



ISSUE BRIEF

# FULFILLING THE REQUIREMENTS ISRAEL'S ENTRY INTO THE US VISA WAIVER PROGRAM

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## EXECUTIVE SUMMARY

A little-discussed, yet far-reaching issue on the US-Israel bilateral agenda is Israel's long-running quest to join the United States' Visa Waiver Program (VWP). In his first year and a half in office, US President Joseph R. Biden Jr. has elevated the issue, and efforts to achieve Israel's entry are gaining momentum after remaining stagnant during the Trump presidency. If Israel is admitted to the program, most Israelis will be able to travel to the United States for cultural exchanges, tourism, and business matters without facing the expensive, time-consuming, and lengthy process of obtaining a visa. US Ambassador to Israel Thomas Nides has pegged 2023 as a target for Israel fulfilling the program's requirements. Yet a number of hurdles remain, including lowering Israel's visa refusal rate, legislative action that Israel must take to align with data-sharing requirements, and compliance with the program's reciprocity benchmarks.

Israel's joining the VWP carries outsized significance for Israelis and a number of US constituencies, including Jewish Americans, who are deeply invested in expanding and deepening a wide range of exchange and educational programs that bring Israelis to the United States. It also carries significance for Muslim and Arab Americans, and especially for Palestinian Americans, who face complex travel conditions when traveling to Israel or the Palestinian Territories. The outgoing government of former Israeli Prime Minister Naftali Bennett identified the VWP as a high priority, and Israel's entry would be enormously popular with the Israeli public.

If Israel wants to prioritize being admitted to the VWP, it will need to consider the recommendations in this report, which include prioritizing some modest but vital administrative and technical policy measures. Israel will also have to take and implement the policy decision to treat US passport holders of Palestinian, Arab, or Muslim heritage, as with all Americans, equally.

As the Middle East and North Africa region undergoes significant political and socioeconomic change, the Council's Middle East programming provides a forum for informing and galvanizing the transatlantic community to work together to address the range of challenges and support opportunities for growth in the region. Our work on the Middle East focuses on building peace and security and unlocking the region's human potential.

### INTRODUCTION

Seemingly obscure to the casual observer, if not byzantine in its details even for those who closely track US-Israel political relations, the US Visa Waiver Program (VWP) has suddenly risen in significance on the US-Israel bilateral agenda. Joining the VWP is deeply desired by Israelis and would have pronounced social and psychological benefits for both societies. It could also have practical benefits for the United States in terms of increasing travel and tourism revenue and facilitating greater exchange opportunities that are at the heart of people-to-people ties, most notably among Jewish Americans and other segments that already maintain extensive ties with Israeli society. Israel's entry into the VWP would also be a boon for Palestinian Americans, and for Arab Americans and Muslim Americans who remain concerned about their ability to travel without disruption or limitations to Israel or the Palestinian Territories.

In the absence of Israel qualifying for the VWP, Israeli citizens must travel to a US consular facility, typically go through an in-person visa interview, pay a significant fee, submit their passport, wait to hear whether their request has been approved or rejected, and then wait for the visa's return or travel again to a consular facility to pick it up.

However, if the United States admitted Israel to the VWP, most Israelis could use the Electronic System for Travel Authorization (ESTA) website to register their travel, and then, once they received email notification of approval, they could travel to the United States without a visa. (US law requires even travelers from VWP countries to get a visa if they traveled to Iran, Iraq, North Korea, Sudan, Syria, Libya, Somalia, or Yemen after February 28, 2011, or if an Israeli citizen is also a citizen of Iran, Iraq, North Korea, Sudan, or Syria.)

Currently, US citizens can travel to Israel for tourism without a visa. Travelers are subject to questioning by airline security personnel that can elicit their religion and whether they are of Palestinian or Arab heritage. US passport holders with Palestinian ancestry who are heading to the West Bank often have to travel through Jordan and enter through a West Bank crossing.

Since the United States and Israel have an extraordinarily intimate and unique relationship, it is surprising to some that Israel has not been admitted already to the

VWP. Israel is, by far, the largest recipient of US foreign assistance, following the signing of a \$38 billion, 10-year memorandum of understanding for security assistance in 2016. The countries' intelligence, defense, and security communities maintain exceptionally close ties. Israel was the first country to sign a free trade agreement with the United States. Both countries boast large, growing, and closely connected expatriate and exchange populations. Israeli firms are prominently represented in US capital markets, and US firms, including many blue-chip companies, have a significant presence in Israel. Since the 1970s, the United States has played an intensive and singular role as the lead mediator between Israel and its Middle Eastern neighbors. Leaders of both countries, regardless of party or political stripe, cite the alliance's "special" standing and the countries' shared interests and values.

But one arena where US-Israel ties lag demonstrably is in the seemingly mundane, but important area of travel, particularly in light of the growing people-to-people ties between the two societies. For decades, Americans have been able to travel freely to Israel for any reason without the need to apply for a visa. But most Israelis continue to face a significant hurdle by being required under US immigration law to get a visa prior to travel to the United States.

Americans entering Israel automatically receive a three-month visa upon arrival. Israelis, in contrast, must wait months—even longer now due to COVID-19-related delays—just to get an interview at a local US consular office in Israel. In this respect, Israelis are subject to the same complicated, expensive, and occasionally uncertain visa application process that applies to all but those countries that have qualified for the VWP. Even then, Israelis' visa applications can be rejected for reasons that are often unstated but appear to relate to concerns—based on employment, religious lifestyle, or post-Israel Defense Forces (IDF) service status—that the applicant cannot overcome the statutory presumption that they are an intending immigrant by proving that they have compelling ties that would lead them to return to Israel.

The travel and visa hurdles are a point of frustration for many Israelis who seek easier access to the United States, the country with which many Israelis feel most aligned. It is also a source of consternation for a variety of communities in the United States. Some factors

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that have stood in the way of Israel qualifying for the program are its need to comply with VWP requirements for data sharing, low visa “refusal rates,” and reciprocity for all eligible US citizens, regardless of background. This last element relates to Israel’s unique situation vis-à-vis Palestinians—a situation without parallel with respect to any other VWP country—and Israel’s control over access to Palestinian areas, with implications for a variety of groups, including Palestinians who hold US citizenship.

Since 2014, the two governments have been engaged in on-again, off-again talks about what Israel must do to qualify for the VWP.<sup>1</sup> Certain requirements of the VWP criteria have remained stubbornly out of reach for Israel, which has fallen short of compliance for several years.

But it now seems that momentum is building toward Israel’s acceptance. In August 2021, when newly installed Israeli Prime Minister Naftali Bennett visited the White House, US President Joseph R. Biden Jr. publicly described Israel’s joining the VWP as a US policy goal, the first time a US leader had staked out such a clear and public commitment. “We’re also going to direct our teams to work toward Israel fulfilling the requirements of the Visa Waiver Program and get that done,” Biden said following his meeting with Bennett on August 27, 2021.<sup>2</sup> US Secretary of State Antony J. Blinken made a similar pledge to Bennett earlier that week in Washington.<sup>3</sup>

The issue of travel has since moved even further from the margins to the center of the US-Israel agenda. From the beginning of his tenure in late 2021, US Ambassador to Israel Thomas Nides has pointed to

Israel’s admission to the VWP as a priority. “Seeing some news in Israel on the Visa Waiver Program. We still have lots of work to do, but I’m thankful to have a great partner for this in @Ayelet\_\_Shaked. Looking forward to rolling up our sleeves together to help Israel meet all the requirements,” Nides tweeted not long after his arrival in Israel.<sup>4</sup> In mid-June 2022, Nides pegged 2023 as a possible target date for approval.<sup>5</sup> This process has not, however, been immune to Israel’s chaotic politics. Two weeks later, as Israelis headed into a new election, the ambassador appealed to Israeli leaders not to “lose momentum,” a rare yet widely praised comment on domestic affairs.<sup>6</sup> Then, days before Biden arrived in Israel, on July 7, the two countries signed a critical data-sharing agreement.<sup>7</sup>

Suddenly, the VWP is at the center of the US-Israel agenda.

The remainder of this paper examines the background and context of the renewed US-Israel VWP negotiations and assesses the challenges and opportunities for progress. With Israelis recently ramping up efforts to meet the various admission criteria and with the Biden administration elevating the US commitment to enabling Israel’s entry into the program, the issue appears closer to resolution than ever before, even though significant hurdles remain. However, additional legislation required for the VWP remain on hold in the Knesset as a result of the upcoming election.

This paper lays out the framework for the VWP and discusses Israeli motivations and why Israel has been unable to gain access until now. It also suggests some points that Israeli and US officials should consider as

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1 Irrespective of VWP status, certain Israelis in limited categories, including some who work in select defense and national security sectors, would continue to face travel and visa restrictions.

2 White House, “Remarks by President Biden and Prime Minister Bennett of the State of Israel Before Expanded Bilateral Meeting,” August 27, 2021, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/27/remarks-by-president-biden-and-prime-minister-bennett-of-the-state-of-israel-before-expanded-bilateral-meeting/>.

3 US Department of State, “Secretary Blinken’s Meeting with Israeli Prime Minister Bennett,” Office of the Spokesperson, August 25, 2021, <https://www.state.gov/secretary-blinkens-meeting-with-israeli-prime-minister-bennett/>.

4 Ambassador Tom Nides (@USAmbIsrael), “Seeing some news in Israel on the Visa Waiver Program. We still have lots of work to do, but I’m thankful to have a great partner for this in @Ayelet\_\_Shaked....,” Twitter, December 27, 2021, 12:01 p.m., <https://twitter.com/i/web/status/1475512153822179332>.

5 Ariel Kahana, “US Ambassador: ‘By 2023, Visa Exemption for Israelis’” [“US Ambassador: ‘עד 2023 - פטור מוויזה לישראלים’”], Israel Hayom, June 13, 2022, <https://www.israelhayom.co.il/news/geopolitics/article/11619609>.

6 Ambassador Tom Nides (@USAmbIsrael), “I’ve been working around the clock since I arrived to help Israel meet all the requirements to join the #VisaWaiverProgram. Don’t lose momentum now. This will help Israeli citizens travel to the U.S. - put them first!” Twitter, June 28, 2022, 9:53 a.m., <https://twitter.com/USAmbIsrael/status/1541781870756745219>.

7 Lazar Berman, “US, Israel Sign Final Agreement Needed for Visa Waiver, but Key Bills Remain Stuck,” *Times of Israel*, July 7, 2022, <https://www.timesofisrael.com/us-israel-sign-final-agreement-needed-for-visa-waiver-but-key-bills-remain-stuck/>.

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they intensify efforts to enable Israel to qualify for the program.

### HISTORY OF THE VISA WAIVER PROGRAM

Initial legislation creating the VWP was passed by Congress in 1986 with the aim of facilitating tourism and short-term business visits to the United States. The program also intended to allow the State Department to focus more consular resources on addressing higher-risk cases. The first country to participate in the program was the United Kingdom, which joined in July 1988, followed later by close US allies like Japan, France, Italy, and the Netherlands. Some non-allied states like Switzerland, Brunei, and Singapore have also qualified over the years. Forty countries are currently in the VWP.<sup>8</sup> Canada, Bermuda, and several Caribbean islands have special status allowing their citizens visa-free travel to the United States but are technically not part of the VWP.<sup>9</sup>

Following the September 11 terrorist attacks, entry requirements into the United States were tightened, with legislation passed requiring foreign visitors entering under the VWP to present a machine-readable passport as of October 1, 2003, and later a biometric-enabled passport. In 2006, ESTA was announced, requiring VWP travelers to provide advance information on their travels to the United States.

Overseas travel was relatively uncommon for Israelis until the 1990s, mainly due to a draconian exit tax that citizens were required to pay upon leaving the country. But travel started to open up as the economy expanded in the 1990s and took off further due to new diplomatic openings to the former Soviet Union and Asia, and to an "Open Skies" agreement with the European Union (EU). Today, Israeli citizens enjoy visa-free or visa-on-arrival access to 164 countries and territories around the world. In 2021, the Global Passport Index ranked the Israeli passport 17th in terms of travel freedom.<sup>10</sup> In the past decade, there has also been a marked increase in Israelis traveling to the United States for immersive and exchange visits, many of which are sponsored by major philanthropic foundations and community

### Countries Currently in the US Visa Waiver Program (year of qualification)<sup>11</sup>

1988-  United Kingdom	 Finland	 Spain	 Estonia
 Japan	 Monaco	1993-  Brunei	 Malta
1989-  Switzerland	 Norway	1995-  Ireland	 Slovakia
 Germany	 San Marino	1996-  Australia	 Hungary
 Sweden	 Austria	1997-  Slovenia	 Latvia
 France	 Iceland	1999-  Portugal	2010-  Greece
 Italy	 Liechtenstein	 Singapore	2012-  Taiwan
 Netherlands	 New Zealand	2008-  Czechia	2014-  Chile
1991-  Andorra	 Denmark	 South Korea	2019-  Poland
 Belgium	 Luxembourg	 Lithuania	2021-  Croatia

8 For further background, see Abigail F. Kolker, *Visa Waiver Program*, Congressional Research Service, updated October 12, 2021, <https://sgp.fas.org/crs/homsec/RL32221.pdf>.

9 "Documentary Requirements for Nonimmigrants," *Code of Federal Regulations*, title 8 § 212.1, <https://www.law.cornell.edu/cfr/text/8/212.1>; and "Citizens of Canada and Bermuda," Travel.State.Gov, US Department of State, accessed April 2022, <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/citizens-of-canada-and-bermuda.html>.

10 "Global Passport Power Rank 2022: Passport Index 2022," Passport Index, Arton Capital, accessed April 2022, <https://www.passportindex.org/byRank.php>

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organizations in both countries, including US Jewish federations and Israeli NGOs like Gesher.

### Countries Not in the VWP

The overwhelming majority of countries included in the VWP are European. No Middle Eastern or African countries have been included in the program to date. A successful bid by Israel will make it the first Middle Eastern country to join.

It is also important to note that participation in the program may be withdrawn at any time if the United States determines that a given country is unable to fulfill the VWP requirements. For example, Argentina's participation in the VWP was terminated in 2002 when a financial crisis in that country created concerns about possible mass emigration. Uruguay was forced to leave the program for similar reasons in 2003.

### ISRAEL'S VISA PICTURE

There are several factors driving Israel's pursuit of the VWP.

**Emotional ties:** An important element of Israel's desire to join the VWP is the emotional connection Israelis feel toward the United States. Israelis view the United States as their strongest, closest, and most reliable ally. Even though they are geographically half a world away, some Israelis joke that their country is the fifty-first US state. Israeli and US leaders often note the bond between the two nations based on their common democratic heritage, which makes Israel unique in its region.

In recent years, Israelis have also felt less isolated as travel opportunities have opened up significantly,

further feeding an expectation for eased travel to the United States.

**Tourism and cultural exchanges:** Israelis are eager to travel to the United States and entry into the VWP would likely lead to a surge in visits. A poll conducted in 2015 as part of an international tourism fair in Tel Aviv cited the United States as the destination that Israelis most want to visit.<sup>12</sup>

The Organisation for Economic Co-operation and Development (OECD) put the number of foreign tourists visiting the United States annually (before the pandemic) at close to 80 million; Canada, Mexico, the United Kingdom, Japan, and China accounted for the largest numbers of tourists to the United States.<sup>13</sup> The number of Israeli travelers to the United States has been growing in recent years, peaking at about 450,000 in 2019.<sup>14</sup>

Alongside traditional tourism is the increasing flow of cross-cultural exchanges, with an ever-widening web of civil society and faith-based initiatives that bring Israelis from all walks of life to the United States. These types of programs, including a growing number that recruit young people, would benefit from Israel joining the VWP.

**Family ties:** Family ties are increasingly a driver of Israeli demand for travel to the United States. While the 2000 US Census estimated that as many as 106,839 Israeli citizens were living in the United States for work, higher education, or having naturalized as US citizens, other, more recent, estimates place the number much higher—possibly as high as three hundred thousand or more.<sup>15</sup> The presence of Israeli Americans is also highly concentrated, for example, in the Connecticut-New York-New Jersey corridor, Boston, Miami, the San Francisco Bay Area, and Southern California. In Los Angeles, according to a 2021 population survey by

11 "Visa Waiver Program Requirements," Homeland Security, US Department of Homeland Security, last updated January 30, 2022, <https://www.dhs.gov/visa-waiver-program-requirements>.

12 Danny Sadeh, "US Is Israelis' Favorite Holiday Destination," *Yediot Ahronot*, April 2, 2015, <https://www.ynetnews.com/articles/0,7340,L-4622339,00.html>.

13 "OECD Tourism Trends and Policies 2020: United States," OECDiLibrary, OECD, accessed April 2022, <https://www.oecd-ilibrary.org/sites/7af173ce-en/index.html?itemId=/content/component/7af173ce-en>.

14 "SIAT Inbound Survey Monitor," International Trade Administration, US Department of Commerce, accessed April 2022, <https://www.trade.gov/data-visualization/siat-inbound-survey-monitor>.

15 Angela Brittingham and Patricia de la Cruz, "Ancestry: 2000," June 2004, <https://www2.census.gov/library/publications/decennial/2000/briefs/c2kbr-35.pdf>; see also research by University of Miami demographer Ira Sheskin, who is also editor of the *American Jewish Yearbook*. Note: Even the high-end estimates, like Sheskin's, typically leave out Arab communities, so the actual number is likely well above three hundred thousand, not including short-term populations (i.e., students, foreign workers, etc.).

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Brandeis University, three-quarters of a million people live in a Jewish household, 12 percent of whom have an Israeli American in the home.<sup>16</sup>

Non-Jewish Israeli Americans and the broader Palestinian American population further expand the numbers of those who will benefit from Israel joining the VWP. This population is also highly concentrated, with the largest communities in California, Michigan and the New York area.<sup>17</sup>

For Israeli Americans, a fast-growing community, their family networks in Israel have myriad reasons to travel to the United States, as do the extended families of the several hundred thousand US citizens who live in Israel but are not eligible for US citizenship. For these cohorts, the already challenging visa process has become even more difficult to navigate since the onset of pandemic-related visa delays, giving rise to unfortunate circumstances including parents, siblings, and children who are unable to visit family members living in the United States.

**Business:** The United States-Israel Free Trade Agreement (FTA) was inaugurated in 1985 with the aim of reducing trade barriers and promoting regulatory transparency. Since then, trade and investment between the United States and Israel have flourished, reaching \$50 billion annually in bilateral trade in goods and services in recent years.<sup>18</sup> Hundreds of US companies, including some of the top names in the high-tech and cyber industries, maintain headquarters in Israel, while numerous Israeli start-ups have established US branches and identify the United States as their primary market. The regular travel of employees of these companies between the two countries would be facilitated by Israel's inclusion in the VWP.

**Politics:** There is an important political element infused in the VWP negotiations. Biden's August 2021 commitment, coming in the context of his administration's warm embrace of the new Bennett-Lapid government, appeared to be a sign of confidence

and affirmation. Although the issues are not formally linked in any way, raising the profile or even accelerating the VWP talks may provide cushioning in the bilateral relationship at critical diplomatic junctures when US-Israeli differences—such as on the Iranian nuclear question—dominate the headlines.

For Israeli political leaders, admission into the VWP is viewed increasingly as a prize. In a November 2021 interview with *Jewish Insider*, former Israeli ambassador to the United States Michael Oren said that Israelis will “erect a statue” in the center of Tel Aviv for “whoever” manages to secure Israel's entry to the VWP.<sup>19</sup> The political popularity of entry into the VWP for Israelis cannot be overstated and efforts to join are seen by Israeli leaders as an efficient tactic to rally supporters.

### OBSTACLES AND CHALLENGES

Hovering over these nearly decade-long VWP talks are cultural divides. To a certain degree, Israel's failure to qualify for the VWP derives from its culture of improvisation. In Israel, rules are often seen as pliable and open to interpretation or possible negotiation. (Unlike the United States, Israel has no written constitution.) The United States, in contrast, is much more formalistic about the letter of the law. The VWP, as a framework based on legislation, is not subject to the discretion of bureaucracies. Until recently, it was not uncommon for Israeli officials to expect that their US counterparts might make certain exceptions, or that provisions could be waived without congressional action.

Another sticking point pertains to the question of equal treatment of all US passport holders. For US officials, particularly those from the two lead agencies—the State Department and the Department of Homeland Security (DHS)—the equal treatment of US passport holders is a bedrock benchmark. Complicating matters are Israel's extreme security situation, its counterterrorism policies, and its longstanding practices of profiling. Its control over the movement of Palestinians in the West

16 Janet Krasner Aronson et al., *2021 Study of Jewish LA*, Brandeis University, June 2022, DOI: <https://doi.org/10.48617/rpt.400>.

17 Precise figures are hard to come by and Arab American community groups, as well as the US Census Bureau's “American Community Survey” reports typically track Palestinian ancestry and heritage, not current family ties to Israel and the Palestinian Territories. When considering the broader Arab American community, which is growing much faster than the US population as a whole, the pool of those potentially affected grows even further.

18 “U.S. Relations with Israel,” Bureau of Near Eastern Affairs, US Department of State, January 20, 2021, <https://www.state.gov/u-s-relations-with-israel/>.

19 Ruth Marks Eglash and Gabby Deutch, “Inside Israel's Push to Join the U.S. Visa Waiver Program,” *Jewish Insider*, November 24, 2021, <https://jewishinsider.com/2021/11/inside-israels-push-to-join-u-s-visa-waiver-program/>.

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Bank and entry to and from the Gaza Strip, with its attendant implications for Palestinian Americans, only adds a further layer of complication.

As if cultural, security, and equal treatment concerns were not enough, there are diplomatic complications as well. The matter of differential treatment of entrants into Israel is also bound up in the Oslo Accords—signed between Israel and the Palestine Liberation Organization in the 1990s—by which Palestinians with foreign citizenship, but who are registered in the Palestinian Authority population registry, enter the West Bank via the land crossing with Jordan, and not via Israel's Ben Gurion Airport or other Israeli ports of entry inside its recognized borders. Some in Israel have attributed the denial of entry to many Palestinian Americans arriving at the country's central airport to the Oslo provisions.

The requirements for a country to be admitted into the VWP are set out by statute and have seven criteria.<sup>20</sup> Separate from these criteria, the legislation states clearly that a traveler is only eligible for visa-free travel to the United States if they are “a national of, and presents a passport issued by, a country which extends...reciprocal privileges to citizens and nationals of the United States.”<sup>21</sup>

Of the VWP requirements that all qualifying countries are required to fulfill, the following three have proven the most difficult for Israel to meet:

1. **Treatment of US passport holders:** “Reciprocal privileges” must be accorded to US citizens and passport holders, a condition often referred to as “reciprocity.” Although the enacting legislation is less than specific, this criterion is widely understood to require Israel to adjust some of its security and entry restrictions to ensure reciprocal treatment for all US travelers, including Palestinian, Arab, and Muslim Americans.<sup>22</sup>

Israel is in the process of working out understandings with the United States that address the specifics of the full range of reciprocity concerns. Before entering the VWP, Israel will need to enact these policy changes. A subsequent period of US observation would likely be required to ensure and test compliance. The Biden administration also has to contend with recent policies announced by the IDF that regulate foreign travel to the West Bank, which have been a focal point of critics and opponents.<sup>23</sup> One US government source told the authors of this study the IDF policies will not impede the VWP talks.

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20 “Visa Waiver Program for Certain Visitors,” Code of Federal Regulations, title 8 § 1187, <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1187&num=0&edition=prelim>. A simplified version of the VWP eligibility criteria is:

- (a) A 3 percent or lower rate of refusal for applicants seeking nonimmigrant visas for travel, business, or study.
- (b) A modern, machine-readable passport document that contains biometric identifiers that reduce the possibility of forgery or passport fraud.
- (c) A decision by the secretary of Homeland Security that VWP admission would be in the law enforcement and security interests of the United States, including specifically whether the country will extradite its own nationals to the United States when they commit violations of US law.
- (d) The country has to report lost and stolen passports promptly to the United States so they cannot be used fraudulently.
- (e) The country has to be willing to take back its own nationals who are subject to final orders of deportation or removal from the United States.
- (f) “The government of the country enters into an agreement with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States or its citizens, and fully implements such agreement.”
- (g) The country screens arriving air travelers against Interpol and other recognized international watchlists.

21 “Visa Waiver Program for Certain,” 8.U.S.C. 1187(a)(2).

22 The current US State Department Travel Advisory for Israel states: “The U.S. government seeks equal treatment and freedom to travel for all U.S. citizens regardless of national origin or ethnicity. U.S. citizens who are denied entry into Israel or the West Bank should receive a written explanation from Israeli authorities. 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.” See, “Israel, the West Bank and Gaza,” Travel.State.Gov, Bureau of Consular Affairs, US Department of State, accessed August 10, 2022, <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/IsraeltheWestBankandGaza.html>. Also see, *2021 Report on International Religious Freedom: Israel, West Bank and Gaza*, Office of International Religious Freedom, US Department of State, June 2, 2022, <https://www.state.gov/reports/2021-report-on-international-religious-freedom/israel-west-bank-and-gaza/>.

23 At the time this study was completed, the IDF regulations — initially released in February 2022 — were delayed and the subject of a variety of legal and NGO complaints. Tovah Lazaroff, “New IDF Limits on Foreigners Visiting West Bank Palestinians Delayed,” *Jerusalem Post*, May 1, 2022, <https://www.jpost.com/middle-east/article-705546>. For the IDF regulations, see: “Procedure for Entry and Residence of Foreigners in the Judea and Samaria Area,” Coordination of Government Activities in the Territories, February 2022, <https://www.gov.il/en/departments/policies/judeaentry2022>.

2. **Refusal rate:** The longest-running technical challenge for Israel has been achieving a sustained visa refusal rate below three percent. Per the VWP authorizing legislation, eligible countries must achieve a visa refusal rate of “less than 3% for the previous year or a lower average percentage over the previous two fiscal years.” According to DHS’ Office of Immigration Statistics, 466,595 Israelis visited the United States in fiscal year 2019, with some 179,904 visas issued to Israeli citizens in 2019. Of those, 164,468 were B1/B2 (visitor for business or pleasure) visas.<sup>24</sup> The figures also show that the rate of refusal for B1/B2 visas in 2019 stood at 5.33 percent, while in 2020 it was even higher at 6.52 percent. There is a wide range of reasons for the denials, including lack of compelling evidence of a plan to return to Israel, overstaying previous visas, criminal activity, and even more basically, incomplete application forms or documentation.

A low visa refusal rate is a fundamental requirement which has been the subject of a significant public messaging campaign by Israeli authorities in 2021 and 2022. The visa refusal rate faces both longstanding challenges—some unique to Israel, like the situation of recently discharged IDF soldiers or ultra-Orthodox citizens—and also the massive pandemic-related backlog in visa processing that has bedeviled the US embassy in Israel and US embassies worldwide. Israeli officials say there have been significant efforts to address this and the number of refusals is close to the target.

3. **Sharing of security information on Israeli citizens:** US legislation requires that VWP eligible countries reach an agreement to “share information regarding whether citizens and nationals of [Israel] traveling to the United States represent a threat to

the security or welfare of the United States or its citizens.” Although some data-sharing progress has been achieved, Israel still has further action to take, including sharing criminal records. This will require legislation in the Knesset.

Israel will also need to adapt some of its existing database-sharing and privacy laws in order to allow this agreement to be fully implemented. Outstanding tasks for Israel include reforming an outdated entry law and updating the process of collecting and sharing Advance Passenger Information (API) and Passenger Name Record (PNR) data, which are both vital to deterring terrorism and organized crime while facilitating international travel. These data-sharing requirements should be relatively easy for the Israeli government to enact, but passing even straightforward legislation has proven challenging during Israel’s recent period of multiple elections and razor-thin parliamentary majorities. Not only must Israel enact the legislation, it must also build the databases to collect the information.

A fourth condition relates to a senior-level determination that would be made toward the very end of the process. A joint determination must be made by “the Secretary of Homeland Security, in consultation with the Secretary of State” that Israel’s entry would not “compromise the law enforcement or security interests of the United States.”<sup>25</sup>

This catch-all criteria, which some observers expect Israel to meet easily, could hinge on highly classified information-sharing arrangements and judgments relating to whether Israel has met past commitments about intelligence collection.<sup>26</sup>

24 “Nonimmigrant Admissions (I-94 Only) by Selected Category of Admission and Region and Country of Citizenship: Fiscal Year 2019,” US Department of Homeland Security, accessed April 2022, <https://www.dhs.gov/immigration-statistics/yearbook/2019/table28>; and “Nonimmigrant Visa Statistics,” Travel.State.Gov, Bureau of Consular Affairs, US Department of State, accessed April 2022, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html>.

25 Alison Siskin, *Visa Waiver Program*, Congressional Research Service, October 28, 2010, <https://trac.syr.edu/immigration/library/P5139.pdf>.

26 Kolker, *Visa Waiver*.



### THE VIEW FROM WASHINGTON

#### The Obama Years

A major effort was undertaken to advance Israel's VWP application in the wake of then US president Barack Obama's 2013 visit to Israel and the passage of the United States-Israel Strategic Partnership Act of 2014 (SPA).<sup>27</sup>

Congressional interest in the issue led to public debates about whether Israel would be held to the program's reciprocity criteria or whether Israel's well-known profiling practices at ports of entry would be exempted. Then-US Senator Barbara Boxer (D-CA), a supporter of Israel's entry into the VWP, denied that she was seeking to exempt Israel from the reciprocity criteria but did highlight that the "legislation does note that Israel retains the right to deny entry to individuals based on national security concerns—a right enjoyed by every country around the globe."<sup>28</sup>

The SPA, which also deals with a range of bilateral issues (military cooperation, energy, water, agriculture, alternative energy, cyber, and licensing for Israeli defense exports), sparked sharp debate at the time of its consideration, bringing to the fore the treatment at Israeli borders and entry points of some Arab Americans, particularly those of Palestinian heritage.

There were proposed amendments, including from US Senators Ron Wyden (D-OR) and the now late Orrin G. Hatch (R-UT), to give Israel more flexibility on its visa refusal rate and on the reciprocity requirement. In the House of Representatives, US Representative Brad Sherman (D-CA) sought to rally other like-minded members. But in the end, these amendments were not adopted.

The final legislation simply affirmed US support for Israel's entry into the VWP, while also affirming that this should occur "when Israel satisfies, and as long as Israel continues to satisfy, the requirements."<sup>29</sup>

#### Lowering the Visa Refusal Rate

A US-Israeli bilateral working group on VWP status began meeting more regularly in 2014, often in Washington under the joint leadership of the State Department and DHS, with the occasional involvement of Israel's then cabinet secretary Avichai Mandelblit and, from 2015, Israel's then justice minister Ayelet Shaked, as well as additional legal advisers from Israel's Ministry of Foreign Affairs and Ministry of Justice.

The negotiations revealed a number of underlying causes for refusal rates higher than the 3 percent the VWP allowed that—until these negotiations—the two sides had not sought together to resolve. For example, many Israelis who finished their mandatory military service chose to travel to the United States for tourism afterwards. A significant minority would overstay their tourist visas in the United States, often to work in unreported sales jobs.

Aware of this problem, consular officers at the US embassy would at times deny visas to post-army service Israelis. In other cases, ultra-Orthodox Israelis would at times overstay their visas to study or work in family businesses in the United States, as part of the way many close-knit family businesses integrated their operations between Israel and the United States. This phenomenon would lead consular officers to deny some visas to members of these communities. In the working group, the two governments began to treat these issues as problems to be solved jointly through educating the Israeli public about US visa requirements and the rules against overstays.

Then US ambassador to Israel Daniel Shapiro directed his public affairs and consular teams to step up public education efforts on navigating the visa application process and its requirements.<sup>30</sup> These measures combined to have positive effects. Concerted efforts to improve Israeli application submissions and ongoing public education campaigns in Israel resulted in a

27 United States-Israel Strategic Partnership Act of 2014, S.2673 – 113th Congress (2013-2014), <https://www.congress.gov/bill/113th-congress/senate-bill/2673/text>.

28 Sen. Barbara Boxer (D-Calif.), "Sen. Boxer: Israel Visa Bill Doesn't Condone Discrimination," *Los Angeles Times*, May 5, 2013, <https://www.latimes.com/opinion/la-xpm-2013-may-05-la-le-0505-sunday-boxer-visa-program-20130505-story.html>.

29 United States-Israel Strategic Partnership Act of 2014, Section 9.

30 One example of these public education efforts was a series of instructional videos distributed on social media. This is one example from 2015: US Embassy Jerusalem, "Visa Q&A: What to Expect During the Visa Interview," November 6, 2015, YouTube video, <https://www.youtube.com/watch?v=M4diNnTrngs>. Also see, Daniel B. Shapiro and Scott Lasensky, "On Trade and Travel, Trump Has an Opportunity to Bolster US-Israel Ties," *Jewish Telegraphic Agency*, February 6, 2017, <https://www.jta.org/2017/02/06/opinion/on-trade-and-travel-trump-has-an-opportunity-to-bolster-us-israel-ties>.

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decrease in US visa refusal rates, which dropped to 3.9 percent in 2015 from a high of nearly 10 percent, still short of the 3 percent requirement.

### Taking on the Reciprocity Issue

Reciprocity—the requirement that all US citizens seeking entry to Israel are treated equally—was regularly raised by US officials in the working group and addressed forthrightly in 2014 by then State Department spokesperson Jen Psaki, who denied that the United States might agree to soften that basic US demand for Israel. “Reciprocity is the most basic condition of the Visa Waiver Program,” Psaki said in response to inquiries in 2014. “No. The requirements have not changed. The Department of Homeland Security and the Department of State remain concerned with reciprocal travel privileges for US citizens due to the unequal treatment that Palestinian Americans and other Arab Americans receive at Israel’s borders and checkpoints,” she said.<sup>31</sup>

That same year, Israel’s Ministry of Foreign Affairs made a formal request to join the VWP. Then deputy foreign minister Zeev Elkin, who spearheaded the Israeli effort, assured his US counterparts, including then deputy secretary of homeland security Alejandro Mayorkas, that Israel would afford equal treatment to Palestinian Americans if Israel were to be included in the VWP.

While senior officials continued to meet through 2016, joining the VWP seemed not to be a priority for the Israeli government. Questions about Israeli interest in satisfying US requirements on reciprocity raised skepticism in the State Department and DHS that Israel might seek shortcuts or special treatment to get around the US rule that “blue is blue”—the principle that foreign countries should treat all US passport holders equally. Other bilateral issues increasingly overshadowed VWP talks, from Israeli-Palestinian peace efforts led by then US secretary of state John Kerry to negotiations over the nuclear deal with Iran to

the drive to complete a MoU on security assistance. On-again, off-again talks on a wholesale updating of the US-Israel FTA also consumed senior officials’ time and attention during this period. After falling sharply, Israel’s visa refusal rate also began to inch up.

### The Trump Years

The issue of the VWP seemed to fall off the US agenda during President Donald J. Trump’s term in office, when US policies on immigration and entry into the United States became more, not less, restrictive, especially toward Muslim and African nations. Although Trump was generous toward Israel in virtually every sphere—from moving the US embassy to Jerusalem to recognizing Israeli sovereignty over the Golan Heights to withdrawing from the nuclear deal with Iran to signaling support for limited West Bank annexation—the Trump administration invested little time on the question of admitting Israel into the VWP.

Shaked, the Israeli justice minister, suggested early in Trump’s presidency that the two sides were close to an agreement. “We are finalizing a deal to cancel the visas,” Shaked tweeted. “Ever since I took up the post, we have been working with the Americans to join the group of select countries whose citizens are exempt from obtaining an entry visa to the USA. We found the balance between protecting the privacy of Israeli citizens and the demands of the Americans.”<sup>32</sup> This remark was a reference to efforts—that began during the Obama years—to find a solution to the US VWP requirement that Israel share law enforcement databases with US counterparts, which Israeli officials were concerned could violate Israeli citizens’ rights to privacy.

Despite Shaked’s positive tone, Israelis who had previously worked on the effort felt little encouragement from their US counterparts and the matter was put once again on the back burner of the bilateral relationship. Israeli and US diplomats focused their efforts on other strategic priorities such as crafting Trump’s “peace

31 Anne Gearan, “Lawmakers Pushing to Add Israel to Visa-Waiver Program,” *Washington Post*, April 26, 2014, [https://www.washingtonpost.com/world/national-security/lawmakers-pushing-to-add-israel-to-visa-waiver-program/2014/04/26/4c99f2d8-ccb1-11e3-93eb-6c0037de2ad\\_story.html?itid=ik\\_inline\\_manual\\_2](https://www.washingtonpost.com/world/national-security/lawmakers-pushing-to-add-israel-to-visa-waiver-program/2014/04/26/4c99f2d8-ccb1-11e3-93eb-6c0037de2ad_story.html?itid=ik_inline_manual_2); Bradley Klapper, “Israeli Push for Visa-Free Travel to US Faces Test,” *Associated Press*, April 25, 2014, <https://apnews.com/article/eafb8a18ca14471f9b779b992957cee5>; and JTA, “US: Israel’s Discrimination Against Arab Travelers Keeps It Out of Visa Waiver Deal,” *Jerusalem Post*, March 25, 2014, <https://www.jpost.com/diplomacy-and-politics/us-israels-discrimination-against-arab-travelers-keeps-it-out-of-visa-waiver-deal-346481>.

32 Stuart Winer, “Israel Nearing Long Sought Visa Waiver Deal – Ministers,” *Times of Israel*, November 13, 2017, <https://www.timesofisrael.com/israel-nearing-long-sought-visa-waiver-deal-with-us-ministers/>. Winer also cites efforts by then Israeli Deputy Foreign Minister Tzipi Hotovely to “reduce the number of Israelis who are refused visas to the US.”

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plan” and, later, developing the Abraham Accords that normalized relations between Israel and Bahrain, the United Arab Emirates, Morocco, and Sudan.

### CURRENT DIPLOMACY AND THE BIDEN ADMINISTRATION

Biden's elevation of Israel's bid to join the VWP has left Israeli officials encouraged, with Israel's then ambassador to the United States Gilad Erdan saying in 2021 that he had “no doubt” the United States would ultimately accept Israel into the program.<sup>33</sup> Since the Biden-Bennett meeting last August, Shaked, now Israel's interior minister, has made joining the VWP a top priority and is working to address the remaining requirements.<sup>34</sup>

Among Shaked's first overseas destinations as interior minister was the United States, which she visited in late 2021 and where she met with Mayorkas, her former negotiating partner who had been appointed secretary of Homeland Security. After their meeting, Mayorkas tweeted: “DHS remains committed to working with Israel to help it meet all Visa Waiver Program requirements.”<sup>35</sup> Shaked said that representatives from her ministry would meet monthly with DHS officials to work through outstanding problems together.

Shaked told Jewish Insider that Israel had been close to joining the VWP in the past and that she now better understood the barriers preventing Israel's entry. She expressed confidence that remaining barriers could be overcome, and that Israel would soon gain entry into the program.<sup>36</sup>

In January 2022, a team from DHS held the first virtual meeting with its Israeli counterparts to discuss the

actual technicalities of the process. The Israeli side had been working on its responses to a broad US government questionnaire and submitted its answers at the start of that month.

In mid-February, a joint DHS-State Department delegation arrived in Israel. The delegation traveled around the country, visiting sites such as Ben Gurion Airport and the four land crossing points (three with Jordan and one with Egypt). The entourage also surveyed the offices where Israel issues its passports, assessing Israel's suitability to meet some of the VWP's more basic requirements.

On March 2, 2022, Israel and the United States signed an Information Sharing Agreement, part of the VWP requirement relating to enhanced border security cooperation, thereby allowing US authorities to receive information from Israeli biometric databases about suspected criminals.<sup>37</sup> DHS Undersecretary Rob Silvers, who took a leading role in these efforts, has increasingly become a focal point for the US government's work on the VWP, alongside and under the guidance of Ambassador Nides. For her part, Shaked directed her ministry to launch a public education program to help Israelis improve their visa applications. Announcing the signing of the Information Sharing Agreement in March, Shaked sought to temper optimism, adding that “there is still a long way to go for the VWP.”<sup>38</sup>

Advocacy groups, both for and against, have been gearing up their engagement. The American Israel Public Affairs Committee (AIPAC), prominent among Jewish American groups in this regard, has long taken an interest in the matter and was deeply involved in congressional lobbying during the 2013-14 period. AIPAC continues to track the issue closely, but no

33 Jacob Magid, “Erdan Confident US Visa Waiver for Israelis Forthcoming After Biden Meeting,” *Times of Israel*, August 27, 2021, [https://www.timesofisrael.com/liveblog\\_entry/erdan-confident-us-visa-waiver-for-israelis-forthcoming-after-biden-meeting/](https://www.timesofisrael.com/liveblog_entry/erdan-confident-us-visa-waiver-for-israelis-forthcoming-after-biden-meeting/). After only 10 months on the job, just before stepping down as ambassador, Erdan told the *Times of Israel* that it was his intervention which prompted Biden to offer the new commitment. See account in Jacob Magid, “Wrapping Up Stint As Ambassador to US, Erdan Confident Visa Waiver Forthcoming,” *Times of Israel*, September 2, 2022, <https://www.timesofisrael.com/wrapping-up-stint-as-ambassador-to-us-erdan-confident-visa-waiver-forthcoming/>.

34 Eglash and Deutch, “Inside Israel's Push.”

35 Homeland Security (@DHSgov), “.@SecMayorkas met with Minister @Ayelet\_\_Shaked to discuss Israel's efforts to join the Visa Waiver Program. DHS remains committed to working with Israel to help it meet all Visa Waiver Program requirements.” Twitter, November 17, 2021, 6:27 p.m., <https://twitter.com/dhsgov/status/1461113729815298051?lang=en>.

36 Eglash and Deutch, “Inside Israel's Push.”

37 US Department of Homeland Security, DHS to Increase Security Cooperation with Israel through New Arrangements, press release, March 3, 2022, <https://www.dhs.gov/news/2022/03/03/dhs-increase-security-cooperation-israel-through-new-arrangements>.

38 Ayelet Shaked (@Ayelet\_Shaked), “We signed an Information Sharing agreement with the USA government. This is a significant step, but there is still a long way to go for the VWP. Special thanks to the US Ambassador to Israel @USAmbIsrael who supported all along and did not give up and thanks to @omerbarlev,” Twitter, March 2, 2022, 12:16 p.m., [https://twitter.com/Ayelet\\_\\_Shaked/status/1499071167101128704?t=MEa-U9jVr7grMwCBIPiWLA&s=19](https://twitter.com/Ayelet__Shaked/status/1499071167101128704?t=MEa-U9jVr7grMwCBIPiWLA&s=19).

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longer appears to be looking for ways to ease certain criteria.

Members of Congress who support Israel joining the VWP have also paid heightened attention to the matter since Biden's pledge in 2021, with large bipartisan groups in both the House of Representatives and the Senate expressing support for Israel's inclusion in letters to the administration.<sup>39</sup>

Increased attention and public discussion have also renewed opposition. Arab American leaders like James J. Zogby have highlighted Israel's treatment of some Arab American travelers. On Capitol Hill, US Rep. Rashida Tlaib (D-MI), herself Palestinian American, and others have sought to rally like-minded progressive Democrats to join in their objections.<sup>40</sup>

It is unclear what impact the collapse of Bennett's government and another round of elections will have on Israel's efforts to join the VWP. The outgoing Israeli government made unprecedented progress in meeting the requirements of the program, but there remain outstanding issues to be addressed. In particular, three pieces of legislation dealing with sharing of information in Israel's criminal database, travel documents, and airline passenger lists must be approved by the Knesset which was dissolved in June triggering new elections. Most likely, this legislation will have to be taken up when a new Knesset and government take office.

### CONCLUSION

Israel's entry into the VWP would constitute a positive development in an already strong relationship between Israel and the United States, with far-reaching impacts on people-to-people ties. The Biden administration has elevated the negotiations to their highest level of prioritization to date, yet much of the work to qualify remains up to Israel. As Biden framed it in his August

2021 meeting with Bennett: Israel's task is "fulfilling the requirements."

Within that broad framing, and assuming Israel continues to make steady and measurable progress, some degree of problem solving may yet be required to overcome remaining obstacles and public opposition.

Israelis and Americans would be well advised to avoid politicizing this process, which could add further delays. Israel's entry into the United States' premier travel program could ultimately prove a win-win: giving a boost to cultural exchanges and people-to-people ties, improving travel opportunities for all US passport holders who previously faced significant hurdles, and taking a tangible step toward strengthening the US-Israel alliance at a time when the United States has a variety of high-order strategic priorities on its agenda, from Ukraine and Iran to climate change and China.

Without continued high-level involvement and ongoing commitments by Israel to meet all eligibility criteria, this nearly decade-long quest to join the VWP could continue to fall short. On the heels of Israel's upcoming election, and with the Biden administration prioritizing the issue, this may be the best chance Israelis have to finally achieve this long-sought-after goal.

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39 In fall 2021, bipartisan groups of House and Senate members addressed letters to the administration calling for Israel's expeditious entry into the VWP. See, for example, US Sen. Kathleen Rice et al., Letter to Secretary of State Antony Blinken and Secretary of Homeland Security Alejandro Mayorkas, November 22, 2021, [https://kathleenrice.house.gov/uploadedfiles/israel\\_vwp\\_final.pdf](https://kathleenrice.house.gov/uploadedfiles/israel_vwp_final.pdf); US Sen. Jacky Rosen et al., Letter to Secretary of State Antony Blinken and Secretary of Homeland Security Alejandro Mayorkas, December 17, 2022, [https://www.rosen.senate.gov/sites/default/files/2021-12/Rosen-Scott%20Israel%20VWP%2012.17.21\\_0.pdf](https://www.rosen.senate.gov/sites/default/files/2021-12/Rosen-Scott%20Israel%20VWP%2012.17.21_0.pdf); and Ben Samuels, "Here's What It Would Take for Israel to Enter America's Visa Waiver Program," *Haaretz*, September 1, 2021, <https://www.haaretz.com/israel-news/.premium.HIGHLIGHT-here-s-what-it-would-take-for-israel-to-enter-america-s-visa-waiver-program-1.10172915?lts=1644165007992>

40 James J. Zogby, "Israel's Problem with US Visa Waiver Program: Respecting Arab American Rights," *Washington Watch*, September 24, 2021, <https://jameszogby.com/washingtonwatch2021s/israels-problem-with-us-visa-waiver-program-respecting-arab-american-rights>; Marc Rod, "Tlaib, Ocasio-Cortez, McCollum Target Israeli Eligibility for Visa Waiver Program," *Jewish Insider*, June 3, 2022, <https://jewishinsider.com/2022/06/rashida-tlaib-visa-waiver-program-israel/>; and Yousef Munayyer, "Israel and the US Visa Waiver Program: Not a Done Deal," May 12, 2022, Arab Center Washington, DC, <https://arabcenterdc.org/renidessource/israel-and-the-us-visa-waiver-program-not-a-done-deal/>.



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