

NATIONAL LAWYERS GUILD

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Dear Sen. Barbara Boxer and members of the Senate Foreign Relations Committee,

I am writing on behalf of the National Lawyers in opposition to Senate Bill 462, the United States-Israel Strategic Partnership Act of 2013¹ introduced by Senator Barbara Boxer. The bill would negatively impact U.S. immigration policies and facilitate discrimination against U.S. citizens by Israel under the existing U.S. Visa Waiver Program.

The existing Visa Waiver Program allows citizens of a designated country to enter the United States without visas so long as the designated country reciprocates by allowing U.S. nationals to enter the designated country without visas and without discrimination.

We oppose SB 462 because the Israeli government routinely denies entrance to Arab and Muslim American travelers, and to Americans supportive of Palestinian rights. For example, well-known academics Noam Chomsky and Norman Finkelstein have been denied entry to Israel.² Officially recognizing the discrimination the Israeli government practices against Palestinian Israelis, Palestinian-Americans, and Arabs and Muslims, the U.S. State Department currently provides a travel warning that states, "Some US citizens holding Israeli nationality, possessing a Palestinian identity card, or of Arab or Muslim origin have experienced significant difficulties in entering or exiting Israel or the West Bank."³ This statement indicates that the State Department officially recognizes that Israeli discriminatory practices apply to various groups of Americans.⁴

The State Department's Visa Waiver Program requires participating countries to maintain a U.S. "visitor visa refusal rate of less than 3 percent."⁵ The Jewish Telegraph Agency has reported "Israel's failure to stay under the maximum 3 percent threshold of denied visas."⁶ Israel may not be the first country to be granted visa waiver privileges while violating the 3 percent requirement. Importantly, however, there is no evidence that any of the other countries allowed to violate the program conditions deny entry based on categories that would be unlawful under U.S. civil rights laws, such as national origin or religion, or based on holding a certain political position, i.e., support for Palestinian rights.

¹ S. 462: United States-Israel Strategic Partnership Act of 2013, GovTrack, <http://www.govtrack.us/congress/bills/113/s462/text>.

² Toni O'Loughlin, US academic deported and banned for criticising Israel, The Guardian, Sunday 25 May 2008 <http://www.guardian.co.uk/world/2008/may/26/israelandthepalestinians.usa>.

³ US Department of State, Travel Advisory, http://travel.state.gov/travel/cis_pa_tw/tw_6010.html.

⁴ Maysoon Zayid, Barbara Boxer: Withdraw your biased bill, The Daily Beast, 29 April 2013, <http://www.thedailybeast.com/articles/2013/04/29/barbara-boxer-s-biased-bill.html>.

⁵ US Department of State, Visa Waiver Program, http://travel.state.gov/visa/temp/without/without_1990.html.

⁶ Ron Kampeas, In U.S. fight over visa waiver exemption for Israel, both sides cite discrimination, JTA, 11 April 2013, <http://www.jta.org/2013/04/11/news-opinion/politics/in-u-s-fight-over-visa-waiver-exemption-for-israel-both-sides-cite-discrimination#ixzz2UKw1Qpjn>.

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Illustrating the problem, Nour Joudah, an American of Palestinian descent, was denied entry to teach English at a Quaker school in the West Bank in February 2013¹ even though she held a valid visa. Intervention by Rep. Sheila Jackson Lee and the U.S. Agency for International Development (AID), which had arranged her visa, was unsuccessful. While Joudah was detained and awaiting deportation, the U.S. Consulate contacted her to say: "We're calling to check on your health and safety. But when it comes to Israel, we really can't do very much."² In view of the admission that the U.S. government "can't do very much" to stop illegal and immoral discrimination against its citizens by Israel based on their national origin, efforts to provide lawful assistance to Palestinians or lawful opposition to Israeli policies, the National Lawyers Guild opposes the inclusion of Israel in the Visa Waiver Program. Inclusion under these circumstances would give U.S. government stamp of approval to discrimination that is unconstitutional and unlawful under U.S. law.

Normally, negotiation of a reciprocal agreement gives the United States leverage to discourage discrimination against U.S. citizens abroad. But SB 462 harms American citizens and U.S. standing in world opinion by accepting discrimination practiced by the Israeli government that is illegal and unconstitutional in the United States.

In addition, SB 462 discards the principle of reciprocity to the disadvantage of U.S. citizens. To avoid the Visa Waiver Program's requirement of non-discriminatory access for U.S. citizens, SB 462 includes a special exemption for Israel that U.S. immigration laws do not include for any of the other 37 nations in the Visa Waiver Program. Rather than requiring reciprocal non-discriminatory access for U.S. citizens to Israel, just as Israeli citizens have non-discriminatory access to the U.S., SB 462 conditions Israeli participation only on the State Department finding that the Israeli government "has made every reasonable effort, without jeopardizing the security of the State of Israel, to ensure that reciprocal travel privileges are extended to all United States citizens." This provision places a stamp of legitimacy on Israel's routine discrimination against and rejection of American travelers based on bogus, unexplained "security" concerns.

The importance of equal rights and non-discrimination against American citizens was recognized by Senate staff attorneys who "privately advised that complying with the request [for participation in the Visa Waiver Program by the Israeli government on a discriminatory basis]... would undermine the U.S. government's call for the equal protection of all its citizens traveling abroad."³

¹ Amira Hass, Israel denies entry to American teacher working in West Bank, Ha'aretz, 27 February 2013, <http://www.haaretz.com/news/national/israel-denies-entry-to-american-teacher-working-in-west-bank.premium-1.506018>.

² Ali Gharib and George Hale, Critics Fear Visa Waiver For Israel Glosses Over Discrimination Against Americans, The Daily Beast, 16 May 2013, <http://www.thedailybeast.com/articles/2013/05/16/critics-fear-visa-waiver-for-israel-glosses-over-discrimination-against-americans.html>.

³ Mike Coogan, AIPAC's legislative agenda dividing members of Congress, The Hill's Congress Blog, 5 April 2013, <http://thehill.com/blogs/congress-blog/foreign-policy/292069-aipacs-legislative-agenda-dividing-members-of-congress#ixzz2UKwtAuEp>.

The National Lawyers Guild also opposes Senate Bill 462 because it promises "to continue to provide Israel with robust security assistance." The United States provides Israel with more than \$3 billion a year in foreign aid -- far more than to any other country. Yet the U.S. government has failed to enact measures that do more than offer lip service against Israel's numerous grave violations of international law. These include the establishment of hundreds of Jewish-only settlements housing some 650,000 people in the occupied West Bank and administering them under a separate legal system; confiscation of much of the territory's land from Palestinian owners and construction of the "separation barrier" (wall and fence) denying residents access to their land; demolition of tens of thousands of homes and other structures; maintenance of segregated roads and "checkpoint" barriers that restrict movement for Palestinians; the implementation of a plan that will result in the forced displacement of up to 70,000 Arab Bedouin citizens of Israel and the destruction of 35 "unrecognized" villages, the refusal of the right of the return of Palestinian refugees, and denial of residency status for many longtime occupants of Jerusalem.

In addition, Israel continues to hold the Gaza Strip under a state of siege, severely restricting travel and commercial contact with the outside world and denying most residents any means of livelihood. And on two occasions since 2008, Israel has pummeled the Gaza Strip with large scale military assaults, killing more than 1,000 civilians, wounding countless others and inflicting massive amounts of damage to property.

For all these reasons, we call upon the Committee to reject SB 462. Should the bill move forward, we will call upon Congress to defeat the legislation, and on President Obama to veto SB 462, should it come to his desk.

Sincerely,



Azadeh N. Shahshahani
President
National Lawyers Guild