

United States Senate

WASHINGTON, DC 20510

May 24, 2023

The Honorable Antony Blinken
United States Secretary of State
The State Department
2201 C Street Northwest
Washington, DC 20520

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

Dear Secretaries Blinken and Mayorkas:

We write today regarding the ongoing negotiations to assist Israel in its efforts to meet the requirements necessary to join the U.S. Visa Waiver Program (VWP). As longtime supporters of the U.S.-Israel relationship, we support Israel's candidacy to join the VWP once it meets all of the requirements established by law including, as stated in 8 U.S. Code 1187, the requirement for reciprocal treatment of all U.S. citizens. We look forward to working with you to determine what measures Israel needs to implement in order to come into compliance and be found eligible to join the program.

Reciprocity and Equal Treatment for All U.S. Citizens

Each potential VWP member country faces different challenges, but all candidate countries must meet the standards for accession to the program. As Secretary of Homeland Security Mayorkas, Ambassador Nides and others in the Administration have repeatedly made clear, our standard is that "blue is blue" — meaning "equal treatment and freedom of travel for all U.S. citizens regardless of national origin, religion, or ethnicity."¹ Based on past experience and current policies and practices, significant changes will be needed for Israel to come into compliance with this requirement.

The U.S. Department of State proactively alerts a specific sub-set of U.S. citizen travelers that they can expect disparate treatment when traveling to Israel based on their national origin, ethnicity, or religion. On the [Travel.State.Gov](https://travel.state.gov) website "Country Information" section for Israel, specific information is provided for U.S. citizens of Arab and Palestinian descent, stating that "some U.S. citizens of Arab or Muslim heritage (including Palestinian-Americans) have experienced significant difficulties and unequal and occasionally hostile treatment at Israel's borders and checkpoints."²

¹ US Embassy Jerusalem. (January 30, 2023). Israel Meets NIV Refusal Rate Requirement for Visa Waiver Program. <https://il.usembassy.gov/israel-meets-niv-refusal-rate-requirement-for-visa-waiver-program/>

² Entry and Exit Requirements, Israel Country Information, Travel.state.gov: <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/>

In addition to these concerns, a number of existing Israeli policies and practices negatively impact U.S. citizens based on their ethnicity, religion, and national origin. The Israeli permit regime, a long-standing mix of civil and military law, restricts the movement of any U.S. citizen who also holds a Palestinian ID. Under current policies dictated by the Coordinator for Government Activities in the Territories (COGAT), the Israeli Defense unit overseeing the West Bank, U.S.-Palestinian dual citizens are required to apply for a permit to enter or exit Israel for any reason, including for travel via Ben Gurion Airport.³ As stated on the Israeli Ministry of Foreign Affairs website on border crossings, Ben Gurion Airport is “intended for all citizens from around the world, except for the Palestinian population”⁴ who are not allowed to use Israel’s primary international airport without a permit. U.S. citizens must use their Palestinian passport “even if there is foreign citizenship. A Palestinian passport takes priority over a foreign passport.”⁵ Other U.S. citizens are not required to obtain such a permit.

Absent a permit, U.S.-Palestinian dual citizens must instead travel to and from the West Bank overland via Jordan, using the King Hussein/Allenby Bridge border crossing — a trip requiring extra time, cost, and inconvenience.⁶ The State Department includes on their website that “individuals registered in the Palestinian Authority population registry — regardless of other nationality, including U.S. citizenship, or place of residence, including those whom Israeli authorities believe may have a claim to a Palestinian ID card are prohibited from entering Israel”⁷ without first applying for an entry permit. These restrictions “may apply even if an individual is not aware of being listed on the PA population registry, does not possess a Palestinian ID card, and does not desire such status.”⁸ These conditions clearly violate the “blue is blue” requirement as they discriminate against U.S. citizens traveling to Israel based on their ethnicity or national origin.

Even when a U.S. citizen is permitted to visit Israel, their travel through Israel to the West Bank may still be prevented. The State Department advises that some U.S. citizen travelers to Israel are not allowed to visit the Palestinian areas on the West Bank and are required by Israeli authorities to “sign declarations stating their understanding that ‘all relevant legal actions’ would be taken against them, ‘including deportation and denial of entry into Israel for a period of up to ten years,’ if they traveled through the country to Palestinian Authority-controlled areas without

[IsraeltheWestBankandGaza.html?wcmmode=disabled](#)

³ COGAT: Status of Authorizations for entry of Palestinians into Israel; for their passage from Judea and Samaria into the Gaza Strip; and for their departure abroad.

<https://www.gov.il/en/departments/policies/authorizationsforentry>

⁴ Israel Ministry of Foreign Affairs, Crossing points. <https://www.gov.il/en/departments/general/crossing-points>

⁵ COGAT: Status of Authorizations for entry of Palestinians into Israel; for their passage from Judea and Samaria into the Gaza Strip; and for their departure abroad: Table of permits — Judea and Samaria: Travel for Various Needs: 10. Departure Abroad. <https://www.gov.il/en/departments/policies/authorizationsforentry>

⁶ Israel Ministry of Foreign Affairs, Crossing points. <https://www.gov.il/en/departments/general/crossing-points>

⁷ Entry and Exit Requirements, Israel Country Information, Travel.state.gov:

<https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/IsraeltheWestBankandGaza.html?wcmmode=disabled>

⁸ Entry and Exit Requirements, Israel Country Information, Travel.state.gov:

<https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/IsraeltheWestBankandGaza.html?wcmmode=disabled>

appropriate authorization.”⁹ These same restrictions do not exist for U.S. citizens visiting Jewish settlements on the West Bank.

In sum, these various conditions violate the “blue is blue” requirement of equal treatment for the Visa Waiver Program by discriminating against U.S. citizens traveling to or through Israel based on their ethnicity, national origin or religion.

Blue is Blue

None of the 40 countries currently participating in the Visa Waiver Program apply such discriminatory laws, policies, and practices against certain groups of U.S. citizens. To do so would violate the “blue is blue” requirement for participating countries. That’s why on January 30, Secretary Mayorkas said, “We will continue to work with the Government of Israel as it works to fulfill all the remaining program requirements, one of which is for Israel to provide equal treatment and freedom of travel for all U.S. citizens regardless of national origin, religion, or ethnicity — for example, Arab-Americans, including Palestinian-Americans — seeking to enter or transit through Israel.”¹⁰

On that same day, U.S. Ambassador to Israel Thomas Nides tweeted “blue means blue,” and posted a video on Twitter where he said, “Reciprocity is a requirement. In fact, freedom of travel is the fundamental basis of the visa waiver program. So what do I mean by reciprocity? It means Israelis coming to the U.S. as tourists can enter the U.S.? Yes. Without visas? Yes. It also means that any American, regardless of their national origin, religion, ethnicity, will be able to travel to Israel. For example: Arab Americans, including Palestinian-Americans, will be able to get on a plane in New York or Detroit and fly directly to Ben-Gurion Airport. You can then go visit your aunt in Bethlehem, all on your blue American passport.”¹¹

State Department Spokesperson Ned Price echoed these sentiments, saying in a press briefing, “If Israelis are able to travel to the United States visa-free, then Americans would and should and must be allowed unhindered access to Ben Gurion Airport, for example. That would apply to Palestinian Americans. Anyone who has a blue passport would be able to travel to and from Israel, landing in Ben Gurion, and going to a place like Deir Dibwan, going to a place like Ramallah, unimpeded.”¹² State Department Deputy Spokesperson Vedant Patel defined reciprocity for all U.S. citizens: “At this time, Israel does not meet all of the Visa Waiver Program eligibility requirements. The U.S. Government is continuing to work with Israel towards fulfilling those requirements, such as, for example, extending reciprocal privileges to all

⁹ Entry and Exit Requirements, Israel Country Information, Travel.state.gov:

<https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/IsraeltheWestBankandGaza.html?wcmmode=disabled>.

¹⁰ Statement from Secretary Mayorkas on Israel’s Visitor Visa Refusal Rate, January 30, 2023:

<https://www.dhs.gov/news/2023/01/30/statement-secretary-mayorkas-israels-visitor-visa-refusal-rate>

¹¹ Ambassador Tom Nides, @USAmbIsrael. (January 30, 2023). Important progress on the visa waiver program - watch this video for more information. For U.S. passports, “Blue is blue.” [Tweet]. Twitter.

https://twitter.com/USAmbIsrael/status/1619984222936260610?s=20&t=VeVM5CKq9vQISr9iDn85_g

¹² Department Press Briefing – February 2, 2023 - United States Department of State

<https://www.state.gov/briefings/department-press-briefing-february-2-2023/>

U.S. citizens and nationals, including Palestinian Americans and Arab Americans to travel to and through Israel. And this includes Americans on the Palestinian population registry as well.”¹³

We appreciate the Administration’s stated position that, in order to be eligible for the Visa Waiver Program, Israel must meet the requirements of reciprocity and equal treatment for all U.S. citizen travelers to Israel and/or the West Bank. To date, however, we have seen no statements from the Government of Israel regarding actions or intentions to change current practices and policies that negatively impact U.S. citizens on the basis of their religion, national origin, or ethnicity, especially in the case of Palestinian-Americans or Arab Americans. Every country, of course, has the right to establish its own rules for the entry of foreigners. However, if a country wants the privilege of participating in our Visa Waiver Program, it does not have the right to discriminate against U.S. citizens.

While we would like to see Israel meet the program requirements for entry into the VWP before the September 30th deadline, it does not appear to be on a path to do so. We request your response to the questions below.

1. Do you agree that, under a Visa Waiver Program, ALL U.S. citizens, regardless of ethnicity, national origin or religion, should be able to travel freely and without limitation to Israel and/or all parts of the West Bank for 90 days for all the purposes enumerated under the program?
2. Do you agree that, under a Visa Waiver Program, a U.S. citizen entering Israel and traveling to a Palestinian town on the West Bank should be treated no differently than a U.S. citizen entering Israel and traveling to a Jewish settlement on the West Bank or to any other place on the West Bank, including being allowed to use the same point of entry?
3. Do you agree that Israel must enact and implement changes to the COGAT policies as they apply to any U.S. citizen traveler and any other measures that violate the equal treatment requirements prior to admission into the Visa Waiver Program?
4. What mechanisms have you put in place to ensure that, if Israel is admitted into the Visa Waiver Program, the U.S. can monitor compliance with the reciprocity and equal treatment requirements of the Program? Given the State Department’s awareness of the history of discrimination against certain groups of U.S. citizen travelers to Israel, will you implement a system to receive and document reports from those who may experience discriminatory treatment? What other mechanisms do you plan to implement to ensure compliance with the equal treatment requirements?
5. If countries in the Visa Waiver Program do not comply with the reciprocity and equal treatment requirements, what is the mechanism in place to remove them from the program? If one does not exist, what steps need to be taken to hold countries accountable for violating the rules of reciprocity?

¹³ Department Press Briefing – January 19, 2023 – United States Department of State
<https://www.state.gov/briefings/departments-press-briefing-january-19-2023/#post-412243-Israel>

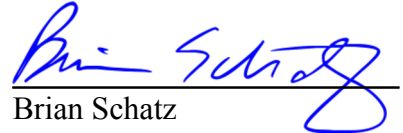
Given the timeline on this matter, we look forward to your prompt written response and respectfully request a briefing on these issues from the appropriate members of your staff within two weeks.

Thank you.


Sincerely,



Chris Van Hollen
United States Senator



Brian Schatz
United States Senator



Peter Welch
United States Senator



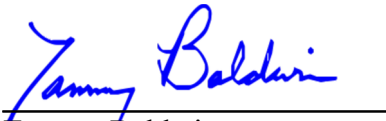
Jeffrey A. Merkley
United States Senator



Richard J. Durbin
United States Senator



Thomas R. Carper
United States Senator



Tammy Baldwin
United States Senator



Tina Smith
United States Senator



Bernard Sanders
United States Senator



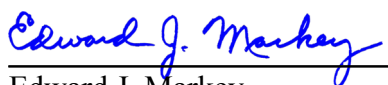
Sherrod Brown
United States Senator



Elizabeth Warren
United States Senator



Tammy Duckworth
United States Senator



Edward J. Markey
United States Senator



Jack Reed
United States Senator



Jeanne Shaheen
United States Senator



Martin Heinrich
United States Senator

CC: U.S. Ambassador to Israel Thomas Nides