



ISSUE BRIEF: 'BLUE IS BLUE': RECIPROCITY AND ISRAEL'S BID TO ENTER THE VISA WAIVER PROGRAM

Dr. Debra Shushan, Director of Policy | Issue Brief #10 | June 2023

Israel should be admitted to the Visa Waiver Program, after demonstrating compliance with all of the program's requirements:

- The US and Israeli governments are engaged in a [major push](#) to gain Israel admission to the [Visa Waiver Program](#) (VWP), an initiative including [40 qualifying countries](#) whose nationals receive visa-free entry to the US for most stays of 90 days or less. Many Americans with close personal ties to Israel look forward to its admission into the VWP, which has qualifying criteria [set out](#) in US law.
- Israel has [pursued](#) admission across multiple US administrations. A number of program requirements have been sticking points, including: reciprocal treatment for all US citizens, achieving a visa refusal rate of under 3%, and information sharing with the US government to determine which of its nationals traveling to the US might represent a security threat. A [2014 law](#) expresses congressional support for Israeli entry into the VWP “when Israel satisfies, and as long as Israel continues to satisfy, the requirements.”
- Israel's visa refusal rate [fell](#) under 3% for the [first time](#) in fiscal year 2022, possibly an [aberration](#) due to fewer applications during COVID-19. At the end of this fiscal year on September 30, the clock will reset, creating a functional [deadline](#). In March, the Knesset [passed](#) a bill geared to bring Israel into compliance with security and data-sharing criteria. It enhances Israel's ability to track passengers and analyze information on passengers and crew entering and leaving Israel via the creation of a National Center for Data Analysis. The law also mandates airlines to share that information with the US and Israel.

Reciprocity is the key outstanding issue to be resolved before Israeli admission to the VWP:

- US law mandates that countries admitted to the VWP provide reciprocal treatment for all US citizens. For Israel to comply, it would need to allow all American visitors — including those of Palestinian, other Arab, or Muslim descent — to enter, leave and transit through Israel and the territories it [occupies](#) — to the extent Israel controls the movement of people in those areas — on equal terms. This is encapsulated by the phrase '[Blue is blue](#).' As the US Embassy to Israel [states](#), this means: “equal treatment and freedom of travel for all US citizens regardless of national origin, religion, or ethnicity, including Palestinian Americans.”
- The State Department's travel website [warns](#), “Some US 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.” US citizens with a Palestinian ID [must apply](#) for a permit to travel via Ben Gurion Airport and to enter or exit Israel, or travel to the West Bank via Jordan. US citizens registered in the Palestinian population registry unknowingly, and who do not have or want Palestinian ID cards, may [face](#) the same restrictions.

- Palestinian, other Arab, and Muslim Americans have [shared](#) experiences of “racial/ethnic profiling and dehumanizing treatment...including hours-long detention and interrogation, invasive questioning, intrusive physical and electronic searches, confiscation of personal electronic devices, and outright denial of entry.”
- 16 Senators led by Chris Van Hollen and Brian Schatz recently [wrote](#) to the Biden Administration, “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.”

Recent Israeli movement in the wrong direction on reciprocity:

- In 2022, Israel’s Coordinator for Government Activities in the Territories (COGAT) introduced new [policies](#) regarding foreigners entering the West Bank. The guidelines [exclude](#) US citizens who are dual nationals of Jordan, Egypt, Morocco, Bahrain, and South Sudan from entering the West Bank, unless they obtain permission in exceptional, humanitarian cases.
- The guidelines also expand the definition of “Jordanian” beyond Jordanian citizens. Palestinians (including Palestinian-Americans) who merely hold Jordanian papers are now excluded from visiting the West Bank absent special permission.
- Critically, the new COGAT guidelines do not apply to visits to Israel’s illegal West Bank settlements.

Need for a robust trial period, with appropriate reporting and monitoring mechanisms, and a suspension procedure:

- Israel will need to implement substantial new policies and practices to comply with VWP requirements. Thus, before being admitted, the Israeli government should show compliance over a significant, meaningful period of time – more than a few weeks or a month.
- Before a trial period starts, the State Department should [implement](#) a system to track denials and discriminatory treatment of Americans at Israeli-controlled points of entry and checkpoints to accurately assess whether Israel is adhering to VWP requirements.
- A suspension mechanism should be included in an Israeli agreement to join the VWP. It is vital that Israel not only meets the requirements before joining the VWP, but that it verifiably continues to comply going forward. Given [recent instances](#) in which the Netanyahu government has violated commitments to the United States, as well as far-right anti-Palestinian Minister Bezalel Smotrich’s [authority](#) over COGAT, incorporating a suspension mechanism in the case of non-compliance is critically important.
- Importantly, Ambassador Nides [indicated](#) that a visa waiver agreement with Israel will include such “snapback” mechanisms, similar to those in the VWP arrangements the US has with other VWP countries. The US should be clear that it will use those mechanisms if the reciprocity promised on paper is not maintained in practice.