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OVERTURNING 30 YEARS OF PRECEDENT: IS THE ADMINISTRATION IGNORING THE DANGERS OF TRAINING LIBYAN PILOTS AND NUCLEAR SCIENTISTS?

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND BORDER SECURITY

OF THE

COMMITTEE ON THE JUDICIARY

AND THE

SUBCOMMITTEE ON NATIONAL SECURITY

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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OVERTURNING 30 YEARS OF PRECEDENT: IS THE ADMINISTRATION IGNORING THE DANGERS OF TRAINING LIBYAN PILOTS AND NUCLEAR SCIENTISTS?

THURSDAY, APRIL 3, 2014

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY
OF THE
COMMITTEE ON THE JUDICIARY

AND THE

SUBCOMMITTEE ON NATIONAL SECURITY
OF THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

Washington, DC.

The Subcommittee met, pursuant to call, at 2:37 p.m., in room 2141, Rayburn House Office Building, the Honorable Trey Gowdy (Chairman of the Subcommittee on Immigration and Border Security, Committee on the Judiciary) presiding.

Present from the Committee on the Judiciary: Representatives Gowdy, Goodlatte, King, Lofgren, Conyers, Jackson Lee, and Garcia.

Present from the Committee on Government Reform: Representatives Chaffetz, Bentivolio, Tierney, Kelly, and Lujan Grisham.

Staff Present from the Committee on the Judiciary: (Majority) Allison Halataei, Parliamentarian & General Counsel; Dimple Shah, Counsel; Graham Owens, Clerk; and (Minority) David Shahoulian, Minority Counsel.

Staff Present from the Committee on Government Reform: (Majority) Molly Boyl, Parliamentarian & Deputy General Counsel; Mitch Kominsky, Counsel; Linda Good, Chief Clerk; Sang Yi, Professional Staff Member; Sharon Casey, Clerk; (Minority) Jaron Bourke, Director of Administration; Peter Kenny, Counsel; Chris Knauer, Senior Investigator; Adam Koshkin, Research Assistant; Julia Krieger, New Media Press Secretary; and Juan McCullum, Clerk.

Mr. GOWDY. The Subcommittee on Immigration and Border Security and the Subcommittee on National Security will come to order.

Without objection, the Chair is authorized to declare recesses of the Committee at any time. We welcome our witnesses today. I will

recognize myself first for an opening statement, and we will have a series of opening statements, given the fact that this is a joint hearing.

The Administration is moving to lift the longstanding prohibition against Libyans entering the United States to work in aviation, maintenance, flight operations or to study or train in nuclear-related fields. Despite concerns expressed last November by Representative Jason Chaffetz and Chairman Bob Goodlatte, DHS moved forward with this change and sent the draft final regulation to OMB.

Under the terms of the regulation, the removal of the prohibition will go into effect without prior notice and comment. We would have to trust the Libyan Government and the Administration to appropriately vet which Libyans would be allowed to learn to fly planes and study nuclear technology.

The current prohibition was put into place in the early 1980's after a series of terrorist incidents involving Libyan nationals. On December 2, 1979, a mob attacked and burned the U.S. Embassy in Tripoli; and on December 29, 1979, the United States designated Libya as a state sponsor of terrorism.

In order to protect Americans, on March 11, 1983, the Reagan Administration implemented this rule to prohibit Libyan nationals or other foreign nationals acting on behalf of the Libyan entity from obtaining certain immigration benefits for the purpose of engaging and/or seeking to obtain aviation maintenance, flight operations or nuclear-related studies or training.

While we have hope for a democratic Libya, the question we must consider today is, has enough changed to lift this longstanding ban? Why now is post-revolutionary Libya secure enough to justify and warrant the change? And let's consider some recent events, if we will. The National Transitional Council has struggled to govern Libya effectively since the fall of Qadhafi. The majority of territory outside of Tripoli has fallen under control of armed militias that have refused to disarm.

Just 3 weeks ago, on March 12, 2014, the Libyan prime minister fled after parliament voted him out of office. Militias based in Western Libya, notorious for their violence and independence, have launched an offensive against the Eastern rebels and what can be the opening shots in a civil war between Western and Eastern Libya. Without a central government, without any real power, Libya may be falling apart. Only 2 weeks ago, Libya acknowledged for the first time that terrorist groups were behind dozens of attacks against security services.

The government issued a statement on March 19 saying, "Benghazi and other cities are facing a terrorist war waged by Libyan and foreign elements who have hostile, evil agendas." On March 20, Libya's Government called for international help to fight terrorism that is threatening internal stability in the country. On the same day, a missile was launched at the Tripoli Airport runway, shutting down the airport.

And finally, the head of Libya's military police was assassinated in Benghazi in October while Libya's first post-Qadhafi prosecutor general was shot dead on February 8, 2013. Unfortunately, these new reports indicate that the militias are getting stronger and not

weaker, so why is the Administration proposing to lift a 30-year ban on Libyans coming to the U.S. to train as nuclear scientists now?

The Administration's draft regulation justifies the change because the U.S. Relationship with Libya has been normalized. In November, my colleagues, Representatives Chaffetz and Goodlatte, wrote to acting Homeland Security Secretary Beers about this rule change and spelled out specifically the violent threats and actions against American antiterrorism operations in the country.

And we cannot talk about the Libyan-American relationship without acknowledging the attack against the diplomatic post in Benghazi resulting in the murder of four Americans. How is this relationship normalized when our Ambassador was murdered in Benghazi 18 months ago and not one single solitary person has been arrested, prosecuted or brought to justice? It seems, therefore, unjustifiable to rescind a 30-year rule at this time.

Why are we willing to risk, no matter the likelihood, chancing Libyan extremists for terrorists to come here to essentially learn the skills to commit acts of terror? So why in general, and why now specifically? What has changed? And the burden of advocating for change, in my judgment, in the status quo lies with the Administration.

With that, I will recognize the Ranking Member Ms. Lofgren from California.

Ms. LOFGREN. I thank you, Mr. Chairman.

Based on the letters that the majority has sent to the Department of Homeland Security as well as the opening statement, I believe the concerns can be summarized as follows: The Libyan Government is fragile. There are extremist elements in the region that would do us harm. So we can't lift the visa restriction because these people might somehow harm us.

This argument, however, is illogical.

First, as the Department of Defense, which initiated the request to rescind the visa restriction in the first place, makes clear, the whole point of lifting the visa restriction is to help the Libyan government defeat those very extremists. Members on both sides of the aisle, including Republican Senators John McCain, Lindsey Graham, and Saxby Chambliss, have recognized the critical importance of helping the new democratically elected Libyan Government secure itself against militant extremism in the region.

But the visa restrictions actually stand in the way. Because the restriction affects all Libyans, it means we can't even train the pro-Western forces within the Libyan Air Force on the aircraft they need to secure their own country against extremist forces. The Libyan Government's ability to fight such forces depends on being able to move troops and equipment throughout the country, and the country currently uses Lockheed C-130 military transport planes and Boeing CH-47 cargo helicopters to do that.

But according to the Defense Department, the fleet is aging and needs repair and replacement, and many more pilots and flight crew need to be trained. There are proposals to buy additional aircraft and parts from U.S. companies and to provide training to pilots and flight crews, but the visa restrictions stand in the way of those arrangements.

Members on the other side of the aisle may raise the unfortunate attacks on Benghazi at this hearing today, but that event actually underscores why we should lift the visa restriction. On the night of the attack, it was one of those very same Lockheed C-130 transport planes that the Libyan Government used to rescue and evacuate their surviving consular personnel at the U.S. compound in Benghazi. Rather than used against us, that plane helped Americans survive.

Now, when my colleagues on the other side of the aisle nevertheless raise the Benghazi attack, as well as other terrorist incidents within Libya, as grounds for keeping the visa restriction in place, we must keep in mind that there is a difference between the extremist forces behind these incidents and the pro-Western Libyan military that is trying to defeat them.

And that is the point of lifting the visa restriction. The visa restriction simply does not differentiate between the Libyan forces we are trying to help and the forces we are trying to defeat. It bars friend and foe alike, and that just isn't smart policy.

That gets us to the second big reason why we should rescind the visa restriction: It simply isn't needed to keep America safe from harm. We must bear in mind that the 30-year-old Libyan visa restriction is the only such country-specific visa ban of its kind. It is an anachronistic relic of a bygone era.

If a ban were necessary with respect to Libya, which is not designated a state sponsor of terrorism since the Bush Administration removed them from the list in 2006, wouldn't it be even more necessary with respect to countries that are actually designated as state sponsors of terrorism? Well, those bans don't exist. There are no country-specific bans for Iran, Syria, Sudan, Cuba, the countries currently listed as state sponsors of terrorism, nor is there a ban for rogue nations like North Korea. And that is because our immigration laws provide plenty of authority to prevent the travel of individuals who pose a danger to the U.S. and its interests.

Our immigration laws already require the denial of visas to persons with suspected ties to terrorism as well as anyone who is otherwise suspected of posing a threat to national security. Our immigration laws also require consular officials to deny visas for an individual whose travel raises significant foreign policy concerns. The same is true for any individual suspected of potentially violating the terms of their visa or admission to the United States.

Over the years, including after the attacks of September 11, 2001, this country has not seen fit to erect more country-specific restrictions like the Libyan visa ban. Instead, the U.S. moved in a very different direction, erecting bans that actually focused on whether the admission of a particular individual was helpful or harmful to U.S. interests.

In other words, we adopted policies that allowed us to let in our friends and to keep out our enemies, rather than barring them all. Doesn't that make more sense? But, unfortunately, sense is rarely what congressional hearings are about these days, and I am afraid we will see potentially some scare tactics and political attacks on the Administration. I hope not. I hope that my fear is not grounded.

I do thank the witnesses for joining us today, and I yield back the balance of my time.

Mr. GOWDY. Before we go vote and come back, I would ask unanimous consent to put a couple things in the record.

Number one, the Libya final regulation, final action notice from the Secretary of DHS, Janet Napolitano, former Secretary of DHS; February 1, 2010 letter to Assistant Secretary Heyman, from Assistant Secretary Jeffrey Feltman; May 31, 2012, letter to Assistant Secretary Heyman from Assistant Secretary Jeffrey Feltman; February 12, 2013, action memo from Mr. Bersin to DHS; April 1, 2014, letter to Mr. Bersin from the Assistant Secretary of Defense Amanda Dory; March 21, 2014, letter to Chairman Goodlatte and myself from Brian de Vallance, Acting Secretary for Legislative Affairs of DHS; and finally, information from OMB showing the date the regulation was sent to them and that the review was extended.

Because the Freedom of Information Act and the Privacy Act include explicit exemptions for disclosure to Congress Members and staff of the House are not restricted in their use of the information provided by DHS. As is typical, the speech and debate clause also applies in this context.

With that, I want to apologize to our witnesses—I am asking unanimous consent. Is there an objection from the gentleman from Utah?

Mr. CHAFFETZ. No.

Mr. GOWDY. Okay. So admitted.

[The information referred to follows:]

Billing Code: 9111-28

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

8 CFR Part 214

[DHS Docket No. ICEB-2013-0003]

RIN 1653-AA69

Rescinding Suspension of Enrollment for Certain F and M Nonimmigrant Students from Libya and Third Country Nationals Acting on Behalf of Libyan Entities

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations by rescinding the regulatory provisions promulgated in 1983 that terminated the nonimmigrant status and barred the granting of certain immigration benefits to Libyan nationals and foreign nationals acting on behalf of Libyan entities who are engaging in or seeking to obtain studies or training in aviation maintenance, flight operations, or nuclear-related fields. The United States and the Government of Libya have normalized their relationship and most of the restrictions and sanctions imposed by the United States and the United Nations toward Libya have been lifted. Therefore, DHS, after consultation with the Department of State and the Department of Defense, is rescinding the restrictions that deny nonimmigrant status and benefits to a specific group of Libyan nationals.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this rule, e-mail Katherine Westerlund, Policy Chief (Acting), Student and Exchange Visitor Program, e-mail: SEVP@ice.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Abbreviations

AFSP	Alien Flight Student Program
APA	Administrative Procedure Act
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
DoD	Department of Defense
DoS	Department of State
INA	Immigration and Nationality Act of 1952, as amended
INS	Immigration and Naturalization Service
RFA	Regulatory Flexibility Act
SBREFA	Small Business Regulatory Enforcement Fairness Act of 1996
TSA	Transportation Security Administration
UMRA	Unfunded Mandates Reform Act of 1995

II. Background

As a result of events hostile to the United States early in the 1970s involving the Libyan government and its citizens, relations between the governments of the United States and Libya eroded significantly. In the ensuing years, diplomatic relations between the nations were severed, travel was restricted, student and exchange visitor enrollment of Libyans in the United States was almost completely suspended, the United States imposed economic sanctions (in concert with sanctions imposed by the United Nations), and the Department of State (DoS) added Libya to its list of state sponsors of terrorism. Additionally, the Immigration and Naturalization Service (INS) amended its regulations

with the promulgation of 8 CFR 214.5 to prohibit Libyan nationals from enrolling in programs of study in the United States involving subject matter that could potentially have a negative impact on U.S. national security. 48 FR 10296 (March 11, 1983).

In 2011, after the fall of the Mu'ammar al-Qadhafi regime and the end of the eight-month Libyan uprising, Libya began building a democratized nation. Despite the country's challenges in building and stabilizing democratic institutions, Libya has continued developing a strong relationship with and has maintained support from the United States, United Nations, and other international partners. As a result, most sanctions that the United Nations and the United States imposed on Libya during Mu'ammar al-Qadhafi's reign have been removed.

The United States has normalized relations with Libya and is working to establish robust diplomatic, military, and economic ties. The United States has signed a trade and investment agreement with the Common Market for Eastern and Southern Africa, of which Libya is a member. This has been a stepping stone in enabling many U.S. companies to resume their business relationships with Libya, which is significant for the United States.

DoS, the Department of Homeland Security (DHS), and the Department of Defense (DoD), each have contributed to efforts aimed at enhancing diplomatic relations with Libya. After the removal of Libya from the list of state sponsors of terrorism, DoS has been effectively engaging with Libya on international matters, and on September 22, 2011, DoS resumed its diplomatic presence in Tripoli. In March 2012, DHS hosted a two-week Libyan International Visitor Program delegation, which included participants from the Libyan Ministry of Defense and the Customs Authority. DHS and the Libyan

government hope to continue to cooperate on other matters such as border security, airport screening, refugee resettlement, and training. The U.S. government has developed a robust plan to encourage engagement and education in the coming years with the Libyan government. One of DoD's goals is to initiate a program of military education and training for Libyan citizens that would be conducted in the United States. The education and training is targeted to include aviation maintenance, flight operations, and nuclear-related studies or training; however, this goal is currently impeded by 8 CFR 214.5.

A. Purpose

The purpose of this regulatory action is to rescind the regulation at 8 CFR 214.5 which prohibits Libyan nationals, or any other foreign nationals acting on behalf of Libyan entities, from engaging in aviation maintenance, flight operations, or nuclear-related studies or training in the United States. The rescission of 8 CFR 214.5 would permit DHS and other agencies of the U.S. government to continue to improve outreach to Libyan counterparts. The ability of these agencies to provide training and technical assistance in the justice, defense, and border security sectors to the new Libyan government in turn will contribute to the growing relationship between the two governments. The Libyan government has expressed initial interest in sending students to the United States to receive training and education from DoD on tactics that will allow them to reconstitute, operate, and sustain their fleet. These tactics include aviation maintenance, flight operations, and nuclear-related studies. Removal of the regulation would permit DoD to provide these educational and military exchanges to Libyan citizens on a case-by-case basis.

Separate and apart from the rescission of 8 CFR 214.5 pursuant to this rulemaking, other requirements of interagency review and clearance under the "Visas Mantis" vetting procedure will remain in place for Libyan visa applicants whose planned travel raises security concerns. This procedure is based on Section 212(a)(3)(A)(i)(II) of the Immigration and Nationality Act of 1952, as amended (INA), which renders inadmissible visa applicants who seek to enter the United States "solely, principally, or incidentally" to illegally export "goods, technology, or sensitive information" from the country. 8 U.S.C. 1182(a)(3)(A)(i). In addition to the "Visas Mantis" vetting procedure, the Transportation Security Administration's (TSA) Alien Flight Student Program (AFSP), set forth in 49 CFR Part 1552, requires any alien or other designated candidate that is seeking flight instruction on aircraft at a Federal Aviation Administration certified training provider located in the United States or abroad to be subject to security threat assessments. See 49 U.S.C. 44939. AFSP is not applicable to U.S. citizens/nationals and those with DoD endorsements; however, TSA has an automated mechanism in place to track DoD endorsements and thereby provide TSA with the capability of identifying foreign nationals who were not vetted through the AFSP process.

After consulting with DoD and DoS, DHS has determined that maintaining this regulation would no longer reflect current U.S. government policy towards Libya. Moreover, its continued existence would significantly hamper the growing relationship between the two countries. Therefore, and in light of the other safeguard measures described above, DHS has decided to lift this restriction.

B. Student and Exchange Visitor Program legal authority and requirements.

Under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i), an alien may be admitted into the United States in nonimmigrant classification (F status) to attend an academic, professional or language training school. Under section 101(a)(15)(M)(i) of the INA, 8 U.S.C. 1101(a)(15)(M)(i), an alien may be admitted into the United States in nonimmigrant classification (M status) to attend a vocational education school or other recognized nonacademic school (other than a language training program). An F or M student may enroll in a particular school only if the Secretary of Homeland Security has certified the school for the attendance of F and/or M students. Exchange visitors (J-1), as defined in section 101(a)(15)(J) of the INA, 8 U.S.C. 1101(a)(15)(j), are nonimmigrants who have been selected by an exchange visitor program sponsor designated by DoS to participate in an Exchange Visitor Program in the United States. The J-1 classification includes exchange visitors participating in programs in which they will receive graduate medical education or training.

Section 428(h) of the Homeland Security Act of 2002, 6 U.S.C. 236(b), grants the Secretary of Homeland Security authority to issue regulations with respect to the INA and all other immigration and nationality laws relating to the functions of consular officers of the United States in connection with the granting or refusal of visas. Similarly, section 428(c) of the INA, 6 U.S.C. 236(c), grants the Secretary of State the authority to direct consular officers to refuse a visa to an alien if he/she deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

As stated above, the former INS issued 8 CFR 214.5 to prohibit Libyan citizens from enrolling in programs of study in the United States involving subject matter that at

that time, could have potentially had a negative impact on U.S. national security or immigration law enforcement. 48 FR 10296 (March 11, 1983). The original rule cited to the former provision of section 212(a)(27) of the INA, 8 U.S.C. 1182(a)(27), which excluded aliens on security grounds. This provision is now partly found in current section 212(a)(3)(A) of the INA, 8 U.S.C. 1182(a)(3)(A). In this regard, current section 212(a)(3)(C) of the INA, 8 U.S.C. 1182(a)(3)(C), provides for the inadmissibility of aliens if the Secretary of State has reasonable ground to believe an alien entry or proposed activities would have potentially serious adverse foreign policy consequences for the United States. The March 11, 1983 INS regulation also invoked the foreign affairs exception of the Administrative Procedure Act (APA) at 5 U.S.C. 553. In light of the normalization of diplomatic relations with the government of Libya, DHS is promulgating this rule pursuant to the above-cited authorities that permit the Secretary of Homeland Security to regulate the granting or refusal of visas.

III. Statutory and Regulatory Requirements

We developed this final rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on nine of these statutes or executive orders.

A. Administrative Procedure Act

The APA generally requires (with exceptions) that the public be allowed to participate in agency rulemaking. Normally, an agency would publish a notice of proposed rulemaking in the Federal Register (5 U.S.C. 553(b)) providing interested persons the opportunity to submit comments (5 U.S.C. 553(c)). The APA also provides (with exceptions) that a final rule published after consideration of those comments not

take effect for at least 30 days from the date of publication (5 U.S.C. 553(d)). In addition, the APA establishes requirements for adjudications required by statute to be determined on the record after opportunity for an agency hearing (5 U.S.C. 554).

DHS is of the opinion that the removal of 8 CFR 214.5 is exempt from § 553 (Rulemaking) of the APA because it involves a foreign affairs function of the United States to the extent that it will impact on the relations with a foreign government. Since the end of the Libyan uprising in 2011, the country has been supported by the United States, the United Nations, and other countries in its efforts to build a democratic government. The United States and Libya have normalized relations and most of the restrictions and sanctions imposed by the United States and the United Nations toward Libya have been lifted. Given these developments, the regulatory provisions of 8 CFR 214.5 are at odds with current U.S. foreign policy. The delicate but important nature of this relationship warrants rescinding the rule pursuant to the foreign affairs exception of the APA. The immediate rescission of 8 CFR 214.5 will help avoid a likely negative impact on the diplomatic relationship with Libya and other unwanted international consequences.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that DHS conduct a regulatory flexibility analysis when it publishes a general notice of proposed rulemaking. 5 U.S.C. 603(a). Because this rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, as set forth above, a regulatory flexibility analysis is not required under the RFA (5 U.S.C. 601-612).

C. Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the RFA, provides requirements to assist small entities in understanding a rule when an agency publishes it as a general notice of proposed rulemaking, so that such entities can better evaluate the rule's effects on them and participate in the rulemaking. 5 U.S.C. 601; Pub. L. 104-121. Because this rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, as set forth above, the requirements relating to a rule under the SBREFA (as contained in 5 U.S.C. 601-612) are not applicable. See Pub. L. 104-121.

D. Executive Order 12866 and 13563: Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(d)(2) of Executive Order 12866 provides that the Executive Order does not apply to a rule that involves a foreign affairs function of the United States, and thus it does not apply to this rule. Accordingly, the Office of Management and Budget has not reviewed this rulemaking under that Executive Order. DHS has nevertheless reviewed this rulemaking to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 12866 and 13563. DHS does not consider this rule to be a "significant regulatory action" under Executive Order 12866, Section 3(f), Regulatory Planning and Review, and Executive Order 13563.

E. Executive Order 13132: Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this final rule under that Order and have determined that it does not have implications for federalism.

F. Executive Order 12988: Civil Justice Reform

This final rule meets the applicable standards in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

G. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4, 109 Stat. 48, 2 U.S.C. 1532) generally requires agencies to prepare a statement of anticipated costs and benefits before promulgating any general notice of proposed rulemaking, that may result in an annual expenditure of $100 million or more (adjusted annually for inflation) by State, local, or tribal governments, or by the private sector. Because this rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, as set forth above, the requirements relating to a rule under the UMRA are not applicable. See 2 U.S.C. 1532(a).

H. Paperwork Reduction Act

All Departments are required to submit to OMB for review and approval, any reporting or recordkeeping requirements inherent in a rule under the Paperwork Reduction Act of 1995, Pub. L. 104-13, 109 Stat. 163 (1995), 44 U.S.C. 3501, et seq. This rule has no such requirements.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

8 CFR CHAPTER 1 – DEPARTMENT OF HOMELAND SECURITY

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301-1305, and 1372; section 643, Pub. L. 104-208, 110 Stat. 3009-708; Pub. L. 106-386, 114 Stat. 1477-1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively, 48 U.S.C. 1806; 8 CFR part 2.

§ 214.5 [Removed and Reserved]

2. Remove and reserve § 214.5.

Dated:

_____

Janet E. Napolitano
Secretary of Homeland Security

United States Department of State

Washington, D.C. 20520

February 1, 2010

Dear Assistant Secretary Heyman:

In light of the newly normalized relationship between the United States and Libya, the Bureau of Near Eastern Affairs at the Department of State recommends the rescission of 8 Code of Federal Regulations (CFR) 214.5, which prohibits Libyans from engaging in aviation maintenance, flight operations, or nuclear-related studies or training in the United States. This outdated 1983 regulation does not reflect current U.S. government policy towards Libya. In 2003, Libya decided to abandon its weapons of mass destruction program and renounce terrorism. In 2004, the United States re-established our diplomatic presence in Libya and U.S. sanctions were lifted. In 2006, Libya was removed from the list of state sponsors of terror. Since that time, the U.S. government has worked to make Libya a constructive partner and we now have a normal bilateral relationship, which includes military and education exchanges. Unfortunately, 8 CFR 214.5 stands in the way military and education exchanges with Libyans who wish to engage in aviation maintenance, flight operations, or nuclear-related studies or training in the United States. The U.S. Embassy in Tripoli estimates that 25 students inquired about visas for flight training or nuclear engineering programs during 2009. The Embassy expects this number to at least double in 2010, in part due to a request by the U.S. Air Force (USAF) to train Libyan officers in aviation maintenance and flight operations.

Libya's strategic decision to end its weapons of mass destruction programs and support for terrorism opened new opportunities for a bilateral military relationship. On January 16, 2009, the United States and Libya signed a Defense Contacts and Cooperation Memorandum of Understanding, paving the way for future cooperation between our militaries. In April 2009, Libyan National Security Advisor Mutassim al-Qadhafi visited Washington and met with Secretary of State Clinton, Department of Homeland Security Deputy Secretary Lute, National Security Advisor Jones, Defense Deputy Secretary Lynn, Chief of Naval Operations Admiral Roughead and CIA Deputy Director Kappes. On December 8, 2009, Libya signed an agreement required by Section 505 of the Foreign Assistance Act of 1961, which provides end-use, security and retransfer assurances to the U.S. government. This agreement has made it possible to move ahead with

Assistant Secretary for Policy
David Heyman,
Department of Homeland Security.

English language instruction for Libyan military officers under the International Military and Education Training program.

The 505 agreement also opens the door for Libyan Air Force personnel to receive military aviation maintenance and flight training in the United States for C-130 aircraft. C-130 aircraft-related activities are the cornerstone of USAF engagement with Libya and serve as a natural avenue to build military-to-military relations. The United States has already engaged in several successful C-130 aircraft-related events with the Libyan government, including a visit to Libya in April 2009 by a USAF technical delegation to assess the Libyan fleet of C-130 aircraft. During this assessment, the USAF concurred with the Libyan view that C-130 maintenance and flight training is necessary to reconstitute, operate and sustain their fleet given the Libyan Air Force's lack of technical expertise and understanding of U.S. security goals and procedures. The Libyan government formally requested a series of courses in the United States for approximately 50 Libyan officers. However, due to 8 CFR 214.5, Libyan military officers are prohibited from obtaining nonimmigrant visas to come to the United States to participate in C-130 aircraft maintenance and flight training. This ban will have serious implications for U.S.-Libya military cooperation and the greater bilateral relationship. Additionally, the reconstitution of the Libyan C-130 fleet can further U.S. interests in the region, as it will allow Libya to contribute tactical airlift to African Union and United Nations peacekeeping operations.

Similarly, 8 CFR 214.5 prevents Libyan students and scientists from pursuing studies and receiving training in nuclear-related fields in the United States. Throughout the 1980s, Libya sent thousands of students to the United States, building a cadre of highly trained experts in a range of fields. Following three decades of isolation, Libya's scientific expertise is very outdated. The United States has a robust plan to encourage educational exchanges and this year, the U.S. Embassy in Tripoli anticipates sending more than 150 Libyan students, military and law enforcement officers, and government officials to the United States on training and exchange programs. Some of these exchanges will focus on nuclear-related fields.

Absent a repeal or revision of 8 CFR 214.5 or the implementation of some other appropriate agency action that could facilitate these exchanges, they will not happen and our effective engagement will be significantly hampered. The Department of State, for example, partners with the Department of Energy on the Libyan Scientist Engagement Program, which engages former weapons of mass destruction scientists on peaceful and economically viable pursuits. Those

scientists are prohibited from pursuing nuclear-related training and studies in the United States. Similarly, Oregon State University was mandated to refuse admission of a highly-qualified Libyan student into its nuclear engineering program under 8 CFR 214.5. This student has now been placed in a general engineering program pending resolution of this issue.

Libyan visa applicants, whose planned travel raises concerns of the transfer of sensitive technology or knowledge of the proliferation of weapons of mass destruction, continue to be subject to requirements for interagency review and clearance through visa security advisory opinions known as "Visas Mantis." Termination of the provisions of 8 CFR 214.5 would not affect these requirements, which fall under the general purview of INA 212(a)(3)(A)(i)(II).

In order to advance the U.S. agenda of expanded engagement with Libya across all areas, we must have the ability to train and educate our counterparts on all issues of mutual importance. The rescission or revision of 8 CFR 214.5, or an appropriate agency action that would allow individuals to train and receive education on a case-by-case basis would pave the way for increased cooperation between our countries on the military, non-proliferation and education fronts. I welcome your consideration of solutions that would permit fulfillment of the U.S. goal of securing positive Libyan engagement in these fields.

Sincerely,

Jeffrey Feltman
Assistant Secretary
Bureau for Near Eastern Affairs

United States Department of State

Washington, D.C. 20520

May 31, 2012

Dear Assistant Secretary Heyman:

In light of the newly normalized relationship between the United States and Libya, the Department of State and the Department of Defense recommend the rescission of 8 Code of Federal Regulations (CFR) 214.5, which prohibits Libyans from engaging in aviation maintenance, flight operations, or nuclear-related studies or training in the United States. This regulation dating back to 1983 does not reflect current U.S. Government policy towards the new Libya. Since the fall of the Qadhafi regime in 2011 and removal of a government that supported terrorist acts in the past, we have been working to establish robust diplomatic, military, and economic ties with the new Libyan leadership. The United States enjoys unprecedented popularity in Libya due in part to its strong support for the revolution. Now is the time to advance our policy goals and build new relationships with emerging leaders. We have no reason to believe that this new government will support any form of terrorism. They have repeatedly and publicly condemned terrorist acts committed by the previous regime. Although we have made considerable progress, providing millions of dollars in non-lethal defense items and training and technical assistance in the justice, defense, and border security sectors to the new Libya, much remains to be done. Unfortunately, 8 CFR 214.5 prevents military and education exchanges with Libyans who wish to engage in aviation maintenance, flight operations, or nuclear-related studies or training in the United States. We expect a rapid increase in demand for exchanges as the new ministries rebuild, and it is in the U.S. interest to be fully prepared to meet that demand.

The Department of Defense has recently met with the new Libyan government and concurred with the Libyan view that C-130 maintenance and flight training is necessary to reconstitute, operate, and sustain their fleet. However, due to 8 CFR 214.5, Libyan military officers are prohibited from obtaining nonimmigrant visas for this type of training. This ban will have serious implications for U.S.-Libya military cooperation and the overall bilateral relationship. Now more than ever, the reconstitution of the Libyan CH-47 and C-130 fleet could further U.S. interests in the region, in part by allowing Libya to contribute tactical airlift to African Union and United Nations peacekeeping operations.

Similarly, 8 CFR 214.5 prevents Libyan students and scientists from pursuing studies and receiving training in nuclear-related fields in the United States. Following three decades of isolation, Libya's scientific expertise is outdated. The United States has a comprehensive plan to pursue educational exchanges, and the U.S. Embassy in Tripoli has heard reports that the Libyan government would like to send up to 5,000 students (who may travel with dependents) to the United States this year to participate in U.S. training and exchange programs. Some of these exchanges may focus on civil nuclear-related fields. Prior to the fall of the Qadhafi regime, the Department of State formally partnered with the Department of Energy on the Libyan Scientist Engagement Program, which engaged former weapons of mass destruction scientists on peaceful and economically viable pursuits. The Department of State is resuming engagements with Libyan scientists but remains prohibited from engaging these experts via nuclear-related training and studies in the United States.

Libyan visa applicants whose planned travel raises concerns regarding the transfer of sensitive technology or knowledge or the proliferation of weapons of mass destruction continue to be subject to requirements for interagency review and clearance known as "Visas Mantis." Termination of the provisions of 8 CFR 214.5 would not affect these requirements, which fall under the general purview of Immigration and Naturalization Act, section 212(a)(3)(A)(i)(II).

In order to advance the U.S. agenda of expanded engagement with the new Libya across all key areas, we must have the ability to train and educate our Libyan counterparts on all issues of mutual importance and concern. The rescission of 8 CFR 214.5 or an appropriate agency action that would allow individuals to train and receive necessary education and training on a case-by-case basis, would pave the way for increased cooperation between our countries on the military, non-proliferation, and education fronts. I welcome your consideration of solutions that would permit fulfillment of the U.S. goal of securing positive Libyan engagement in these fields at a pivotal time in Libya's history.

Sincerely,

Jeffrey Feltman
Assistant Secretary
Bureau for Near Eastern Affairs

Joseph McMillan
Acting Assistant Secretary of Defense for
International Security Affairs

FOR OFFICIAL USE ONLY

Office of International Affairs
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

February 12, 2013

Action

MEMORANDUM FOR THE SECRETARY

FROM: Alan Bersin for
Assistant Secretary for International Affairs and
Chief Diplomatic Officer

SUBJECT: Recommendation to take regulatory action to rescind 8 C.F.R. § 214.5

Purpose

To recommend that, based on the request from the Department of State (DOS) and the Department of Defense (DoD) that reflects revised U.S. Government policy towards engagement with Libya, you direct regulatory action to rescind 8 C.F.R. § 214.5, which prohibits Libyan nationals' access to immigration benefits for the purpose of engaging in or seeking to engage in aviation maintenance, flight operations, or nuclear-related studies or training.

Background

On March 11, 1983, the legacy Immigration and Naturalization Service (INS) published a final rule prohibiting Libyan nationals, or other foreign nationals acting on behalf of a Libyan entity, from obtaining certain immigration benefits for the purpose of engaging in or seeking to obtain aviation maintenance, flight operations, or nuclear-related studies or training. *See* 48 Fed. Reg. 10,296 (codified at 8 C.F.R. § 214.5). Those benefits include applications for school transfers; extensions of stay and change of nonimmigrant status; employment authorization or practical training; and requests for reinstatement of student status. The regulation also terminated the nonimmigrant status of any Libyan national, or other foreign national acting on behalf of a Libyan entity, engaged in those proscribed activities. With the transfer of INS authorities to the Department of Homeland Security (DHS), this regulation now falls under the purview of DHS. (Additional context is provided at Attachment D).

DHS COJHOR LIBREG 000001

On February 1, 2010, DHS received a letter from then-Assistant Secretary of State for the Bureau for Near Eastern Affairs, Jeffrey Feltman, requesting the rescission or revision of 8 C.F.R. § 214.5. Shortly thereafter, widespread unrest precluded the U.S. government from engagement with Libya. Following the revolution, however, the United States once again began the process of normalizing relations with Libya. On May 31, 2012, DHS received an additional letter from then-Assistant Secretary Jeffrey Feltman, with a joint signature from Joseph McMillan, Acting Assistant Secretary of Defense for International Security Affairs. The May 2012 letter states the "outdated regulation does not reflect current U.S. government policy towards Libya." The letter also reiterates the request that DHS consider rescinding or revising 8 C.F.R. § 214.5 to allow for expanded engagement with Libya across all areas. According to the U.S. Embassy in Tripoli, there is a robust plan in place to encourage engagement and educational exchanges in coming years with the Libyan government. DoD is attempting to initiate a program of aircraft sales, pilot training, and ground crew training early this year worth up to $2 billion, the contracts for which would go to other countries if training could not be conducted in the United States. The Departments of Defense and State have made it clear that absent its rescission, C.F.R. § 214.5 will significantly hamper these efforts.

Discussion

Department regulations at 8 C.F.R. § 214.5 apply only to Libyan nationals or other foreign nationals acting on behalf of a Libyan entity. There are currently no other DHS regulations similarly restricting immigration benefits for nationals of specified countries, including those that remain designated state sponsors of terrorism—Cuba, Iran, Sudan, and Syria. However, there remain regulations issued by other agencies, and statutory provisions that restrict immigration benefits based upon nationality or citizenship. Of note, DOS regulation at 22 CFR § 41.3 allows for a waiver of certain documentary requirements for entry in limited circumstances. Section 41.3(e) provides that aliens on active duty in the armed forces of a foreign country traveling to the United States, on behalf of the alien's government or the United Nations, and under advance arrangements made with the appropriate U.S. military authorities, are eligible for a waiver of travel documents. Citizens or residents of Cuba, the People's Republic of China, North Korea, Mongolia, and Vietnam are specifically precluded from waivers under 22 C.F.R. § 41.3(e). Although citizens and residents of these countries are ineligible for a waiver, they are not prohibited from filing a visa application for travel to the United States.

In the absence of 8 C.F.R. § 214.5, Libyan visa applicants whose planned travel raises security concerns would continue to be subject to requirements of interagency review and clearance under the "Visas Mantis" vetting procedure. Review under "Visas Mantis" is based on Section 212(a)(3)(A)(i)(II) if the Immigration and Nationality Act, which renders inadmissible visa applicants who are "principally" or "incidentally" involved in exporting "goods, technology or sensitive information" from the United States. This security screening process is part of the effort to prevent weapons proliferation.

In addition to the continued application of "Visas Mantis," Libyan nationals seeking to engage in flight operations training would be subject to regulation by DHS and the Transportation Security Administration (TSA). Specifically, prospective flight students must comply with the Alien Flight Student Program (AFSP) requirements set forth in 49 CFR Part 1552. AFSP conducts

Security Treat Assessments for all aliens and other designated candidates seeking flight instruction on aircraft at Federal Aviation Administration-certified flight training providers whether in the United States or abroad. Prospective flight students are required to complete the TSA security threat assessment, which includes collection of: fingerprints; biographical information, to include photo; identity documents, to include valid passport; and specific information about desired training events. AFSP vetting requirements are not applicable to U.S. citizens/nationals and those with DoD endorsements. In July 2012, TSA implemented an automated mechanism to track DoD endorsements. This mechanism provides TSA capability to identify foreign nationals who have not been identified during the AFSP process. AFSP was created in accordance with Section 612 of the Vision 100 – Century of Aviation Reauthorization Act which was signed in to law on December 12, 2003. This Act transferred the process of authorizing non-U.S. citizens to study flight in the United States to TSA, and away from the Federal Bureau of Investigation (FBI), which had previously handled the authorizations.

In addition to the January 2009 U.S.-Libya Defense Contacts and Cooperation Memorandum of Understanding, on December 8, 2009, Libya signed an agreement for military assistance required by section 505 of the Foreign Assistance Act of 1961, which provides end use, security and retransfer assurances to the U.S. government. This agreement enabled Libyan military officers to received English language instruction under the International Military and Education Training Program. The agreement further opened the door for Libyan Air Force personnel to receive military aviation maintenance and flight training in the United States for C-130 aircraft. USAF believes that C-130 aircraft-related training is the cornerstone of its engagement with Libya and serves as a natural avenue to strengthen military-to-military relations. Additionally, USAF is negotiating to provide aircraft to the Government of Libya. These negotiations presently do not include provisions related to aviation maintenance and flight operations training, which USAF believes significantly hampers the U.S. position.

With respect to DHS engagement, in 2008, U.S. Customs and Border Protection (CBP) provided training on International Seaport Interdiction as well as on Airport Special Teams Operations to its Libyan counterparts. The U.S. Coast Guard (USCG) increased outreach and exchanges concerning maritime issues with the Libyan Coast Guard, including a port visit in Libya by the USCG Cutter Boutwell in June, 2009. In March 2012, after the fall of Qadhafi, CBP sent two border security experts to Tripoli to engage with the Customs Authority and provided several items of handheld Non-Intrusive Detection equipment. In September 2012, DHS hosted a two-week Libyan International Visitor Program delegation, including participants from the Libyan Ministry of Defense and the Customs Authority. Libyan officials expressed a strong desire to increase engagement with DHS in the future, to include border security, airport screening, refugee resettlement, and additional training opportunities. DOS indicates that absent a rescission or revision of 8 C.F.R. § 214.5, effective engagement with Libya is significantly hampered.

Should 8 C.F.R. § 214.5 be rescinded, DoD, as well as U.S. private sector companies, would be able to provide aviation maintenance and flight operations training to support their contracts to sell aircraft to the Government of Libya. However, aircraft are designated as a military item and any military item that does not belong to the U.S. government (built by industry for foreign sales) that leaves the United States requires a license issued by the DOS Directorate of Defense

Trade Controls. The licensing requirement applies regardless of where the military item is going. In the absence of 8 C.F.R. § 214.5, existing regulations would continue to ensure the Government of Libya and Libyan nationals must adhere to requirements imposed by the U.S. government on all international partners seeking to engage in activities and transactions that may have a nexus to a possible national security threat.

Action to rescind 8 C.F.R. § 214.5 would permit DHS and other elements of the U.S. government to continue its outreach with Libyan counterparts and contribute to the strengthening of U.S.-Libya ties. Removal of this regulatory provision would permit educational and military exchanges and allow for cooperation between the United States and the Government of Libya.

If you approve this recommendation, the Department will undertake the appropriate mechanisms to publish a new rule that will remove and reserve 8 C.F.R. § 214.5 and thus allow Libyan nationals to access immigration benefits for the purpose of engaging in or seeking to engage in aviation maintenance, flight operations, or nuclear-related studies or training, subject to the same requirements as nationals of other countries.

The Office of International Affairs has coordinated with the DHS Office of the General Counsel (OGC). OGC has indicated that there are no legal barriers to the rescission of 8 C.F.R. § 214.5. The National Security Staff strongly supports rescission of 8 C.F.R. § 214.5 as soon as possible.

Recommendation

The Office of International Affairs recommends that you direct appropriate regulatory action to rescind 8 C.F.R. § 214.5.

Approve 2-21-13 Disapprove _____

Modify _____ Needs more discussion _____

Attachments

A. February 1, 2010 letter from DOS
B. May 31, 2012 joint letter from DOS/DOD
C. Classified Analysis
D. Additional Background on U.S.-Libya Relations

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-2400

INTERNATIONAL SECURITY AFFAIRS

Mr. Alan D. Bersin
Assistant Secretary for International Affairs and
Chief Diplomatic Officer
United States Department of Homeland Security

April 1, 2014

Dear Assistant Secretary Bersin,

This letter is intended to explain and amplify as necessary the Department of Defense's strong interest in support of the Department of Homeland Security's efforts to rescind 8 Code of Federal Regulations (CFR) § 214.5 and for your use in future testimony.

Despite Libya's challenges in building and stabilizing democratic institutions, Libya continues to seek a strong relationship with the United States, the United Nations, and other international partners. A key element of Libya's success in its transition will be its ability to meet national security requirements including by successfully developing the Libyan Armed Forces (LAF). We recognize that there is greater political uncertainty now than when we initially requested that the pilot ban be lifted in 2012 (enclosed), but now more than ever the Libyan government needs capable, centrally controlled Armed Forces.

Libya has requested that the United States and the international community assist with the development of its defense and security sectors. Specific requests made to the United States include the development of a 5,000-8,000 member General Purpose Force (GPF), and provision of counter-terrorism training. With congressional support, the United States is implementing a Libyan-funded GPF training program in cooperation with Bulgaria, Italy, Turkey, and the United Kingdom, as well as U.S.-funded Libyan Special Operations and border security forces training pursuant to section 1206 of the National Defense Authorization Act (NDAA) for Fiscal Year 2006, as amended, and section 1207 of the NDAA for Fiscal Year 2012, as amended.

DoD's request to rescind the regulatory provision found in 8 CFR § 214.5 is primarily intended to facilitate the training of Libyan military pilots and aircraft maintainers who are seek to maintain an existing fleet of U.S.-origin C-130 tactical airlift aircraft (8) and CH-47 medium-lift cargo helicopters (7), many of which are non-operational. The Libyan Air Force is arguably the most professional force in the LAF, and has deployed C-130 and CH-47 assets to assist in bilateral U.S.-Libyan efforts. For example, Libyan C-130s deployed in support of U.S. and Libyan chemical stockpile destruction efforts, culminating in the elimination of Libyan chemical weapons in January 2014.

To maintain the existing fleet of C-130s and CH-47s properly, as well as to facilitate acquisition of newer models, the United States must be able to train the necessary pilots and maintenance

personnel. To this end, Libya has initiated Foreign Military Sales cases at various levels of development for C-130Js/CH-47Ds worth a combined value of approximately $650M. Libyan ability to maintain, acquire, and successfully operate C-130s/CH-47s will ensure current and future interoperability with U.S. forces as we continue to implement the congressionally supported training programs described above.

The Libyan Air Force fleets of C-130s/CH-47s that we advocate to professionalize more fully are essential for successful security and counterterrorism operations given Libya's size (two and one-half times the size of Texas), with much of the terrain covered by desert and many locations along the border significantly dependent on aerial resupply and movement of forces.

DoD strongly supports the procedures that would be implemented to vet potential Libyan pilots and maintenance personnel properly, as outlined in the draft 8 CFR Part 214.

Sincerely,

Amanda Dory
Deputy Assistant Secretary of Defense for
African Policy

Enclosure

cc
The Honorable Anne Patterson
Assistant Secretary of State
Near East Affairs

Office of Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

March 21, 2014

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte:

I write in response to your November 25, 2013 letter regarding the Department of Homeland Security's (DHS) draft final regulation to rescind 8 C.F.R. § 214.5, as well as the follow-up letter sent on March 19, 2014. Allow me to apologize on behalf of the Department for the length of time it has taken us to respond. To ensure an accurate and appropriate response, we coordinated our response in the interagency process, as well as among a number of Components of the Department. As you note in your most recent letter, under our new Secretary, we have instituted new processes to accelerate and improve our responses to Congressional correspondence. We believe these processes will reduce, if not eliminate, delays of this type in the future.

As noted in your letter, the purpose of the draft regulation to rescind 8 C.F.R. § 214.5 would be to remove the regulatory provisions promulgated in 1983 that terminated the nonimmigrant status and barred the granting of certain immigration benefits or status to Libyan nationals and foreign nationals acting on behalf of Libyan entities engaging in or seeking to obtain studies or training in aviation maintenance, flight operations, or nuclear-related fields.

The draft regulation has been under review, pursuant to Executive Order 12866 *Regulatory Planning and Review*, at the Office of Management and Budget's Office of Information and Regulatory Affairs since January 1, 2014. In the fall 2013 edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions, DHS included an entry for this regulation. See: www.reginfo.gov/public/do/eAgendaViewRule?pubId=201310&RIN=1653-AA69.

On February 1, 2010, then-Assistant Secretary of State for Near East Asian Affairs Jeffrey Feltman sent a letter to DHS recommending rescission of 8 C.F.R. § 214.5. Subsequently, on May 31, 2012, the Department of Defense and Department of State (Mr. Feltman) sent a joint letter to DHS again recommending that 8 C.F.R. § 214.5 be rescinded in light of the newly normalized relationship between the United States and Libya, and DHS concurred. The Department of State informs DHS that Mr. Feltman left State at the end of May 2012 to pursue other professional endeavors.

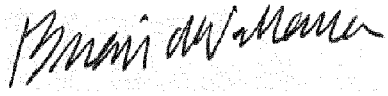
The regulation, which was drafted by U.S. Immigration and Customs Enforcement (ICE) at the direction of DHS, went through the regulatory drafting process, which included various individuals and offices at ICE. When ICE submitted the draft regulation to the Department, DHS handled the draft regulation through the Department's standard regulatory clearance process, which involves review by components and offices throughout the Department, and involves clearance by senior leadership, including political appointees, before submission of the draft regulation to Office of Management and Budget/Office of Information and Regulatory Affairs. In addition, relevant interagency partners within the Executive Branch have been consulted during the conception phase of this draft regulation.

A final decision has not been made as to whether the foreign affairs exception under the Administrative Procedure Act will be used with regard to this regulation. The regulation under review at Office of Information and Regulatory Affairs is drafted as a final rule.

We appreciate your interest in this draft regulation and the questions you have raised in regard to its drafting and development.

Thank you again for your letter, and I look forward to working with you on future homeland security issues. Representatives Chaffetz, Issa, and Gowdy, who co-signed your letter, will receive separate, identical responses. Should you need additional assistance, please do not hesitate to contact me at (202) 447-5890.

Respectfully,



Brian de Vallance
Acting Assistant Secretary for Legislative Affairs

Office of Information and Regulatory Affairs (OIRA)
Executive Order Submissions Under Review
April 02, 2014

Department of Homeland Security

AGENCY: DHS-CS
RIN: 1601-AA69
TITLE: Classified National Security Information
STAGE: Final Rule
ECONOMICALLY SIGNIFICANT: No
RECEIVED DATE: 11/20/2013
LEGAL DEADLINE: None

AGENCY: DHS-USCIS
RIN: 1615-AC00
TITLE: Enhancing Opportunities for H-1B1, CW-1, and E-3 Nonimmigrants and EB-1 Immigrants
STAGE: Proposed Rule
ECONOMICALLY SIGNIFICANT: No
RECEIVED DATE: 03/25/2014
LEGAL DEADLINE: None

AGENCY: DHS-USCIS
RIN: 1615-AB92
TITLE: Employment Authorization for Certain H-4 Dependent Spouses
STAGE: Proposed Rule
ECONOMICALLY SIGNIFICANT: No
RECEIVED DATE: 12/19/2013
LEGAL DEADLINE: None
REVIEW EXTENDED

AGENCY: DHS-USCBP
RIN: 1651-AB01
TITLE: The U.S. Asia-Pacific Economic Cooperation Business Travel Card Program
STAGE: Interim Final Rule
ECONOMICALLY SIGNIFICANT: No
RECEIVED DATE: 09/26/2013
LEGAL DEADLINE: None

AGENCY: DHS-USICE
RIN: 1653-AA69
TITLE: Rescinding Suspension of Enrollment for Certain F and M Nonimmigrant Students from Libya and Third Country Nationals Acting on Behalf of Libyan Entities
STAGE: Final Rule
ECONOMICALLY SIGNIFICANT: No
RECEIVED DATE: 01/01/2014
LEGAL DEADLINE: None
**** REVIEW EXTENDED**

Note: "**" denotes recent change in status.

View Rule

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DHS/USICE **RIN: 1653-AA69** **Publication ID: Fall 2013**

Title: •Rescinding Suspension of Enrollment for Certain F and M Nonimmigrant Students from Libya and Third Country Nationals Acting on Behalf of Libyan Entities

Abstract: The Department of Homeland Security (DHS) is amending its regulations by rescinding the regulatory provisions promulgated in 1983 that terminated the nonimmigrant status and barred the granting of certain immigration benefits to Libyan nationals and foreign nationals acting on behalf of Libyan entities who are engaging in or seeking to obtain studies or training in aviation maintenance, flight operations, or nuclear-related fields. The United States Government and the Government of Libya have normalized their relationship and most of the restrictions and sanctions imposed by the United States and the United Nations toward Libya have been lifted. Therefore, DHS, after consultation with the Department of State and the Department of Defense, is considering rescinding the restrictions that deny nonimmigrant status and benefits to a specific group of Libyan nationals.

Agency: Department of Homeland Security(DHS) **Priority:** Other Significant

RIN Status: First time published in the Unified Agenda **Agenda Stage of Rulemaking:** Final Rule Stage

Major: Undetermined **Unfunded Mandates:** No

CFR Citation: 8 CFR 214.5

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1281; 8 USC 1282; 8 USC 1301 to 1305; 8 USC 1372; 48 USC 1806

Legal Deadline: None

Statement of Need: The Department of Homeland Security (DHS) will amend its regulations by rescinding the regulatory provisions promulgated in 1983 that terminated the nonimmigrant status and barred the granting of certain immigration benefits to Libyan nationals and foreign nationals acting on behalf of Libyan entities who are engaging in or seeking to obtain studies or training in aviation maintenance, flight operations, or nuclear-related fields. The United States Government and the Government of Libya have normalized their diplomatic relations and most of the restrictions and sanctions imposed by the United States and the United Nations toward Libya have been lifted. Therefore, DHS, after consultation with the Department of State and the Department of Defense, finds it necessary to rescind the restrictions that deny nonimmigrant status and benefits to a specific group of Libyan nationals.

Anticipated Costs and Benefits: The regulatory action will rescind the regulation which prohibits Libyan nationals, or any other foreign nationals acting on behalf of Libyan entities, from engaging in aviation maintenance, flight operation, or nuclear-related studies or training in the United States. The rescission would permit DHS and other agencies of the U.S. government to provide training and technical assistance in the justice, defense, and border security sectors to the new Libyan government. This will contribute to the growing relationship between the two governments.

Timetable:

Action	Date	FR Cite
Final Action	03/00/2014	

Regulatory Flexibility Analysis Required: No **Government Levels Affected:** Undetermined

Small Entities Affected: No **Federalism:** No

Included in the Regulatory Plan: Yes

International Impacts: This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

RIN Data Printed in the FR: No

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Mr. GOWDY. I will apologize to the four witnesses. We will vote as quickly as we can, and then we will come back and recognize the remainder of our colleagues for their opening statements and then you for yours.

And with that, we are temporarily recessed.

[Recess.]

Mr. GOWDY. The Subcommittee will come to order and the Chair will now recognize the Subcommittee Chair from Oversight, the gentleman from Utah, Mr. Chaffetz for his opening statement.

Mr. CHAFFETZ. I thank the Chairman.

I thank you all for being here today on this topic.

I simply don't understand. Who in the Federal Government wakes up in the morning and says, You know, what is in the best interest of the United States, what would improve the national security posture of the United States is to make sure the Libyan nationals can come to the United States and learn about nuclear sciences, that we have got to teach them about aviation?

Like who actually wakes up in this country and says, this will be in the best interest of the United States of America; let's teach the Libyan nationals about nuclear sciences? That makes no sense to me. None.

Now, I am sure there are a lot of good and decent people there that are going through a lot of difficult things, but it does not mean that we should be actively pursuing the bringing of Libyan nationals to the United States to train them on nuclear sciences.

We have got enough Americans that can do this. And as it relates to aviation security and aviation, we can teach them overseas. We don't need to bring them to the United States of America to do this, where we don't monitor them once they are here.

I was very surprised to read the Department's draft final regulation, Billing Code 9111-28, that stated, "DHS has determined that maintaining this regulation would no longer reflect current U.S. Government policy toward Libya." I am curious to hear what exactly the Administration's current government policy toward Libya entails. Of all the things in the world we have got to do and work on, this is what the Administration is working on, how to loosen up the visa requirements for Libyan nationals to come to the United States?

Equally troubling to me was reading Mr. Bersin's memorandum addressed to then DHS Secretary Janet Napolitano on February 12, 2013. In his memo, Mr. Bersin recommended that the Secretary take regulatory action to rescind Section 214.5 of Title 8 of the Code of Federal Regulations. What is most surprising is that the memo postdates the tragic day in Benghazi when our country lost four Americans during a terrorist attack.

We couldn't even send our FBI into Eastern Libya for 18 days because it was so dangerous. We couldn't get the intelligence that we needed. We couldn't even get the FBI to go into that part of the country. And yet, we want to give those same people a visa to come to the United States to learn about nuclear sciences? Wow!

However, not one mention of the chaos and violence in Libya is made in the memo. There appears to be zero consideration of any geopolitical concern in rescinding this 31-year-old rule that prohibits certain Libyan nationals from engaging in aviation or nu-

clear-related training in the United States. Meanwhile, just last month, it was reported that the Libyan former Prime Minister Ali Zeidan fled after parliament voted him out of office.

A North Korean oil tanker illegally picked up a cargo of crude from rebels in Eastern Libya, despite a Libyan government's threat to detain the vessel. In Western Libya, militias launched attacks against Eastern Libya rebels, which could provoke a civil war. These events do not indicate a nation where things have been, "normalized," rather they seem to be ingredients of a failed state in the making.

Another reason why the Department's rescission of this prohibition in the CFR is so troubling is the lack of any prior notice or comment period. That is a deep concern. I have read the testimonies of the witnesses, and it seems that we are all in agreement: Libya is a very dangerous place, challenged by instability. And when looking at corruption indexes, Libya ranks 172 out of 177, making it the sixth most corrupt country in the world, if you are going to believe that index.

I was in Libya in September 2012. I was in Libya again in November of 2013. I heard firsthand the security challenges of the country. I met with the deputy prime minister, who noted that the security situation in Libya is tumultuous at best. He referred to his government as an accidental government. It was the byproduct of removing an existing government, and he claimed one of the main obstacles to their progress was a police force, was the lack of a reliable ministry of interior, intelligence and internal affairs apparatus to help the police force.

When we go to give somebody a visa, we rely on the host nation to help us identify that person and understand their background. That does not happen in Libya. Let's be realistic. Muammar Qadhafi was ruling there for 40-plus years. They don't have the infrastructure and the ability to deal with this.

Now, there was some assertions early on in the testimony that, well, we need to train them on aviation. Well, then do it overseas. That is how we have done it in the past. There is this assertion that there is no prohibition against getting visas from state sponsors of terrorism and other countries. I want to sponsor that bill. It is a good idea.

I want to sponsor a bill that says if you are coming from trying to get a visa from a state sponsor of terrorists, then you shouldn't be able to get a visa here in the United States.

And there are multiple restrictions on Cuba, Mongolia, North Korea, Vietnam, the People's Republic of China, for all sorts of different visas. We have these type of visa—restrictions in Iran for people trying to come from Iran. So there is precedent.

I don't see, Mr. Chairman, the reason why we have to deal with this now, and I am glad to have this hearing.

Yield back.

Mr. GOWDY. I thank the gentleman from Utah.

The Chair will now recognize the gentleman from Massachusetts, Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman.

I thank our witnesses for being here today, as well. I am going to ask unanimous consent to enter my opening statement in its en-

tirety into the official record and make just a couple of brief remarks.

Mr. GOWDY. Without objection.

Mr. TIERNEY. Thank you. We are having a review of the attempt to define the bilateral relationship between our country and Libya. And both before and after the fall of Mr. Qadhafi, the Department of Defense espoused the need to lift the restrictions that we are discussing.

In view of Libya's challenges in building and stabilizing democratic institutions it seems advisable that we review whether or not the success of that country in transitioning has impacted its ability to meet national security requirements in a manner that strengthens or weakens the development of its armed forces and political process.

Everybody agrees that there is greater political uncertainty now than there was perhaps in 2012, but if the Department of Defense security experts feel that military cooperation is a good idea, if they think it would help stabilize the government, then it would seem to make sense to me that we have the Department of Defense and their defense experts here to discuss whether or not the current political infrastructure is secure enough and reliable enough to warrant a cooperation that is being recommended.

And I just think that is one of the faults of today's hearing, is we don't seem to have a full panoply of people that are making the recommendation, which I think would make ultimate sense, and therefore, the Committee Members are not going to get a full discussion of this matter, and I regret that.

With that, I will rely on the rest of my statement that has been entered upon the record and thank the Chairman.

Mr. GOWDY. I thank the gentleman from Massachusetts.

[The prepared statement of Mr. Tierney follows:]

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Opening Statement
Rep. John F. Tierney, Ranking Member

Subcommittee on National Security
Committee on Oversight and Government Reform
Joint Hearing on "Overturning 30 Years of Precedent: Is the Administration Ignoring the Dangers of Training Libyan Pilots and Nuclear Scientists?"

April 3, 2014

Thank you Mr. Chairman, and thank you for having this hearing.

Today, we examine whether it is prudent to lift a longstanding prohibition against Libyan nationals from entering the U.S. in order to receive aviation and nuclear-related training. The U.S. Government enacted this regulation decades ago to punish Muammar Gadhafi, then a state-sponsor of terrorism.

Starting in the administration of President George W. Bush, the U.S. has taken steps to re-establish diplomatic and security ties with Libya. In 2004, U.S. sanctions were formally lifted. In 2006, Libya was removed from the list of state sponsors of terrorism. Since then, the U.S. has worked to improve the bilateral relationship with Libya, including through military and educational exchanges.

In 2010, both the Departments of State and Defense requested that the Department of Homeland Security lift the restriction on Libyan nationals. In a 2012, after the fall of Gadhafi, the Department of Defense again reiterated the need to lift this restriction. In a letter to the Department of Homeland Security, DOD stated:

> This ban will have serious implications for U.S.-Libya military cooperation and the overall bilateral relationship. Now more than ever, the reconstitution of the Libyan CH-47 and C-130 fleet could further U.S. interests in the region, in part by allowing Libya to contribute tactical airlift to African Union and United Nations peacekeeping operations.

Just this week, DOD explained that the current restriction prevents the training of Libyan military pilots and aircraft maintenance personnel and emphasized the importance of lifting the restriction. In an April 1st letter to the Department of Homeland Security, DOD said:

> Despite Libya's challenges in building and stabilizing democratic institutions, Libya continues to seek a strong relationship with the United States, the United Nations, and other international partners. A key element of Libya's success in its transition will be its ability to meet national security requirements including by successfully developing the Libyan Armed Forces (LAF). We recognize that there is greater political uncertainty now than when we initially requested that the pilot ban be lifted in 2012, but now more than ever the Libyan government needs capable, centrally controlled Armed Forces.

I understand that some security experts, including the Department of Defense, feel that military cooperation is a good idea, would help stabilize the government of Libya, and help curtail the rise of extremist groups there. I am frankly surprised that the primary advocate for lifting this ban, DOD, was not invited to this hearing to share their views of why this is important.

As we continue to review the current state of affairs in Libya, including whether the current political infrastructure is secure and reliable enough to warrant assuming responsibility for the relief sought, it would seem to make sense to entertain the reasoning of the entity advocating for the action. I hope the majority will consider conducting additional hearings for the purpose of presenting to the Members a full range of considerations as members seek to make a decision on the matter at hand.

Thank you to the panelists for being here, today. I look forward to learning more about whether this visa ban should be lifted or allowed to remain on the books.

Thank you, Mr. Chairman.

Contact: Jennifer Hoffman, Communications Director, (202) 226-5181.

Mr. GOWDY. The Chair would now recognize the gentleman from Michigan, Past Chairman of the full Committee, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman. And we welcome Mr. Tierney to our ranks.

I would like to make this observation, if I may. Namely, that the Department of Defense had asked the State Department and the Department of Homeland Security to rescind a dated 30-year-old regulation that is currently hindering U.S. interests in Libya. That regulation, which prevents Libyan nationals and certain other individuals from coming to the United States to study flight operations, aircraft maintenance and nuclear science, was put in place in 1983 when Libya had training camps and supported terrorism around the world.

Such a prohibition on visas for Libyan nationals may have made sense in 1983, but it does not make sense over 30 years later. If country-specific travel bans were necessary to keep us safe, we would have instituted them for other countries, like designated state sponsors of terrorism—Iran, Cuba, Syria or Sudan—and other countries, like North Korea. But we haven't. That is because our immigration laws provide broad authority to restrict travel to individuals who may do us harm.

The government already denies admission to anyone suspected of having ties to terrorism, anyone suspected of otherwise posing a threat to national security, anyone whose travel raises significant foreign policy concerns, and even anyone suspected of potentially violating the terms of their visa or admission to the United States. This kind of system basically allows us to keep in the good guys and keep out the bad guys. It is far superior to a system like the Libyan regulation that keeps out friend and foe alike.

Libya, and our relationship with Libya, has changed dramatically since the regulation was promulgated in 1983. In the late 1990's, Libya became an ally in the war against terrorism. In the years following, Libya condemned the 9/11 attacks against the United States, paid compensation for attacks it had been responsible for in the past, destroyed and surrendered its weapons of mass destruction, signed international treaties and protocols on nonproliferation and otherwise sought to return to the good graces of the international community.

For these actions, the administration of former President George W. Bush ended sanctions against Libya in 2004. In 2006, President Bush and Secretary of State Condoleezza Rice removed Libya from the list of state sponsors of terrorism. Secretary Rice even said that the United States was resuming, "normal diplomatic relations," with Libya. Based on those improving relations, the Department of Defense, not known for being soft on terrorism, requested that the Libyan regulation be rescinded.

Libya's ability to fight off extremist forces in the region, as well as the Arab spring and the Libyan civil war, put efforts to lift the Libyan regulation on hold. But once Libya established a new democratically-elected government, one that sought closer cooperation with the United States, the Defense Department renewed its request to lift the visa restriction.

The principle reason for lifting the restriction is to help the Libyan Government fight a common enemy, extremist militants in the

region. Ladies and gentlemen, this is critical. A few months ago, Senator John McCain went to Libya and explained the critical importance of training the Libyan armed forces. He said, and I quote, "I have met with the military here, and we are confident that we have plans now for training and equipment for the Libyan military."

Senator McCain noted that this support was critical for helping the Libyan armed forces carry out their security and border management tasks, tasks critical to beating the extremist forces in the region. But the current visa restriction prevents us from providing a great deal of this training and equipment, thus making it more likely that the extremists may win.

I doubt that this is the outcome anyone here wants, and I thank the witnesses for joining us here today for this discussion, and I yield back the balance of my time.

Mr. GOWDY. Thank you, gentleman from Michigan.

The Chair will now recognize the gentleman from Virginia, the Chairman of the full Committee, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

I would like to thank you and Chairman Chaffetz for holding this hearing.

On February 1, 2010, then Assistant Secretary of State for the Bureau of Near Eastern Affairs Jeffrey Feltman requested ending the longstanding prohibition against Libyans entering the United States to work in aviation maintenance flight operations or to study or train in nuclear-related fields. Shortly thereafter, widespread unrest in Libya precluded the U.S. Government from engagement with Libya.

The post-Arab Spring civil war in Libya led to the fall of the Qadhafi regime in August 2011, and Qadhafi was captured and then killed by rebel forces in October 2011. Following the revolution, the Obama administration once again began the process of "normalizing" relations with that country.

Yet, on September 11, 2012, U.S. Ambassador John Christopher Stevens and three other State Department officials were killed when terrorists stormed the U.S. Consulate in Benghazi, Libya, and set it ablaze. A statement by U.S. State Department spokeswoman Victoria Nuland said the United States condemned the attack "in the strongest terms," and was working with Libyan security forces to secure the compound.

President Obama called the attack in Benghazi outrageous and shocking and vowed its perpetrators will face justice. "I have also directed my Administration to increase our security at diplomatic posts around the world," Obama said. "And make no mistake, we will work with the Libyan Government to bring to justice the killers who attacked our people."

To date, no one has been brought to justice for these attacks. Instead and despite these attacks, on May 31, 2012, Feltman, along with Joseph McMillan, Acting Assistant Secretary of Defense for International Security Affairs, again asked DHS to end the provision stating the "outdated regulation does not reflect current U.S. Government policy towards Libya." Unbelievably, the letter makes no mention of the attacks, acting as if they had never occurred.

Rather, as outlined in a February 12, 2013, memo from Alan Bersin, signed by Secretary Napolitano, "According to the U.S. Embassy in Tripoli, there is a robust plan in place to encourage engagement and educational exchanges in coming years with the Libyan Government. The Department of Defense is attempting to initiate a program of aircraft sales, pilot training and ground crew training early this year worth $2 billion, the contracts for which would go to other countries if training could not be conducted in the United States. The Departments of Defense and State have made it clear that, absent its rescission, the regulation will significantly hamper these efforts."

On April 1, 2014, just 2 days before this hearing, the Department of Defense reiterated its desire to see the regulation lifted to Mr. Bersin. The memo from Mr. Bersin also fails to mention the attack in Benghazi, the first time an ambassador for the United States had been killed since 1979. The longstanding prohibition on Libyans was put in place to protect the homeland against serious threats from terrorists from a particularly unstable and dangerous country.

The Obama administration argues that it is no longer needed. However, many of the characteristics regarding Libya that caused the regulation be put in place persist today. Regardless of any progress that may have been made following the removal of Muammar Qadhafi from power, many extremist and terrorist groups operate unfettered in Libya.

Two weeks ago Libya acknowledged for the first time that terrorist groups were behind dozens of attacks against security forces. And on March 20, Libya's Government called for international help to fight terrorism that is threatening internal stability in that country. That same day, a missile was launched at the Tripoli Airport.

Four 9/11 hijacker pilots obtained their expertise in aviation primarily at U.S. flight schools. Do we want to risk Libyan terrorists learning how to fly airplanes in the United States? Given the desire of radical regimes and terrorists to obtain or build nuclear weapons or dirty bombs, do we want to possibly train Libyan terrorists in nuclear engineering?

If the prohibition is lifted, not only can Libyan supposedly vetted by the Administration receive this training, but any Libyan can seek to do so.

Ultimately, it does not appear that national security has been adequately considered in the effort to end the prohibition. It is uncertain whether our immigration system has sufficient integrity to ferret out applicant's long-term motivations for receiving an education in sensitive topics from the United States.

As a final note, we have long been seeking information from the Department of Homeland Security regarding the status of the rescission of the regulation and the role of the White House. We only received answers to some of the questions we asked after this hearing was announced. It is troubling that it takes such actions by the Committees to receive information from DHS that is vital for us to fulfill our legitimate oversight role.

Thank you, Mr. Chairman, and I yield back.

Mr. GOWDY. I thank the Chairman.

We have a distinguished panel of witnesses.

I am going to do my best to summarize and capture your backgrounds. If I leave something out, it is not because it is not important; it is because I am trying to get you out of here at a reasonable hour. We have your opening statements and then questions.

I am going to introduce you en bloc, and then I will recognize you individually for your opening statements and hope that you do a better job than I did at staying within the 5-minute time period. The lights mean what they normally mean: Green means go; yellow means speed up; and red means stop.

First, Mr. Alan Bersin currently serves as assistant secretary of international affairs and chief diplomatic officer for Department of Homeland Security, a position he has held since January of 2012. He oversees the Department's international engagement and serves as the principal adviser to Secretary Jeh Johnson on all international affairs. Previously, he was the Commissioner of the U.S. Customs and Border Protection. He has graduated from Harvard, Oxford and Yale, where he got a law degree.

Ms. Janice Kephart—if I mispronounce your name, forgive me—currently serves as CEO of Secure Identity and Biometrics Association, a firm that works to create awareness and promote the value of secure identity technologies and biometric solutions. She also recently returned from the special counsel position with the Senate Judiciary Committee. Prior to that, she was counsel with the 9/11 Commission and was the author of "9/11 and Terrorist Travel." She holds degrees from Duke and Villanova School of Law.

Mr. James Chaparro is executive vice president for strategy at Strategic Enterprise Solutions, an information technologies services and management consulting company that delivers cybersecurity technology and program management capabilities to better enable the government to accomplish their mission. Prior to that, he had a distinguished 26-year long career in Federal law enforcement in the national intelligence community. He has a bachelor of arts degree in political science from California State, University of Long Beach, and a graduate of the Federal Law Enforcement Training Center in Glynco, Georgia.

Dr. Frederick Wehrey is a senior associate in the Middle East Program at Carnegie Endowment for International Peace. His research focuses on political reform and security issues in Arab Gulf states, Libya and U.S. policy in the Middle East. Prior to that, he was senior policy analyst at RAND Corporation. He was also a lieutenant colonel in the U.S. Air Force Reserve, completed tours in Turkey, Uganda, Libya, Nigeria and Iraq, where you earned the Bronze Star in 2003. We thank you for your service.

He holds an M.A. In Near Eastern studies from Princeton and a Ph.D. In international relations from Oxford.

With that, we would recognize Mr. Bersin for his 5-minute opening statement.

TESTIMONY OF ALAN D. BERSIN, ASSISTANT SECRETARY OF INTERNATIONAL AFFAIRS AND CHIEF DIPLOMATIC OFFICER, OFFICE OF INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. BERSIN. Chairmen Goodlatte, Gowdy, Chaffetz, Ranking Members Conyers, Lofgren and Tierney. I want to assure you that we have not approached the subject of today's hearing without careful consideration.

Secretary Napolitano considered it carefully as is Secretary Johnson, who is taking great care to review this important issue.

I share your commitment to the safety and security of our nation, and I would never undertake any measure that would place this country in jeopardy. I have never awakened on any morning with the intent to do so. My entire public career and public life is to the contrary.

Ladies and gentlemen, we have good reasons and prudent ones for changing this regulation, and I want to ensure you are comfortable with our thinking or that at least you understand the basis for the recommendation. I am also available to discuss this issue with you individually.

Today, I would like to discuss why this is a sound policy from the standpoint of ensuring that we are issuing visas appropriately and safely admitting those who we allow to enter the country in accordance with congressional mandates that have been established after 9/11.

In 2013, the Department of Homeland Security under then Secretary Napolitano agreed to formal request by the Departments of State and Defense to begin the process to amend the provision from 1983, barring Libyan nationals seeking to study aviation maintenance, flight operations or nuclear-related fields in the United States.

It is important to note, as have the Ranking Members, that 8 CFR Section 214.5 applies only to Libyan nationals or other foreign nationals acting on behalf of a Libyan entity. There are no other DHS regulations similarly restricting nationals of other countries, including those that today remain state sponsors of terrorism.

Much has changed since 1983. The most important change is that we suffered the attack of 9/11, and after that trauma, Congress legislated a whole series of security requirements in response. Notably, Congress did not adopt the technique embodied in 214.5 of banning nationals of this country or that country. Instead, Congress adopted a case-by-case approach to be filtered through multiple layers and checks which is what we have proceeded to accomplish over the last 13 years.

As a result, distinguished Members, the U.S. Government has exponentially expanded procedures for vetting immigrants, refugees and visa applicants. Today, our vetting process considers a far broader range of information than it ever has and certainly did in 1983 or in the years before 9/11.

In the absence of 8 CFR 214.5, Libyan visa applicants seeking admission to the United States for any purpose, to include aviation, nuclear-related training, would be subject to the array of visa security measures currently in place to protect U.S. borders from terrorist-related or other elicit travel. Each year, 365 people cross our

borders to visit this country for one purpose or another. Every one of them is subject to the restrictions and the layers of security that I look forward to discussing with you this afternoon.

Interagency stakeholders, to include DHS, the Department of State, FBI, the National Counterterrorism Center and other intelligence community partners have constructed a visa-vetting processes that leverages state-of-the-art technology, expensive information sharing, highly skilled and trained officers and comprehensive interagency cooperation, all to facilitate legitimate trade and travel without compromising our Nation's security.

The Security Advisory Opinion mechanism is an interagency secondary screening process available to consular officers to provide supplemental advice and background information to adjudicate cases of visa applicants with possible terrorism or other security-related ineligibilities. Specific to the nuclear-related provision of 214.5, Libyan visa applicants would be subject to a specific type of security advisory opinion known as Visas Mantis. The purpose of Visas Mantis is to ensure comprehensive interagency vetting to guard against improper technology transfers.

Initially, in 2010 and then in 2012, the Departments of State and Defense formally requested that DHS rescind 214.5 to allow for comprehensive bilateral security with the Libyan government. I want to discuss with you today, and I look forward to doing so, why we at DHS felt that that would not jeopardize the security of this Nation or the safety of the American people.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Bersin follows:]

TESTIMONY OF

ALAN D. BERSIN

ASSISTANT SECRETARY FOR INTERNATIONAL AFFAIRS AND
CHIEF DIPLOMATIC OFFICER
OFFICE OF INTERNATIONAL AFFAIRS
U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE

UNITED STATES HOUSE OF REPRESENTATIVES
Committee on the Judiciary
Subcommittee on Immigration and Border Security
Committee on Oversight and Government Reform
Subcommittee on National Security

Libya Hearing

APRIL 3, 2014

Good Afternoon Chairman Gowdy, Chairman Chaffetz, Ranking Member Lofgren, Ranking Member Tierney and distinguished Members of the Subcommittees. Thank you for inviting me to testify today on the question of the rescission of regulatory provision 8 C.F.R. § 214.5, concerning the prohibition of aviation and nuclear-related training for Libyan nationals in the United States.

Background

In 2010, the Department of State (DOS) formally requested that DHS rescind 8 C.F.R. § 214.5 to allow for aviation and nuclear-related bilateral security cooperation with the Libyan government. In 2012, DOS and the Department of Defense (DoD) signed a joint letter reiterating the formal request that DHS take action to rescind 8 C.F.R. § 214.5. The Department of Energy (DOE) additionally contacted DHS to request the rescission of 8 C.F.R. § 214.5. Among other things, these Departments pointed out that the rescission of 8 C.F.R. § 214.5, would enable DoD, as well as U.S. private sector companies, to provide aircraft and training essential for successful security and counterterrorism operations within Libya.

8 C.F.R. § 214.5 applies only to Libyan nationals or other aliens acting on behalf of a Libyan entity. There are currently no other nationals of specific countries, including those of countries designated as state sponsors of terrorism, banned from seeking studies or training in aviation maintenance or flight operations in the United States. In the absence of 8 C.F.R. § 214.5, Libyan visa applicants seeking admission to the United States for any purpose—to include aviation and nuclear-related training—would be subject to all of the visa security measures currently in place to protect U.S. borders from terrorist-related or other illicit travel.

The U.S.-Libya bilateral relationship has changed considerably since 8 C.F.R. § 214.5 was promulgated in 1983. Muammar al Qadhafi's policy reversals on weapons of mass destruction and terrorism led to the lifting of international sanctions against Libya in 2003 and 2004, and the Secretary of State rescinded Libya's designation as a state sponsor of terrorism in 2006. The United States is

working to establish robust diplomatic, military, and economic ties, with Libya. Despite Libya's challenges in building and stabilizing democratic institutions, Libya continues to seek a strong relationship with the United States, the United Nations, and other international partners. A key element of Libya's success in its transition will be its ability to meet national security requirements.

In February 2013, then-Secretary Napolitano agreed with DOS, DOE and DoD to begin the process to amend DHS regulations relating to Libya. This consisted of beginning the regulatory process to amend provision 8 C.F.R. § 214.5. The draft regulation is currently under review, pursuant to Executive Orders 12866 and 13563, at the Office of Management and Budget's Office of Information and Regulatory Affairs, and will not be issued before this review is completed.

Security in the Visa Application Process

Notwithstanding the new relationship with the Libyan government and our shared security goals as described by DoD and DOS, DHS considered numerous mitigating security measures when considering amending of 8 C.F.R. § 214.5. The U.S. government continually improves and expands its procedures for vetting immigrants, refugees and visa applicants, and today our vetting process considers a far broader range of information than it did in past years. Our procedures continue to check applicants' names and fingerprints against records of individuals known to be security threats, including the terrorist watchlist, as well as law enforcement and other intelligence community holdings. These checks are vital to advancing the U.S. government's twin goal of protecting the world's most vulnerable persons while ensuring U.S. national security and public safety. Interagency stakeholders, to include DHS, DOS, DoD, the Federal Bureau of Investigation (FBI), the Terrorist Screening Center, the National Counterterrorism Center, and other Intelligence Community partners, have constructed a visa vetting process that leverages state-of-the-art technology, extensive information sharing, highly-skilled and trained officers,

and interagency cooperation to facilitate legitimate travel and trade without compromising our nation's security.

If Libyan nationals were permitted to enter the United States for the purposes of aviation or nuclear-related education or training, they would first register with the DHS Immigration and Customs Enforcement (ICE) Student and Exchange Visitor Program (SEVP) as part of the visa application process. Under the SEVP, a prospective student's information is entered into the Student and Exchange Visitor Information System (SEVIS) upon acceptance into an education or training program in the United States, and is available to consular and fraud prevention officers when making a visa determination. Should a visa be issued for study or training in the United States, the SEVIS database is continually updated to monitor student progress throughout the course of study. Student visas for academic study (F), vocational study (M) and exchange programs (J) for Libyan nationals are currently 12-month, single entry visas.

A visa applicant would next complete the online DS-160 nonimmigrant visa application. This automated form provides consular and fraud prevention officers the opportunity to analyze data in advance of the visa interview, enhancing their ability to make decisions with more information than was available several years ago. The automated application form is "smart," meaning that certain answers to questions will trigger subsequent questions that elicit additional information from the foreign national. The system will not accept applications if the security-related questions have not been answered fully, and "irregular" answers are flagged to ensure that consular officers address them in the interview.

The Enhanced Border Security and Visa Entry Reform Act of 2002 mandated the use of biometrics in the issuance of most U.S. visas. This law requires that U.S. Embassies and Consulates abroad must issue to international visitors only machine-readable, tamper-resistant visas and other

travel and entry documents that use biometric identifiers during the vetting process. Before DOS issues a visa, the visa applicant's fingerprints are screened against two key databases. The first database is the DHS Automated Biometric Identification System, or IDENT, which screens against a database of available fingerprints of known and suspected terrorists, wanted persons, and immigration law violators. IDENT currently contains approximately 160 million identities. More than 10,000 matches of visa applicants with records on the IDENT watchlist are returned to posts every month. The second database is the FBI's Integrated Automated Fingerprint Identification System, which contains more than 76 million criminal history records. Visa applicant's fingerprints are also screened against a DoD-provided dataset in IDENT containing fingerprints for threats identified during military operations.

The Biometric Visa Program also allows DHS U.S. Customs and Border Protection (CBP) officers at ports of entry to match the fingerprints of persons entering the United States with the fingerprints that were taken during the visa application process at overseas posts. This enables CBP to identify mismatches (e.g., imposters attempting to travel with someone else's passport and visa). Visa applicant biometrics are continually vetted against IDENT, enabling CBP to identify any new derogatory information pertaining to the applicant even after a visa has been issued. Facial recognition technology is additionally used to screen all visa applicants against photos of known and suspected terrorists obtained from the Terrorist Screening Center, as well as the entire gallery of visa applicant photos contained in DOS' Consular Consolidated Database. Currently, more than 109 million visa applicant photos are enrolled in the facial recognition database.

DOS checks all visa applicants against the automated Consular Lookout and Support System, or CLASS, which contains 27 million records of persons found ineligible for visas or against whom potentially derogatory information exists. CLASS employs strong, sophisticated name-searching algorithms to ensure matches between names of visa applicants and any derogatory information

contained in CLASS. CLASS has grown more than 400 percent since 2001—largely the result of improved interagency information sharing. Consular officers also run all visa applicants' names against the Consular Consolidated Database in order to detect and respond to derogatory information regarding visa applicants and visa holders. The Consular Consolidated Database contains more than 143 million immigrant and nonimmigrant visa records.

The Security Advisory Opinion (SAO) process is an interagency secondary screening mechanism applicable to certain visa applicants. A consular officer may request an SAO because the primary screening process reveals that the visa applicant has certain demographic characteristics, there is derogatory information about the applicant, the applicant has certain scientific knowledge or interest, or some combination of these factors exists. Different SAO programs correspond to different triggers, but each SAO involves additional vetting by the intelligence and law enforcement communities. In any case in which reasonable grounds exist, regardless of name check results, a consular officer may suspend visa processing and institute SAO procedures. SAO responses provide consular officers with the necessary advice and background information to adjudicate cases of visa applicants with possible terrorism or other security-related ineligibilities. Specific to the nuclear-related provision of 8 C.F.R. § 214.5, Libyan visa applicants whose planned travel raises concerns regarding the transfer of sensitive technology or knowledge or the proliferation of weapons of mass destruction would be subject to a specific type of SAO, known as "Visas Mantis." The purpose of the Visas Mantis SAO is to ensure comprehensive interagency vetting to guard against improper technology transfers.

In 2013, the United States added another layer of security with the introduction of the National Counterterrorism Center's Kingfisher Expansion program into the processing for visa applications. Kingfisher Expansion is the U.S. government's new standard process for conducting counterterrorism reviews of all visa applicants, and consists of three stages: 1) sophisticated, automated comparison of

visa application data against U.S. government classified terrorist identity holdings, which return "red light/green light" responses to posts within minutes; 2) interagency counterterrorism reviews of all "red light" cases (as well as SAO requests submitted on the basis of policy or officers' discretion); and 3) continuous vetting of all U.S. visa holders against new or evolving derogatory information in the U.S. government's classified terrorist identity holdings. Kingfisher Expansion went live for all nonimmigrant visa applications on June 15, 2013; and for immigrant visa applications on September 5, 2013.

Finally, DHS—through CBP and ICE—has partnered with DOS to develop the Pre-Adjudicated Threat Recognition Intelligence Operations Team, or PATRIOT, a program to vet all online visa application data through CBP's Automated Targeting System prior to visa application adjudication. PATRIOT is currently operational at 20 ICE visa security program-staffed locations overseas and will be rolled out incrementally worldwide through FY 2015. When fully implemented, PATRIOT will pre-screen 100 percent of nonimmigrant visa applications submitted online before DOS adjudicates the application. This is important because conducting vetting activities earlier in the visa application lifecycle enables ICE to conduct focused criminal investigations of visa applicants, as well as potential facilitators and organizations. PATRIOT allows overseas personnel to conduct in-depth vetting of potential matches against DHS-held derogatory information weeks before DOS even begins to review or consider the application. Additionally, CBP utilizes PATRIOT to address issues of eligibility and admissibility, and to pre-screen visa applicants at the earliest point in the immigration and travel continuum.

In addition to the visa security layers described, if the prohibition on Libyan nationals engaging in flight training were removed, Libyan nationals would be subject to additional regulations by DHS and the Transportation Security Administration (TSA). Specifically, prospective flight students are subject to 49 U.S.C. § 44939 and 49 C.F.R. § 1552, prohibiting a Federal Aviation Administration-regulated flight school from providing flight training to an alien unless TSA has determined that the alien does not pose

a threat to aviation or U.S. national security. In connection with TSA's Alien Flight Student Program, prospective flight students are required to complete a TSA security threat assessment, which includes the collection of fingerprints, biographical information, a photo, identity documents, a valid passport, and specific information about the desired training. Although Alien Flight Student Program vetting requirements are not applicable to aliens who have been endorsed by DoD, in July 2012, TSA implemented an automated mechanism to track DoD endorsements. This mechanism provides TSA the capability to identify foreign nationals seeking flight training who were not otherwise identified through the Alien Flight Student Program.

Conclusion

In formulating my policy recommendation to then-Secretary Napolitano, I primarily evaluated the visa and border security measures currently in place. As previously stated, over the past 31 years and since the implementation of 8 C.F.R. § 214.5, the U.S. Government has constructed a visa vetting process that leverages state-of-the-art technology, extensive information sharing, highly-skilled and trained officers, and thorough interagency cooperation. DHS appreciates your interest in this draft regulation and the questions you have raised in regard to its genesis and development. We look forward to working with you on this and other matters. Thank you.

Mr. GOWDY. Thank you, Mr. Bersin.

Ms. Kephart.

TESTIMONY OF JANICE L. KEPHART, FOUNDER AND CEO, SECURE IDENTITY AND BIOMETRICS ASSOCIATION (SIBA), FORMER COUNSEL, 9/11 COMMISSION

Ms. KEPHART. Good afternoon, Chairman Goodlatte, Chairman Chaffetz, Chairman Gowdy, Ranking Member Conyers, Ranking Member Lofgren, Ranking Member Tierney and distinguished Members of the Subcommittees.

To be clear, I am not representing the views of the Secure Identity and Biometrics Association today, an organization I founded in February.

I understand that DOD, DOE and DOS all have strategic reasons for wanting the Libyan visa ban on aviation and nuclear studies lifted and that military and diplomatic agreements are the usual course of business for the United States. However, when the immigration system is affected in such a contract, such situations must be treated with careful consideration. The immigration system is more than a token and a contract but a gateway to our great benefits and a core strategic partner in security.

As such, I deeply appreciate Mr. Bersin's testimony. He has illuminated much in major improvements to visa processing that support what we learned on the 9/11 Commission and since that time.

Unfortunately, there is more than just process at stake in rescinding this rule. Remember, there is absolutely nothing in place legally when this rule is rescinded: no processing requirements, no caveats, no limits on only DOD-endorsed individuals having access to these visas, for example.

Visas Mantis for high science visas like nuclear studies is discretionary. Flight school vetting for DOD-endorsed individuals will be waived, and we know the security concerns here are widely understood because of the 9/11 hijacker pilots, who obtained their expertise in aviation primarily at U.S. flight schools.

Kingfisher counterterrorism automated vetting is not clearly required.

PATRIOT vetting by ICE officers is not fully in place yet, and we don't even know if it would apply to Libya. Any Libyan in any militia that is threatening the Libyan Government right now, Al-Qaeda or numerous dangerous elements in Libya, could apply that, but our intelligence simply can't pick up where there are so many degrees of anti-U.S. sentiment.

While I personally don't think it is the right time for rescission, the foreign policy questions are for this body and Administration to jointly decide. What I want to do with the remainder of my time is pose some areas that deserve further consideration.

Let me begin with the sensitive and dual-use technologies. Current law requires that nations actively sending their citizens to study nuclear and other sciences will not use that knowledge to increase a region's instability, for one; or two, develop and transfer arms or sensitive technologies to terrorists.

In Libya, we have both issues of concern. The region and the government are highly unstable and the Libyan Government could end up transferring sensitive technologies to terrorists under a lot of

different scenarios. The 1983 rule under consideration today requires that no detrimental security situation be implicated, but rescission will repeal that standard, too.

Also, why does Libya want these students in the U.S. really? With a $2 billion military contract at stake, will these state-sponsored students have to work for the Libyan Government and in what capacity? Historically, for example, Iraq's strategy was to send students specifically to study nuclear-related subjects in order to develop Iraq's nonconventional weapons programs. One of these students received his doctorate in nuclear engineering from Michigan State University, then returned to Iraq to head its nuclear weapons program.

Similarly, at least three Iranian officials suspected of developing Tehran's nuclear program also reportedly studied in the United States.

Libya reportedly sent students to develop Tripoli's weapons programs prior to Qadhafi's fall.

In 2012, we banned Iranians from obtaining nuclear and energy-related visas. The precedent set in 2012 represents not creating a detrimental security situation, which could be very well preserved in the current rule.

And what do we really know about the individual Libyan applicants in a nation being torn by internal terrorist activity? For both nuclear and aviation applicants, it is unclear whether the Administration's self-created Interview Waiver Pilot Program could apply to applicants under this rule.

You may recall that the visa interview played a major role in our 9/11 Commission recommendations and findings. The Interview Pilot Program enables the waiver of interviews deemed in the national interest, and there is the possibility that the national interest exception could apply to some of these Libyans. The result could be no robust security vetting, nor interviews for certain Libyans.

In conclusion, there is no doubt that this rule could detrimentally provide access for Libyans to highly desired nuclear and aviation visas. However, if there is a decision to do so, I highly recommend limiting access of these visas to the original DOD request in the contract, mandating interviews, mandating Secure Advisory Opinion and Alien Flight School Program vetting, which is not mandated, using the student tracking to its utmost potential, and enforcing immigration law where appropriate.

Thank you so much. I look forward to your questions.

[The prepared statement of Ms. Kephart follows:]

JOINT HEARING BEFORE THE

HOUSE JUDICIARY SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

AND

HOUSE OVERSIGHT AND GOVERNMENT REFORM SUBCOMMITTEE ON NATIONAL SECURITY

"Overturning 30 Years of Precedent: Is the Administration Ignoring the Dangers of Training Libyan Pilots and Nuclear Scientists?"

TESTIMONY OF JANICE L. KEPHART

Former Counsel, 9/11 Commission
Former Special Counsel, U.S. Senate Judiciary Committee
Founder and CEO, Secure Identity & Biometrics Association (SIBA)

APRIL 3, 2014 at 2:30 pm

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HOUSE JUDICIARY SUBCOMMITTEE ON
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Introduction

I want to thank Judiciary Subcommittee on Immigration Policy and Enforcement Chairman Gowdy and Ranking Member Lofgren, and Oversight and Governmental Reform National Security Subcommittee Chairman Chaffetz and Ranking Member Tierney for the invitation to testify on the national security implications of the administration's decision to lift the prohibition on Libyans applying for visas to study or train in aviation maintenance, flight operations, or nuclear-related fields.

As stated in the final rule that is the subject of this hearing, the underlying basis of the request for lifting the ban on Libyans obtaining visas to study and train in high security risk areas such as nuclear science and aviation is grounded in a Department of Defense's goal to "initiate a program of military education and training for Libyan citizens that would be conducted in the United States." This "education and training is targeted to include aviation maintenance, flight operations, and nuclear-related studies or training" not currently permitted under immigration law. In addition, the Department of Homeland Security states it has interests in rescinding this ban generally, in supporting Libya's Defense and Customs Authority, and the State Department continues to build diplomatic relations with Libya. *DHS ICE, 8 CFR 214 Final Rule,* "Rescinding Suspension of Enrollment for Certain F and M Nonimmigrant Students from Libya and Third Country Nationals Acting on Behalf of Libyan Entities" (undated).

I understand that such military and diplomatic agreements amongst nations are amongst the usual course of business for the United States. However, where national security weighs in to diplomatic and military relations, it is imperative that proper balance is achieved amongst all interests. Where such relations involve immigration law, it is also imperative that immigration law and programs are adequate to support any potential national security risks posed by the diplomatic and military interests. This will be the core focus of this testimony.

My testimony is based on the following work, plus additional research specific to today's hearing:

- As a counsel to the Senate Judiciary Subcommittee on Technology, Terrorism, and Government Information prior to 9/11 where I drafted two bills which became law under President Clinton;
- As a counsel on the 9/11 Commission "border security team," which produced the *9/11 Final Report* draft recommendations and analysis;
- As an author of the 9/11 staff report, *9/11 and Terrorist Travel;*
- As the National Security Policy Director for the Center for Immigration Studies for nearly five years where I have investigated and reported border and identity security; and
- As founder and CEO of the Secure Identity & Biometrics Association

At the Commission, I was responsible for the investigation and analysis of the Immigration and Naturalization Service and current Department of Homeland Security (DHS) border functions as pertaining to counterterrorism, including the 9/11 hijackers' entry and abuse of the immigration system to enter the United States in a clandestine manner, facts mostly contained in our staff report, *9/11 and Terrorist Travel*. My team also produced the terrorist travel portions of the *9/11 Final Report* that were unanimously agreed to and refined by 9/11 Commissioners led by Governor Tom Kean and Rep. Lee Hamilton.

I have spent the years since the publication of our 9/11 work ensuring, in part, that our terrorist travel findings, lessons learned, and recommendations be properly understood and implemented as both policy and law. I also work to ensure that other types of terrorist travel not specifically covered in the 9/11 investigation be considered under the tenets and intentions of the 9/11 Commission findings, lessons learned, and recommendations in light of ever-changing times. To be clear, the views I represent are my own, and do not reflect those of the Secure Identity & Biometrics Association, whose founding in February 2014 is my current focus.

The subject of this hearing, a pending final rule rescission of 8 CFR Part 214.5, which prohibits Libyan nationals from enrolling in "studies or training in aviation maintenance, flight operations, or nuclear-related fields." As I understand the purpose of this hearing, it is the concern expressed by the Chairmen of both the Judiciary and Oversight and Governmental Reform subcommittees that the administration's decision, requested by the State and Defense Departments and implemented by the Department of Homeland Security, to rescind a 30 year ban on Libyan visa applications in aviation and nuclear-related studies and training could significantly affect national security in an adverse manner.

Congressional oversight has been invoked for three core reasons to determine whether: (1) national security has been adequately considered in the making of this rule; (2) the immigration system has sufficient integrity to withstand potential uncertainties about applicants' potential

long term interests in obtaining sensitive security information and education from the United States; and (3) the unilateral and private nature of the decision was an appropriate under the Foreign Powers Act, without engaging Congress, who is ultimately responsible for immigration law. Core *9/11 Final Report* recommendations and *9/11 and Terrorist Travel* findings of fact show that vigilance is essential when assuring immigration integrity against entry of foreign nationals that may threaten national security, and that Congress has a key role to play in assuring that vigilance .

National Security Oversight Issues

The administration's core argument in favor of rescission of the ban is twofold: (1) that the regulation is outdated and a "hamper" to forward progression of U.S.-Libyan relations; and (2) that relations are "normal" with Libya. National security is not mentioned in the proposed rule change, and OMB has not taken down the notice to make the rescission final despite these terrorist activities within the past two weeks: (1) Libya's leadership request for international support to quell terrorist activity; (2) a missile launch on the Tripoli airport shut it down for over a day; and (3) a terrorist pirate attack on a Libyan oil tanker which was hijacked to North Korea, with the U.S. Navy Seals responding and to get the vessel back on behalf of the Libyan government, who could not do so independently.

Background. From a national security oversight perspective, there are a number of issues which require open dialogue with the American people. The State Department and Department of Homeland Security private correspondence began in 2010 regarding rescinding the ban on Libyan applications for nuclear and aviation-based visas. The core reason for the State Department's request that the ban should be lifted was that Libya-U.S. diplomatic relations were "normal." Even after the Benghazi attack that killed four Americans and Ambassador Christopher Sands on September 11, 2012, the State Department did not retract its request to the Department of Homeland Security, nor appear to adjust its analysis.

In fact, the next action after the Benghazi attacks was by the Department of Homeland Security in December 2012 recommending to the DHS Secretary "that based on the revised U.S. Government policy towards engagement with Libya, you direct regulatory action to rescind 8 C.F.R. § 214.5, which prohibits Libyan nationals' access to immigration benefits for the purpose of engaging in or seeking to engage in aviation maintenance, flight operations, or nuclear-related studies or training." According to the OMB website, it appears the DHS Secretary agreed to the request, and the final rule is now pending.

To enable a constructive discussion of the national security implications of the correspondence, it is fair and necessary to provide some appropriate background. The first letter from State Department Assistant Secretary for Governmental Affairs, Jeffrey Feltman, to Department of Homeland Security Assistant Secretary for Policy, David Heyman, was sent on February 1, 2010. The letter states that since the United States removed Libya from the state sponsor of terror list in

2006, the United States now has a "normal bilateral relationship" and a military cooperative agreement signed by the two countries. This agreement includes military flight training.

On February 15, 2011, the Qaddafi regime was overthrown, and Qaddafi himself was killed brutally in August 2011. Many experts' analysis concludes that Libya has remained highly unstable since 2011.

On May 31, 2012 Mr. Feltman and Acting Assistant Secretary of Defense for International Security Affairs, Joseph McMillan, wrote Mr. Heyman again, stating that they have "no reason to believe this new government will support any form of terrorism." On September 11, 2012, four Americans and Ambassador Christopher Sands were horrifically murdered in what many assert was a terrorist attack on U.S. soil, the U.S. embassy in Benghazi. The current pending Final Rule "Rescinding Suspension of Enrollment for Certain F and M Nonimmigrant Students from Libya and Third Country Nationals Acting on Behalf of Libyan Entities" make no mention of issues raised by this attack, subsequent threats against America from Libyan factions, or the Libyan government's current concerns with its own stability. Nor does the Final Rule examine or explain the effect of regime stability on the national security interests of the United States.

Immigration system integrity is grounded in confidence that nations actively engaged in sending their foreign nationals to the United States for training or study programs that are listed on the Technology Alert List such as nuclear science, or technical training in aviation, will (1) not support proliferation of weapons of mass destruction; (2) restrain from developing destabilizing conventional military capabilities in unstable regions of the world; and (3) prevent the transfer of arms and sensitive dual-use items to terrorist states. While U.S. policy states that Libya is no longer a state sponsor of terror per se, by Libya's own assertion as recently as March 20, 2014, the country suffers from terrorist threat from within. Because all three of the concerns expressed in the Technology Alert List possibly exist, robust public discussion is necessary prior to finalizing a rescission of 214.5.

National Security Questions.

1. On March 20, 2014, according to the *Libyan Herald*, Libya's government called for international help to fight terrorism that is threatening internal stability of the country. On the same day, a missile was launched at the Tripoli runway shutting down the airport. Are the reasons asserted for a rescission of visa restrictions in 2010, still valid today?
2. Mr. Feltman's May 2012 letter asserts that the Libyan government wants 5,000 Libyans to have access to nuclear-related science education visas.

- How can the United States be assured that Libyan government-sponsored visas will continue to be sponsored by a non-terrorist regime upon the close of study of these individuals, which could be anywhere from one to four or longer years in the future?
- If these students' education is funded wholly or in part by the Libyan government, how will the United States be assured that the Libyan government has sufficient procedures in place to screen out potential terrorists?

- If these students' education is funded wholly or in part by the Libyan government, how will the United States be assured that the Libyan government will not use these individuals for non-democratic military activities or to support weapons-oriented nuclear programs in Libya, or an unfriendly country or terrorist organization?

Immigration and Border Security Issues

Aviation and nuclear-related studies require a great deal of confidence that the knowledge will not be used in a manner that is "detrimental" U.S. national security. The 1983 rule that terminated nuclear and aviation related studies for Libyans and third party nationals at issue here today reads:

> DEPARTMENT OF JUSTICE, Immigration and Naturalization Service
> 8 CFR Part 214, Nonimmigrant Classes (Friday, March 11, 1983)
>
> ACTION: Final rule.
>
> SUMMARY: This final rule will accomplish two purposes. First, it will terminate the nonimmigrant status of Libyan nationals and third country nationals acting on behalf of Libyan entities who are presently engaged in aviation or nuclear-related education or training in the United States. Secondly, it will bar certain benefits to such individuals where the intent is to obtain such education or training. The Secretary of State has determined that this type of education or training is detrimental to the security of the United States, and that it falls within section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(27).
>
> **These prohibitions are based upon a determination by the Secretary of State that aviation and nuclear-related training by foreign nationals in the United States, whose skills could be used by the Government of Libya, are detrimental to the security of the United States** [emphasis added].
>
> EFFECTIVE DATE: March 11, 1983.

The Final Rule proposed rescission at 8 CFR 214.5 states in part:

> DEPARTMENT OF HOMELAND SECURITY
> U.S. Immigration and Customs Enforcement
> 8 DFR Part 214, RIN 1653-AA69
> Rescinding Suspension of Enrollment for Certain F and M Nonimmigrant Students from Libya and Third Country Nationals Acting on Behalf of Libyan Entities
> Action: Final Rule

> After the removal of Libya from the list of state sponsors of terrorism, DoS has been effectively engaging with Libya on international matters, and on September 2011, DoS resumed its diplomatic presence in Tripoli. In March 2012, DHS hosted a two-week Libyan International Visitor Program delegation, which included participants from the Libyan Ministry of Defense and Customs Authority. DHS and the Libyan government hope to continue to cooperate on other matters such as border security, airport screening, refugee resettlement, and training. The U.S. government has developed a robust plan to encourage engagement and education in the coming years with the Libyan government. One of DoD's goals is to initiate a program of military education and training for Libyan citizens that would be conducted in the United States. The education and training is targeted to include aviation maintenance, flight operations, and nuclear-related studies or training; however, this goal is currently impeded by 8 CFR 214.5.

The emphasis in the two rules is vast; the 1983 rule clarifies that the action is taken due to national security concerns. The pending rule does not acknowledge that any such issues may exist. The impact on the two categories of visas affected by the pending rule change require different analysis under immigration law. That analysis is the bulk of the remainder of this testimony.

Nuclear science studies. The proposed final rule enables Libyans and third party nationals acting on behalf Libyan entities to obtain visas in "nuclear-related" fields. This is not the only such ban that exists. In fact, such precedent exists in this administration. In August 2012, the United States banned Iranians from obtaining any type of visa for a career in the energy sector, as well as nuclear science or engineering education.

> 22 U.S. Code § 8771, Pub. L. 112–158, title V, § 501. EXCLUSION OF CITIZENS OF IRAN SEEKING EDUCATION RELATING TO THE NUCLEAR AND ENERGY SECTORS OF IRAN.
>
> (a) IN GENERAL.--The Secretary of State shall deny a visa to, and the Secretary of Homeland Security shall exclude from the United States, any alien who is a citizen of Iran that the Secretary of State determines seeks to enter the United States to participate in coursework at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) to prepare the alien for a career in the energy sector of Iran or in nuclear science or nuclear engineering or a related field in Iran.
> (b) APPLICABILITY.--Subsection (a) applies with respect to visa applications filed on or after the date of the enactment of this Act.

Historically, there has been great concern with states sponsoring visas in areas that could directly affect U.S. national security, and a direct concern about whether the individual, or the country, was paying for it.

Perhaps somewhat obscure now, but highly relevant, is a 1998 report titled "Open Admissions: U.S. Policy Toward Students from Terrorism-Supporting Countries in the Middle East" by Hillary Mann. Ms. Mann had testified before Congress on terrorism and served both overseas and on the National Security Council on Near East issues. The hearing was before the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information with Chairman Jon Kyl and Ranking Member Dianne Feinstein presiding. I was responsible for determining the current threat from foreign terrorists in the United States. We conducted the hearing on the five year anniversary of the 1993 World Trade Center bombing and titled it "Foreign Terrorists in America: Five Years after the World Trade Center."

At the time, and still relevant today, was the concern that state-sponsored students would be required to work for their state upon conclusion of their training in the United States, perhaps in a manner that was detrimental to U.S. national security interests. Ms. Mann's 1998 study discussed Libya in depth. At the time, the United States reviewed Libyan visa applications more robustly than any other designated state sponsor of terror, mostly likely due to the 214.5 rule that is at the heart of this hearing. Apparently, Libyans could still be issued visas despite the ban if their application was approved after a favorable Security Advisory Opinion decision. She described the concern for misuse of state-sponsored student visas for nuclear-related activity as follows:

> In 1991, UN weapons inspectors in Iraq discovered documents detailing an Iraqi government strategy to send students abroad (including to the United States) specifically to study nuclear-related subjects in order to develop Iraq's nonconventional weapons programs. One of those students, Samir Al-Araji, received his doctorate in nuclear engineering from Michigan State University and then returned to Iraq to head its nuclear weapons program.
>
> Similarly, at least three Iranian officials suspected of developing Tehran's nuclear program also reportedly studied in the United States: Reza Amrollahi studied electrical engineering at the University of Texas, Mahdi Chamran studied nuclear physics at the University of California at Berkley, and Kazem Khabir studied nuclear engineering at the University of Oklahoma. Libya also reportedly sent students to study abroad, including to the United States, in order to develop Tripoli's weapons programs.
>
> Indeed, the presence of students from state-sponsors of terrorism in weapons-related scientific fields may be a useful indicator of their countries' weapons development plans.
>
> *- The Washington Institute- Policy Focus, "Open Admissions: U.S. Policy toward Students from Terrorism-Supporting Countries in the Middle East," Hillary Mann, in Hearing Record before the Subcommittee on Technology, Terrorism, and Government Information of the Committee on the Judiciary, U.S. Senate, 105th Congress "Examining the Extent of and Policies to Prevent Foreign Terrorist Operations in America" (Feb. 24, 1998)*

Granted, Libya is no longer considered by the U.S. government to be a state sponsor of terrorism. However, concerns over the stability of a government that publicly asks for help to fight off terrorist elements threatening the nation's stability raises concerns over the potential abuse of American generosity in re-opening such study. At minimum, Congress and the administration need to have a transparent dialogue over (1) the exact nature and intent of the Libyan government in specifically seeking the nuclear-related visas under the new bilateral agreement between the Libyan-U.S. militaries, and (2) whether there is sufficient stability within the Libyan government to warrant rescission of the current ban on Libyan nuclear-related science study.

In regard to adjudication of nuclear or aviation-related student visas, the proposed DHS Final Rule under consideration in this hearing states that Visas Mantis will apply only to "Libyan visa applicants whose planned travel travel raises security concerns."

Visas Mantis procedures apply whenever a consular officer determines that the applicant falls under INA 212(a)(3)(A)(i)(II), which is concerned about applicants who are "principally" or "incidentally" involved in exporting "goods, technology or sensitive information" from the United States. Under these circumstances, the consular officer is precluded from adjudicating the application until the immigration and intelligence community has determined whether the individual is ineligible based on national security grounds. The most common resource used by consular officers to identify security related concerns is the Technology Alert List, which lists over 15 subject areas including nuclear and rocket science, avionics, and chemical and biological engineering. One of the core security objectives of this list is to "restrain the development of destabilizing conventional military capabilities in certain regions of the world." (Tien-Li Loke Walsh, "The Technology Alert List, Visas Mantis and Export Control: Frequently Asked Questions" 2003)

However, it is not at all clear that Visas Mantis will apply to the proposed rule, as the Mantis SAO review is not mandated, but left to the discretion of the State Department. Nor does the Final Rule mention or mandate processing of these applicants through the new Kingfisher Program, which appears to be a more robust and timely counterterrorism version of an SAO that is run through the NCTC. It would seem imperative that applicants be run through both SAO and Kingfisher, to assure proper vetting. Since Kingfisher is an automated process that would not be difficult. Perhaps it is simply a matter of editing the pending Final Rule, but it is critical that reference to both Visas Mantis and Kingfisher as a mandatory check for all applicants under 214.5 be clear and unequivocal if the final rule is approved. This program is described in November 2013 State Department testimony:

> Kingfisher Expansion, or KFE, is a new U.S. government system for conducting interagency counterterrorism screening of all visa applicants. The Department launched KFE in June 2013 in partnership with the National Counterterrorism Center (NCTC), and in coordination with our partners at DHS (including CBP and U.S. Immigration and Customs Enforcement (ICE), the FBI, and the FBI's TSC.

> KFE checks are initiated when a U.S. embassy or consulate submits electronic "vetting packages" – consisting of visa applicants' electronic visa applications as well as the automated visa cases created in post software – to the NCTC. In an automated process, NCTC compares vetting package data to its holdings in a highly classified environment, and responds to posts within minutes with "red-light/green-light" responses. KFE red light responses trigger a Washington-based interagency review of the case.
>
> In addition, KFE conducts post-issuance, continuous reviews of all holders of valid visas against emerging threat information. Continuous check "hits" are reviewed by our KFE partners and forwarded to the Department for revocation consideration when appropriate.
>
> A 2011 comparison of pilot results suggested that KFE could, potentially, reduce counterterrorism SAO volume by as much as 80 to 85 percent, and associated administrative costs by as much as $55 million annually. While we have yet to hit this volume reduction target, KFE's early impact has been positive and substantial. The public relations benefit to the United States of not delaying tens of thousands of qualified applicants cannot be quantified but will also be substantial, especially in the Middle East and South Asia.
>
> *- Statement of Edward Ramotowski, Deputy Ass't Sec for Visa Services, Department of State before the House Committee on Oversight and Government Reform Subcommittee on National Security, "Securing the U.S. Border, B1/B2 Visas and Border Crossing Cards (Nov. 14, 2013)* http://oversight.house.gov/wp-content/uploads/2013/11/Ramotowski-Testimony.pdf

With no reference to Kingfisher processing, and Visa Mantis not required, it remains unclear whether the administration would interpret the Interview Waiver Pilot Program to apply to applicants under 214.5. New 2012 State Department consular guidance (FAM) 9 FAM 41.102 N3.2(b) states: "The Deputy Assistant Secretary for Visa Services may waive personal appearance requirement for an individual applicant after determining that such waiver is. . . in the national interest of the United States." In addition, 9 FAM 1.102 N3.5 gives authority to the Deputy Assistant Secretary for Visa Services the authority to waive the in-person interview requirements if "national security concerns do not require an interview."

Such waiver can not occur when a Visa Mantis Security Advisory Opinion is sought, but again, if the SAO is determined to not be necessary, then it is possible that the interview requirements could be waived as well. In regard to visa renewals, under 9 FAM 41.102 N3.3, many renewals, including most student visas, may waive the renewal interview as well. In testimony by the same Department of State before House Oversight and Government Reform in November 2013, the interview waiver pilot program was described as follows:

> In January 2012, the Department and the Department of Homeland Security (DHS) initiated the two-year Interview Waiver Pilot Program (IWPP) to streamline processing for low-risk visa applicants. The worldwide pilot program allows consular officers to waive in-person interviews for certain nonimmigrant visa applicants who were previously interviewed and thoroughly screened in conjunction with a prior visa application, and who are renewing a previous visa within four years of its expiration.
>
> All Interview Waiver Pilot Program applications are thoroughly reviewed by a commissioned consular officer, with the applicant's fingerprints, photograph, and biodata undergoing extensive database checks. Consular officers have been directed to require an interview for any applicant who might otherwise qualify for the IWPP, if the application is not immediately approvable upon paper review, including if database checks reveal potential grounds of inadmissibility or other possible concerns. - *Ibid.*

Aviation maintenance and flight operation studies. Concerns about aviation education are widely understood, mostly due to the facts and circumstances of the four 9/11 hijacker pilots who obtained their expertise in aviation primarily at U.S. flight schools. Perhaps a little less well known is that the Pentagon pilot, Hani Hanjour, was likely picked for the 9/11 operation due to his attendance to flight school in the U.S. in the mid-1990s. Our 9/11 Final Report supplement, *9/11 and Terrorist Travel* provides an in-depth explanation of how the two lead 9/11 pilots abused the immigration process to enter the United States without vocational "M" visas, but attended flight school anyway.

In regard to aviation-related visa adjudication pursuant to the pending 214.5 rescission, there are concerns regarding interview waivers as well as discussed above. In addition, appropriate vetting via the Alien Flight Student Program exist. Specifically, the proposed rule states that while the AFSP "requires any alien or other designated candidate that is seeking flight instruction on aircraft at a Federal Aviation Administration certified training provider located in the United States or abroad to be subject to security threat assessments ... AFSP is not applicable to U.S. citizens/nationals **those with DOD endorsements** [emphasis added]. (DHS ICE 8 CFR Part 214, RIN 1653-AA69 "Rescinding Suspension of Enrollment for Certain F and M Nonimmigrant Students from Libya and Third Country Nationals Acting on Behalf of Libyan Entities, Final Rule at p. 5)

It is worth repeating the DOD endorsement, which could initiate circumvention of AFSP vetting:

> The U.S. government has developed a robust plan to encourage engagement and education in the coming years with the Libyan government. One of DoD's goals is to initiate a program of military education and training for Libyan citizens that would be conducted in the United States. The education and training is targeted to include aviation maintenance, flight operations, and nuclear-related studies or training; however, this goal is currently impeded by 8 CFR 214.5. - *Ibid at p. 4*

Immigration and Border Security Questions.

1. Will the administration be willing to amend the final rule to require Visas Mantis and Kingfisher vetting for all applicants to whom the 214.5 rescission applies?
2. Will interviews be required? Will the Interview Waiver Pilot Program apply to renewals?
3. Will Libyan aviation students receive ICE priority in the Student Exchange and Visitor Information System (SEVIS) and Homeland Security Investigation/Counterterrorism investigations? What plans are in place to enable ICE to have more resources at its disposal to assure tracking inside the United States?
4. Will immigration law be enforced against Libyans if immigration violations exist, such as no-shows at school, seeking a change of status to add additional studies that are currently listed on the technology alert list?

Conclusion

There is no doubt that terrorists present a national security threat to the Libyan government that could open up the same threat to the U.S. if we release highly desired visas to Libya *at this time*. Reversing a 30 year Libyan ban on highly sensitive visas such as aviation operation and training and nuclear-related studies in highly unstable political environment requires active review by the American people. If such a decision is determined to be warranted, all precautions must be in place. However, even if all precautions are in place, is our intelligence capability strong enough to deal with the volatility of a nation where terrorists are attempting to topple the government?

When granting access to highly sensitive U.S. immigration benefits such as aviation and nuclear studies that have a strong and proven impact on national security, best-in-class immigration vetting is essential. Robust visa processing, including mandated interviews, Kingfisher and immigration security reviews are essential prior to visa issuance. Improvements and tracking through SEVIS is essential. Immigration enforcement should apply when necessary. All of these elements should be place prior to any 214.5 rule rescission, if and when it is decided that the Libyan government is stable enough to warrant rescission.

Without a robust plan in place that assures security vetting for both nuclear and aviation visa applicants' eligibility, it is of concern that the terrorist organizations that currently plague the Libyan government could attempt to infiltrate the program, the Libyan government could fall to an unfriendly regime, or the Libyan government itself could have an unstated agenda. All of these indicators point to holding off on the rescission, and perhaps even point to Congress considering visa policy across the board for a increasing number of countries in similar crisis.

APPENDIX
Relevant Findings of Fact from Staff Monograph, "9/11 and Terrorist Travel"

- The success of the September 11 plot depended on the ability of the hijackers to obtain visas and pass an immigration and customs inspection in order to enter the United States. If they had failed, the plot could not have been executed.
- A review of visa and border processing and interviews were an integral part of our investigation on the 9/11 Commission.
- Only two of 19 hijackers were interviewed for their visas.
- 15 of the 19 hijackers received 18 visas in Saudi Arabia. Saudi Arabia became the country of choice for a hijacker's visas, as these applicants were not interviewed in person.
- The 9/11 hijackers submitted 23 visa applications during the course of the plot, and 22 of these applications were approved. During the course of the plot, these visas resulted in 45 contacts with immigration and customs officials.
- The hijackers applied for visas at five U.S. consulates or embassies overseas; two of them were interviewed. One consular officer issued visas to 11 of the 19 hijackers.
- Fourteen of the 19 September 11 hijackers obtained new passports within three weeks of their application for U.S. visas, possibly to hide travel to Afghanistan recorded in their old ones or to hide indicators of extremism that showed ties to Al Qaeda. The new passports caused no heightened scrutiny of their visa applications as consular officers were not trained, and would not have been privy to, such intelligence.
- Two hijackers lied on their visa applications in detectable ways, but were not further questioned.
- Three of the hijackers, Khalid al Mihdhar, Nawaf al Hazmi, and Salem al Hazmi, presented with their visa applications passports that contained an indicator of possible terrorist affiliation. We know now that Mihdhar and Salem al Hazmi both possessed at least two passports, all with this indicator.
- There is strong evidence that two of the hijackers, Satam al Suqami and Abdul Aziz al Omari, presented passports that contained fraudulent travel stamps that have been associated with al Qaeda when they applied for their visas. There is reason to believe that three of the remaining hijackers presented such altered or manipulated passports as well.
- Hijackers Nawaf al Hazmi and Khalid al Mihdhar were the first to submit visa applications because they were originally slated to be pilots. The four hijackers who did become pilots applied for visas in 2000. The remaining "muscle" hijackers applied in the fall of 2000 through the spring and summer of 2001, three applying twice.
- Eight other conspirators in the plot attempted to acquire U.S. visas during the course of the plot; three of them succeeded. The remaining five could not obtain visas, although none were denied for national security reasons. One, al-Kahtani, was stopped at Orlando Airport by an astute immigration officer. One dropped out. The other was Khalid Sheikh Mohammed, the mastermind of the 9/11 plot, who obtained a visa in Jeddah, Saudi Arabia, in July 2001 under an alias.
- There were opportunities to stop both World Trade Center pilots in secondary interviews at the border. That did not happen. We know what happened to the World Trade Centers.

- We also know that not having a fifth man on the Pennsylvania flight mattered as well. Al-Kahtani's turn around at Orlando International Airport after an extensive secondary interview meant there were only four hijackers on the flight that was headed for either the White House or the Capitol on that fateful day in 2001. That plane was overrun by the passengers who knew their plane was headed for disaster, and gave their lives to stop the hijackers. This one secondary interview prompted by two astute border inspectors in Orlando did determine how many hijackers the passengers had to fight on Flight 93.
- Few, if any, of the problems in visa issuance with the 9/11 hijackers had to do with technology or databases vetting the applicants; rather, the issue was that interviews that could have detected fraud and lies were either not done, or done incompletely. In the one instance where there was an extensive interview at a border secondary inspection al Kahtani was prevented from taking his place on Flight 93.

9/11 Commission Recommendations Relevant to Visa Interviews and Issuance

The 9/11 Commission recommendations emphasize that terrorists are best stopped when "they move through defined channels." The first, and best, opportunity to stop terrorist travel is in the visa adjudication process. It is best to stop at issuance, where there are triggers for further investigation. These can range from a recently obtained new passport, suspicious (fraudulent) travel stamps, incomplete visa applications to indicators of extremism, as was the case with the 9/11 hijackers. Interviews are essential if any of these conditions arise, or to notice them in the first instance.

Just as important is post-issuance information that indicates a terrorism (or espionage or criminal activity) affiliation. This requires the same vigilance as prior to issuance. Visa interviews with a purpose to reassess visa issuance upon renewal, or prior to U.S. travel, are an excellent tool for denial of entry or removal of those already in the United States. It is the in-person consular officer or Visa Security Unit's special agent expertise and access to information that can be the critical element to denying terrorist entry in such cases. The same is the case with any kind of criminal activity or illegal purpose.

The point is that the visa process does not end with initial issuance. The visa process continues during the life of the visa. Indeed, visa life cycles (term life of the visa) and types of visas (single or multiple entry) are negotiated with countries by the State Department on a case-by-case basis with countries (United Arab Emirates had 10-year visas at the time of 9/11, for example), and the ability to review the visa for security-related reasons remains throughout its life span. Yet again, it is not all about issuance. Those with existing U.S. visas will be sought after by those with nefarious purposes, and thus review of existing visas prior to travel and re-interviews should be a priority at consular posts worldwide.

Mr. GOWDY. Thank you, ma'am.
Mr. Chaparro.

TESTIMONY OF JAMES M. CHAPARRO, EXECUTIVE VICE PRESIDENT, STRATEGIC ENTERPRISE SOLUTIONS

Mr. CHAPARRO. Chairman Goodlatte, Chairman Gowdy, Chairman Chaffetz and Ranking Members Lofgren, Tierney and distinguished Members of the Subcommittee, thank you for inviting me to discuss DHS' proposed decision of 8 CFR 214.5. I have spent over two and a half decades of my professional career strengthening national security in a number of key positions.

I have served as a frontline special agent with the Immigration of Naturalization Service; the director of antismuggling at INS; special agent in charge with U.S. Immigration and Customs Enforcement; the director of the Human Smuggling and Trafficking Center; executive associate director for Enforcement of Removal Operations at ICE; deputy undersecretary for intelligence at DHS, INA; and executive vice president at SE Solutions.

My experience provides me with a deep understanding of threats and vulnerabilities impacting Homeland Security. I understand how our legitimate travel systems are continually exploited by those seeking to circumvent our security efforts, and I also understand the strengths and weaknesses of our IT systems that vet visitors as well as our enforcement capabilities' strengths and weaknesses.

I am extremely proud of the men and women who labor around the clock and around the globe to help protect us. I understand their challenges firsthand, and I feel a burning sense of urgency to help them.

Once a state sponsor of terrorism with an aggressive WMD program, Libya is working hard to evolve to accepted norms of international conduct and governance.

Despite the best efforts of Libya's weak and unstable government, Libya remains a very dangerous place. Radical extremists within Libya, including factions of Al-Qaeda, continue to present genuine threats to Libyan security and to our own. Libya's ineffective border controls cannot stand the illicit flow of people and weapons across its borders. In fact, the U.N. Security Council issued a statement last December urging the Libyan Government to gain control of the vast amounts of unsecured weapons in Libya, citing the risks of having those weapons fall into the hands of extremist groups.

I commend the Subcommittees for holding this hearing. While it is clearly in America's interest to strengthen relations with Libya, it is also in our interest to protect our own citizens at home. Rescinding 214.5 begs several questions: Does Libya have sufficient passport issuance controls, including effective anticorruption measures? Can Libya control its own borders to stem the flow of terrorists and weapons? Does Libya have the capability to conduct comprehensive background and security checks before it issues passports? Are the breeder documents used to issue Libyan passports secure?

And then looking at our own mechanisms, how effective are our own border security screening tools? We have made progress, but

we have gaps. How effective are we at monitoring the compliance of foreign students in the U.S.? Have we provided sufficient resources to maintain acceptable levels of compliance, and have we implemented effective deterrence for those who failed to comply? How effective are our IT systems at pushing that necessary information to our frontline officers and agents?

The GAO has found considerable room for improvement in many of our border security programs, including SEVP which is designed to monitor compliance of foreign students. DHS, as Mr. Bersin noted, has made tremendous advancements in screening foreign nationals coming into the U.S. including the collection and analysis of biometrics information, federated search tools, targeting algorithms and increased information sharing.

But these tools are not a panacea. The tools have improved, but funds have been cut in operational programs, such as Homeland Security investigations and enforcement and removal operations, who are our boots on the ground actually enforcing the law and pursuing the leads that these tools generate.

For example, when I was running intelligence at ICE, Department of Defense was bringing in Afghan nationals to United States for military training to support the Afghan military. And about once a week, one of them would abscond, which causes great concern because many had training in explosives or training in weapons and tactics. And so my point is that these are very resource-intensive operations.

My two and a half decades of training and experience has taught me that when it comes to the safety and security of the American people, we should err on the side of caution. I would rather explain to the Libyan Government why we want a little more time to deliberate this important policy matter rather than sit before this Committee at some point in the future explaining something that went horribly wrong. I wouldn't feel comfortable lifting the ban until we were satisfied with our answers to these questions, and I know and recognize it is a complex issue.

I thank you for inviting me to testify and I am happy to answer your questions.

[The prepared statement of Mr. Chaparro follows:]

Statement for the Record

James M. Chaparro
Executive Vice President, Strategic Enterprise Solutions

"Overturning 30 Years of Precedent: Is the Administration Ignoring the Dangers of Training Libyan Pilots and Nuclear Scientists?"

Before a Joint Session of the

Judiciary Committee,
Subcommittee on Immigration and Border Security
and the
Committee on Oversight and Government Reform,
National Security Subcommittee

United States House of Representatives

April 3, 2014

Chairman Gowdy, Chairman Chaffetz, Ranking Member Lofgren, Ranking Member Tierney, and distinguished Members of the Subcommittees, I would like to thank you for providing me with the opportunity to appear before your Committees to discuss a proposal by the Department of Homeland Security (DHS), at the request of the Departments of State and Defense, to rescind a restriction of certain nationals of Libya, or persons acting their behalf, from traveling to the United States to study or train in aviation maintenance, flight operations, or nuclear-related fields. The restrictions, found in 8 C.F.R. 214.5, were imposed in March, 1983, a few years after Libya was designated a state sponsor of terrorism, and before the horrific bombing of Pan Am Flight 103 over Lockerbie, Scotland in December, 1988.

I have spent over two and a half decades of my professional career working to strengthen border security and national security, having served in Federal law enforcement, the United States Intelligence Community and in the private sector. I have served in a number of key positions, including:

- A front line Special Agent with the Immigration and Naturalization Service (INS), combatting crimes such as immigration fraud and human smuggling;
- Director of Anti-smuggling for INS, where I oversaw worldwide human smuggling investigations;
- Deputy Assistant Commissioner for Investigations in INS, where I oversaw all investigative activities, including national security investigations;
- Special Agent in Charge with US Immigration and Customs Enforcement (ICE), where I oversaw 17 offices in four states to combat illicit trade, illicit travel and illicit finance;
- Director of the Human Smuggling and Trafficking Center, where I oversaw efforts to combat human smuggling, human trafficking and clandestine terrorist mobility;
- Executive Associate Director for Enforcement and Removal Operations at ICE, where I managed a $2.7 billion budget and 6,500 employees responsible for identifying, apprehending and removing nearly 400,000 illegal aliens a year from the United States;
- Assistant Director of Intelligence in ICE Homeland Security Investigations, where I managed the intelligence program in the second largest Federal investigative agency in the United States;
- Deputy Under Secretary in the Department of Homeland Security's Office of Intelligence & Analysis, where I helped lead and manage intelligence efforts all across DHS; and

- I currently serve as the Executive Vice President of Strategy for SE Solutions, where I help lead efforts to provide innovative technology, cyber security and program management services to the Federal government.

Having carried all of these responsibilities provides me with unique insights and a depth of understanding of threats and vulnerabilities impacting homeland security and national security. I have a deep understanding of how our legitimate travel systems are continually exploited by those seeking to circumvent our security efforts, as well as the strengths and weaknesses of key information technology systems, our information sharing mechanisms and our analytic and enforcement programs and capabilities.

Even though I recently retired from Federal service, I still feel a burning sense of urgency to help protect our nation. I am extremely proud of the men and women who labor around the clock and around the globe to help keep our country safe, and I understand -- firsthand -- the challenges they face in carrying out their important responsibilities.

The Situation in Libya

The world is a dangerous place, and there are many, many people who would like nothing more than to bring harm to the United States. Weak or unstable governments can create a permissive environment where terrorism and transnational crime flourish, and can present formidable threats to our nation. It is in America's best interest to strengthen the rule of law around the world and to help emerging democracies create stable, secure and prosperous environments for their citizens. Diplomacy and security almost always go hand in hand.

Libya is no exception. Libya has evolved from a former state sponsor of terrorism with an aggressive weapons of mass destruction program, to a nation that is working hard to adhere to accepted norms of international conduct, trade and governance. However, despite the efforts of its government, Libya remains a very dangerous place. Radical extremists within Libya, including factions of Al-Qa'ida, continue to present genuine threats to Libya's security, as well as the security of the United States and our allies. Libya's fledgling government is stymied by tension within its General National Congress, and its ability to effectively govern is hampered by numerous armed groups with wide ranging agendas, undermining Libya's overall safety and stability.

Less than one year ago, the U.S. Department of State warned U.S. citizens of the risks of traveling to Libya and strongly advised against all but essential travel to Tripoli and against all travel to areas outside of Tripoli. The State Department warned that the security situation remains unpredictable and unstable, indicating that many military-grade weapons remain in the hands of private individuals, including antiaircraft weapons that may be used against civilian aviation. The State Department also noted that various groups have called for attacks against U.S. citizens and U.S. interests in Libya. In October and December 2013, extremist groups in Libya made specific threats against U.S. government officials and U.S. non-governmental organizations (NGOs) operating in Libya, and the State Department warned travelers to be aware that they may be targeted by extremist groups seeking to injure or kill U.S. citizens.

In addition to the internal threats it faces, Libya is bordered by nations with serious security challenges, and Libya's ineffective border controls present only minimal deterrence to stem the illicit flow of people and contraband, including armaments, into and out of the nation. In fact, the United Nations Security Council issued a statement in December, 2013 expressing its concern with the threats posed by unsecured arms and ammunition in Libya and their proliferation, causing a risk to stability, including through transfer to terrorist and extremist groups. The UN Security Council called on the Libyan Government to take concrete measures to control arms and ammunition stockpiles in Libya by ensuring proper management, safe storage and, where appropriate, effective disposal of arms and related materiel. The UN Security Council urged Libya to strengthen its border security, and urged Libya's neighbors to cooperate with the Libya's efforts to secure its borders.

Lifting Restrictions Imposed by 8 CFR 214.5

Lifting the restrictions imposed by 8 CFR 214.5 is a matter worth public debate, and I commend the Subcommittees for holding a public hearing on this important issue. The issue is one of great complexity. While it is clearly in the best interest of the United States to strengthen relations with Libya, it is also in our interest to ensure that we keep our own citizens safe from harm. Allowing Libyan citizens, or people acting on their behalf to study or train in aviation maintenance, flight operations, or nuclear-related fields could certainly help to strengthen cultural and economic ties between Libya and the United States, and could potentially provide the Libyan government with better tools to strengthen its own security. At the same time, however, a shift of this long-standing policy could present new opportunities for terrorists or terrorist facilitators within Libya to gain skills and knowledge they need to bring harm to the United States and our interests.

The risks associated with this proposed policy change need to be carefully examined. As I look at the issue of rescinding 8 CFR 214.5 through the perspective of my border security and national security experience, I think that there are numerous questions that should be considered when contemplating such a move:

1) How confident are we that Libya has sufficient internal controls, including effective anti-corruption measures, to effectively manage the issuance of passports to its citizens?

2) Does Libya have the capability to conduct comprehensive background and security checks prior to issuing passports to its citizens and are we confident that there are sufficient mechanisms in place to ensure that breeder documents used to obtain Libyan passports are secure?

3) Libya is located in a very tumultuous region of the world. How confident are we that Libya is able to adequately control its own borders to stem the flow of terrorists and terrorist facilitators into Libya?

4) How confident are we that our own intelligence services are fully capable of understanding, at a granular level, potential threats posed by individuals in Libya?

5) What are the benefits to lifting the 214.5 restrictions, and do they outweigh the potential risks?

If we were comfortable with the answers to each of these questions, I would then ask several more revolving around our own ability to screen travelers, and our ability to locate, arrest and remove those found to be out of status in the United States:

1) How comfortable are we with our own mechanisms for screening people seeking entry into the United States? Although we have made tremendous progress since 9/11, vulnerabilities remain.

2) Does DHS have a Visa Security Unit in Libya to thoroughly screen individual applicants who would seek to come to the U.S. if the 8 CFR 214.5 restrictions are lifted?

3) How comfortable are we with our ability monitor the immigration status compliance of foreign students in the United States and have we provided sufficient resources to maintain acceptable levels of compliance – and – do we have a sufficient level of deterrence for those who fail to comply with the law?

4) How comfortable are we with our ability to identify, locate, arrest, detain and remove non-immigrant status violators in the United States? Have we sufficiently resourced this mission?

5) How confident are we with the capabilities of our border security information technology systems? Are we confident that our front line officers and agents have access to all of the information they need to make rapid decisions, and do we have sufficient interconnectivity between the various agencies and departments that hold relevant information?

6) Have we provided our intelligence analysts operating in the Homeland with the information and tools they need to identify threats within our borders, and to locate absconders, and are there enough analysts to accomplish this daunting task?

7) What are the resource implications for enforcing existing laws related to non-compliant students and have those resource challenges been adequately addressed?

Progress Has Been Made - - But Work Remains

The Government Accountability Office (GAO) has thoroughly examined many issues related to compliance monitoring, screening and vetting programs, and our effectiveness administering these programs. It is clear that there is room for improvement. For example, while the Student and Exchange Visitor Program (SEVP) was specifically designed to track foreign students and

monitor compliance of foreign students in the United States, the GAO found numerous deficiencies in the program, as well as with the Student and Exchange Visitor Information System (SEVIS), which supports SEVP. These programs are critical national security tools. DHS is aggressively addressing the deficiencies identified by the GAO, but considerable work remains.

I know from personal experience that locating, arresting and removing non-immigrant status violators is a difficult and very resource intensive task, and I have seen numerous cases where aliens sponsored by other government agencies to attend training in the United States abscond from their training. For example, individuals brought to the United States from Afghanistan for military training absconded on a regular basis, requiring extensive investigative resources to locate and apprehend them. Locating absconders who have been provided training on firearms and military tactics is a difficult and potentially dangerous task. The men and women who work to locate these potentially dangerous absconders, day in and day out, need all the help they can get.

DHS has made great progress in screening and vetting of foreign nationals coming to the United States. I personally witnessed those advancements and DHS should be commended. DHS has made significant advances in collection and analysis of biometric information, federated search tools for vetting, targeting rules and algorithms, and increased information sharing. These advances have all helped to make our Homeland more secure, and have strengthened the integrity of our international borders. Federated screening and vetting tools such as the PATRIOT system in DHS have helped, but these tools are not a panacea.

While screening and vetting tools have greatly improved, funds have been cut in critical operational programs such as Homeland Security Investigations (HSI) and Enforcement and Removal Operations (ERO) in ICE, and further cuts are proposed for fiscal year 2015. Both HSI and ERO play a critical role in pursuing the leads that systems such as SEVIS and PATRIOT generate, and help to ensure compliance with our nation's immigration laws. Trained analysts and boots on the ground are needed to effectively address the enormous number of leads that the new vetting tools are generating, otherwise the value of these tools is greatly diminished, as is our ability to identify and apprehend those who fail to comply with the laws that the Congress has passed.

While serving in the Intelligence Community and as the head of Intelligence for ICE, I saw reports – literally on a daily basis – of individuals attempting to undermine our border security efforts. Many of these individuals posed serious national security or public safety threats. I witnessed our adversaries continually evolve their tactics, techniques and procedures to circumvent our security efforts and have every reason to believe that they will continue to do so. As a nation, we can never afford to become complacent. Doing so would open us up to repeating past mistakes and roll back the tremendous progress we have made.

In short, vulnerabilities remain. As a federal manager, I had great challenges getting time-sensitive and relevant information into the hands of front-line Agents, both at home and abroad. I continually struggled to get adequate resources to make needed improvements to information

technology, and often struggled with cumbersome information sharing processes that at times impeded the ability to effectively share information with those who needed it.

In Conclusion

While this hearing is focused on issues related to Libya, I think that we all understand that the threats we face are far broader in nature, and government agencies must be able to adequately address all of them. Threats rapidly evolve from various places around the globe, including Libya, and the national security community needs the tools, resources and flexibility to address them.

I feel honored to have been entrusted with many positions where I could play a key role in strengthening our national security and border security efforts. The tragic events of September 11th, 2001 were wake up call for all Americans, including me. We were attacked on our own soil and thousands of lives were lost. To add insult to injury, vulnerabilities in our own intelligence and border security practices were exploited, and many of the September 11th hijackers lived and trained among us. The threats continue. I have seen seemingly relentless efforts by terrorists since then to kill Americans, and seemingly countless attempts by them to exploit perceived vulnerabilities in our security apparatus.

We can never forget, and we can never let our guard down.

With so many questions and issues to consider regarding the proposed rescission of CFR 214.5, I believe that it was a prudent decision for your Committees to hold an informed public hearing regarding the matter. Many of the questions that I raised in my testimony have no easy answer – the issues are complex. Allowing Libyan citizens to come to the United States to study and train in the fields of flight operations, aviation maintenance and nuclear-related fields poses some potential benefits, but also poses many, many risks.

When it comes to America's safety and security, my experience has taught me to err on the side of caution. I would rather explain to the Government of Libya why we want more time to carefully evaluate this issue, than to have to explain to the American People what happened if something went horribly wrong. I recognize and understand the reasons why the Department of Defense and the State Department requested DHS to rescind 8 CFR 214.5. Given my knowledge of the vulnerabilities we still possess, I would not be comfortable lifting the ban until I was satisfied with the answers to the questions I raised.

I appreciate the opportunity to share with you my thoughts on this important national security issue. I recognize the complexity of the issue, I welcome the debate and discussion, and I will be happy to answer any questions that you may have.

Mr. GOWDY. Thank you very much.

Dr. Wehrey.

TESTIMONY OF FREDERIC WEHREY, SENIOR ASSOCIATE, MIDDLE EAST PROGRAM, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

Mr. WEHREY. Chairmen Gowdy and Chaffetz, Ranking Member Lofgren and Tierney and distinguished Committee Members, I am grateful for this opportunity to speak with you today about Libya's security crisis and why a repeal of CFR 214.5 is necessary to give the United States the flexibility to assist the Libyan Government in its difficult transition.

I visited Libya four times since the fall of Qadhafi in 2011, traveling to this country's main cities, including Benghazi. I have spoken with a range of government officials, military officers, Islamists and militia leaders about the lack of security and what to do about it. Now, prior to this, as an officer in the Air Force Reserve, I served as a military attache at the Defense Attache Office in Tripoli in 2009 and again in 2011 before the revolution.

Based on this service and my visits, I will offer some observations about why U.S. assistance to Libya's military, especially in the aviation field, is so important for the country's security.

Now, much of Libya's hope in bringing about a durable peace to its citizens lies in national reconciliation, a constitution, a functioning parliament and a government that can deliver services to its citizens. These are challenges where outsiders can assist by offering advice and modest assistance, but the ultimate burden must be carried by Libya's leaders and its civil society.

The security field is an area where Libya's Government has sought outside help and where the U.S. is well positioned to assist. Libya desperately needs a capable military and a police to assert control of vast expanses of its territory and confront extremists bent on destabilizing the country and its neighbors.

During my last trip to Benghazi in November, I was struck by the poor state of Libyan military units in that city, ill-equipped and lacking even basic body armor and secure communications. They are often indistinguishable from local Islamist militias.

Aviation is an especially important part of the effort to bolster security across the country. But the Libyan air force is currently unable to perform even basic missions. Long neglected by Qadhafi, its aircraft are poorly maintained; flight training is inadequate; and crashes are common. The Libyan air force lacks the critical capacity to ferry equipment and personnel from one part of the country to another.

Now, in response to a request by the Libyan Government, the U.S. has committed to train and equip a new Libyan national army, denoted in military terms as a "general purpose force." Equipping Libya's military with new lift and mobility aircraft, such as the C-130 and CH-47, is an essential element in the U.S. plan to help Libya secure its territory and confront extremism.

So, too, is training a new generation of Libyan pilots in a secure U.S. location with adequate facilities and simulators. Training in Libya is unfeasible due to security conditions and the lack of facilities. CFR 214.5 stands in the way of this assistance.

Now, certainly, the effort to build Libya's military faces challenges and difficulties. U.S. support to the Libyan military must be undertaken in a way that does not further polarize or destabilize the country. The U.S. must ensure that it trains a force that is respectful of human rights and subordinate to a democratically elected government. But to meet these challenges, the Department of Defense has to have the flexibility to meet Libya's security assistance needs.

Mr. Chairman, let me conclude with a few words about Islamic extremism and the influence of Al Qaeda in Libya.

Some observers have charged that the Libyan government has grown hostile to the United States and is under the sway of hardline Islamists. Much of this commentary is unfortunately based on a superficial reading of Libya's complex politics. Certainly, there are pockets of Libyan territory that are rife for exploitation by local jihadists working with transnational Al Qaeda elements, but I want to emphasize that these actors remain on the fringes of Libya's politics and its security institutions. Overwhelmingly, the country's Islamists reject violence for political means. Like most other Libyans they remain committed to moving the current forward on a democratic path, and they welcome cooperation with the United States, provided it is done in a way that is respectful of Libyan sovereignty and built on a foundation of mutual trust.

Mr. Chairman, the repeal of CFR 214.5 will help build that trust. It will pave the way for the U.S. to provide vital aviation assistance to Libya's military. It is a small but important step in enabling the country's elected government to protect its citizens and territory, combat violent extremism, and advance the hard-won gains of its revolution.

Thank you for the opportunity to speak with you here today.

[The prepared statement of Mr. Wehrey follows:]

United States House of Representatives Testimony

Frederic Wehrey, Senior Associate, Middle East Program,
Carnegie Endowment for International Peace

April 3, 2014

Joint Hearing of the House Oversight and Government Reform Subcommittee on National Security and House Judiciary Subcommittee on Immigration and Border Security

Chairman Gowdy and Chaffetz, Ranking Member Lofgren and Tierney, distinguished committee members, I am grateful for this opportunity to speak with you about Libya's security crisis and why a repeal of CFR 214.5, which prohibits aviation and nuclear-related assistance to Libyan nationals, is necessary to give the U.S. the required flexibility to help the Libyan government in its difficult transition.

I have visited Libya four times since the fall of Qadhafi in 2011, traveling to the country's major centers of power: Zintan, Tripoli, Misrata, and the troubled eastern city of Benghazi. I have spoken with a range of government officials, Libyan military officers, Islamists, and militia leaders regarding the country's lack of security and what to do about it. In nearly all cases, I heard support for the role of the United States in liberating the country and a desire to receive increased assistance, particularly in the security field.

As an officer in the U.S. Air Force Reserve, I also had the unique opportunity in 2009 (and again in early 2011) to serve as a reserve military attaché at the Defense Attaché Office in Tripoli where I worked on U.S. security assistance to the Libyan army. The

experience gave me unique insights into both the capabilities and shortcomings of Libya's military.

Based on this service and my subsequent visits to the country, I will offer some detailed observations about the roots of Libya's ongoing troubles. These observations demonstrate why outside assistance to the country's army and police, particularly in the aviation realm, is so central to the country's post-conflict recovery.

The Roots of Libya's Security Vacuum

Libya's current instability stems in part from the weakness and disorganization of its formal security institutions—the army and the police—and in part from the power of the country's militias, which possess greater firepower and numbers. Lacking its own police force and army, the transitional government cut a deal with these militias in late 2011 and 2012 that included putting them on the payroll of the Ministries of Defense and Interior. By all accounts this has been a Faustian bargain that has given the militias freedom to pursue agendas that are political, ideological and, in some cases, purely criminal.

The militia menace has been especially stark in Tripoli, where armed groups from outside the city—Misrata and Zintan—have claimed what they see as the spoils of the revolution. This has included occupying public and governmental institutions, raiding the army's training camps and facilities, and pressuring the parliament to pass legislation. In the east, militias allied with the country's federalists have shut down oil production, while in the south they guard the porous frontier. Benghazi remains a city under siege, wracked by assassinations and bombings.

Much of the country's hope in bringing a durable and democratic peace to its citizens lies in the hands of its politicians and its vibrant civil society: fostering a broad-based national reconciliation process, developing a constitution that is fit for

purpose, ensuring a functioning parliament that provides checks and balances, and government departments that can effectively deliver services to its citizens. There are a number of sources deepening polarization in Libya that must be resolved through patient political dialogue and consensus building. These include the question of federalism, the balance between central and municipal authorities, and the role of Islam in political life. The young men who fill the militias ranks must be given incentives to leave: to pursue job training, scholarships, or entry into the regular police and army. The U.S. and others can help address these challenges by offering advice and modest assistance, but the ultimate burden must be carried by Libyans themselves.

The Importance of U.S. Security Assistance

Building up Libya's military and police are central pillars of post-conflict reconstruction and an area where outside assistance is vital, particularly from the United States.

In response to Libya's deepening crisis and a request by the Libyan government, the U.S., Italy, Britain, Morocco, and Turkey have committed to train and equip a new Libyan national army. This force, denoted in military terms as a "General Purpose Force" (GPF), will comprise an estimated 19,000 trainees, with the U.S. responsible for 5,000 to 8,000.

It is hard to overstate the enormity of this challenge. Libya is in effect building its military forces from scratch. With the exception of a few elite units commanded by his sons, Qadhafi kept the Libyan army underfunded, ill equipped, and poorly organized because he feared the prospect of a coup. When I interacted with the Libyan military in early 2011, its facilities, equipment and even uniforms were shockingly decrepit. Basic communications relied on1970s-era technology. Its ranks were bloated at the senior levels and largely bereft of junior officers and senior non-commissioned officers—the backbone of any military.

Today, Libya's government desperately needs a capable military and police to assert better administrative control over vast expanses of its territory. It also needs a stronger military to confront extremists bent on destabilizing Libya and its neighbors. During my last trip to Benghazi in November, I was struck by the poor state of Libyan army units based in the city: ill-equipped and lacking even basic body armor and secure communications, they are indistinguishable from local Islamist militias by whom they are frequently outgunned.

Aviation is an especially important part of the government's effort to bolster security across the country. It is also crucial for border control, a task that affects not just Libya's stability but that of its Sahelian and Saharan neighbors.

But the Libyan air force is currently unable to perform even the most basic missions. Its aircraft are poorly and infrequently maintained and flight training is inadequate. The air force's ability to ferry equipment and personnel from one part of the expansive country to another is especially limited. It is an area where the Libyans have reached out to the U.S. for assistance.

Based on my conversations with Libyan officers and AFRICOM officials, equipping Libya's military with new lift and transport aircraft—such as the C-130J and CH-47—and training a new generation of Libyan pilots are key elements in the broader U.S. plan to help Libya's government secure its territory and confront extremism. It is essential that the U.S. Department of Defense, AFRICOM and component services have the necessary flexibility to meet Libya's security assistance needs. CFR 214.5 stands in the way of this assistance.

The effort to train and equip Libya's military is fraught with challenges and difficulties. U.S. support to the GPF must be undertaken in such a way that does not further polarize the country or exacerbate its instability. The U.S. must ensure that it trains a

force that is respectful of human rights and subordinate to democratically elected officials. The force's officers and rank-and-file must be drawn from across Libya's diverse regions, tribes, and ethnic groups. And its formation must be accompanied by parallel tracks of political reconciliation and disarmament, demobilization, and reintegration.

The Challenge of Extremism in Libya

Mr. Chairman, let me conclude with a few words about the place of Islamic extremism in Libya and the influence of al-Qaeda. Some observers have suggested that the Libyan government is growing increasingly hostile to the United States and is coming under the sway of hardline Islamists. Much of this commentary is unfortunately based on a superficial and cursory reading of Libya's complex political spectrum.

There are certainly pockets of Libyan territory that are ripe for exploitation by local jihadists working in conjunction with transnational al-Qaeda elements. This is most evident in the southwest border regions and in Libya's eastern cities of Derna and Benghazi. But these actors remain on the outer fringes of Libya's politics and security institutions.

Overwhelmingly, the country's Islamists reject violence for political means. Like other Libyan politicians from across the ideological spectrum, they remain committed to moving the country forward on a democratic path. And they welcome greater cooperation with the U.S., provided it is done in a way that is respectful of Libyan sovereignty and rests on a foundation of mutual trust.

Mr. Chairman, the repeal of CFR 214.5 will help build that trust. It will pave the way for the U.S. to provide vital aviation assistance to Libya's military. It is a small but important step in enabling the country's democratically elected government to protect its citizens

and territory, combat violent extremism, and advance the hard-won gains of its revolution.

Thank you for the opportunity to speak with you here today.

Mr. GOWDY. Thank you, sir.

The Chair will now recognize the gentleman from Virginia, the Chairman of the full Committee, Mr. Goodlatte, for his questions.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Bersin, can you give us some more details about the $2 billion contract that you believe is at stake here?

Mr. BERSIN. Mr. Chairman, the $2 billion figure that you quoted in the—from the memorandum was the information that, best information we had received from the State Department, the Defense Department in—at the time that the memorandum was composed. As you have seen from the letter filed in connection with this hearing, that number has been reduced based on the assessment of what assistance could be available to Libya.

Mr. GOODLATTE. And where was this assistance coming from?

Mr. BERSIN. From the United States.

Mr. GOODLATTE. So we would be paying the Libyans to come here and be trained, not generating additional work from outside the country, additional resources to pay people in the United States to provide these services?

Mr. BERSIN. I believe the reference in the letter dated April 1st related to hardware. Now I am not familiar with the budget lines that would separate between hardware that would be purchased and supplied and services that might be involved. I am simply not able to do that, although I am certain the Pentagon could.

Mr. GOODLATTE. You issued a memo to Secretary Napolitano advocating for rescission of the rule that bars Libyan nationals from entering the United States. The memo you sent to Napolitano fails to discuss the attacks on the U.S. compound in Benghazi, does not discuss recent terror threats coming out of Libya or the instability of the current Libyan Government. Do you think that any event would change the Administration's mind about rescinding the rule when the death of a U.S. Ambassador did not and very heavy terrorist activity inside Libya right now does not seem to change that?

Mr. BERSIN. Mr. Chairman, and respectfully, the attachments to the memorandum that was submitted with my memorandum to Secretary Napolitano did mention the tragic, horrible and unspeakably indefensible attack on our compound in Benghazi.

Mr. GOODLATTE. The attachment, but not the memo itself. So in the memo, you did not address those concerns? Why would that be?

Mr. BERSIN. Because the issue that we were addressing was the request of the Defense Department and the State Department made to engage with those elements of Libya, the Libyan Government, with whom we could do business and who would be able to take actions in the—that would be in the interest of the United States. The focus of our request, because that is a policy judgment that was recommended by State and Defense, and we did not take issue with it, but the focus of our concern was on how we would issue visas and what protections existed to be able to assure that we could do so securely and safely.

Mr. GOODLATTE. But isn't it true that if the regulation was lifted, there would be nothing in place to prevent any Libyan from seeking access to the United States for purposes of flight training or to study nuclear science?

Mr. BERSIN. They could, as is the case from, with the exception of Iran, from other citizens of sponsors of state terrorism in which there is no specific or overall ban, Mr. Chairman.

Mr. GOODLATTE. I don't want to get into other countries that we might want to add to that list, but I certainly don't have a problem associating what is going on in Libya today with the same kind of concerns we have with what is going on in Iran today. And why would we want to reduce that list in a country that is having the kind of problems. It is disturbing to me.

Mr. BERSIN. The ability to enlist and recruit those people who are known to our military and to our diplomats and to be able to distinguish between them and terrorists I think is a fundamental assumption here that is a good assumption.

Mr. GOODLATTE. Why didn't you modify the regulation to provide that only Libyans vetted by the U.S. military could seek to do these things? Why do you repeal the entire regulation?

Mr. BERSIN. Because of the system of vetting and the layers of security that exist, Mr. Chairman, we have confidence that we do this every day and that we could do this in this case. And with respect to the specific areas of flight maintenance and operations and nuclear-related fields, there are extra layers of security and vetting through which everyone who would be invited into the country would go through.

Mr. GOODLATTE. My time is running out. Let me turn to Ms. Kephart and ask her what she thinks about this. Do you agree with me that there is nothing that would prevent any Libyan from seeking access to the United States for purposes of flight training or studying nuclear science?

Ms. KEPHART. That is correct.

Mr. GOODLATTE. The State Department recently updated their security vetting procedures to include a new system called Kingfisher. The system was up and running for nonimmigrant visas as of June 15, 2013, and functions for immigrant visas as of the first week of September of last year. The notice to rescind the regulation makes no mention whatsoever of Kingfisher, though the rescission notice was sent to OMB on January 1, 2014. Isn't it crucial to ensure that Kingfisher processing is required for all Libyans seeking to study aviation or nuclear science?

Ms. KEPHART. I agree, and I would also add that right now, under the draft language supporting the final rule rescission, everything, all the other security vetting is discretionary as well. There is mention of Visa Mantis for nuclear science, but it is not required. There is mention of the flight, the Alien Flight Student Program, but that is waived for DOD applicants, so, you know, you have got some loopholes in there that are pretty big, and I think, and PATRIOT also is not mentioned, either, the visa security vetting as well. So I think these are all really great measures that if they are in place would help a lot with this particular rule, but it is not even mentioned, and having it discretionary leaves too many loopholes, in my view.

Mr. GOODLATTE. My time has expired.

Thank you, Ms. Kephart.

Thank you, Mr. Chairman.

Mr. GOWDY. Thank you, Mr. Chairman.

The Chair will now recognize the gentlelady from California, the Ranking Member of the Subcommittee, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

It is the Department of Defense that is really driving this proposal as best I can figure, and the letter that has been put into the record makes it clear that the Defense Department believes it is important to actually get this changed so they can strengthen the Western forces in the Libyan Government.

Now, I asked my staff to check with the Defense Department to understand why in the Department's view it is important to train Libyan officials in the United States, and if we assume that it is important, and I think everyone does, that we strengthen Western forces—I don't think anybody is against doing that—why would we have to do it here? Now, what we were told is that the training that would normally be done, let's talk about the pilots, has to be done under secure conditions, and that the simulators and training facilities that meet those security requirements are really only here, and that if the travel ban continues, the Defense Department would have to establish secure training facilities someplace else, which they haven't done, and they don't have the budget to do and/or the material to do. Is that your understanding? I guess I should ask you, Dr. Wehrey, is that your understanding of what the crux of the problem is here?

Mr. WEHREY. Yes, ma'am. There is—I mean, there is really no facilities to do it. Obviously, in Libya, they are in disrepair, security conditions. So it would have to be done in the United States or at a third country. I mean, I visited some of these air bases, and there is just no place. There is no infrastructure and then, of course, the security issue.

Ms. LOFGREN. Now, Secretary Bersin, obviously, all of us want to have a safe country. We don't want anybody who would do harm to the United States to be admitted to the United States. There is no disagreement on that point, I don't think, among any Member of the Committee. The concerns that have been raised about our ability to adequately vet prospective Libyan trainees I think needs to be addressed directly. Do you think that the State Department, the Department of Defense, the Department of Homeland Security can adequately screen who we want to receive the training in the United States? Are we up to that task, do you think?

Mr. BERSIN. Ms. Lofgren, yes. In addition to that, there is the combined resources of the intelligence community, the National Counterterrorism Center, and the FBI and the Department of Justice.

Ms. LOFGREN. Now, how—can you explain the process that DHS would use to screen out potential bad actors from Libya who might want to come and receive training here but really aren't, they are not our side? How would you address that?

Mr. BERSIN. In two specific ways. First is the standard visa vetting process that takes place with regard to all foreigners who enter the United States, and that involves being checked against massive databases that are maintained by the United States Government. These include the Automated Biometric Identification System, containing 160 million fingerprints; the FBI Next Generation Identification System, which contains 76 million criminal

records; the consolidated, consular consolidated database maintained by the State Department that has 109 million photos of visa applicants; the Consular Lookout and Support System that contains 27 million records of people who have applied for and been rejected for visas.

In addition, Ranking Member Lofgren, there is the Terrorist Screening Center activities, in which we are constantly screening visa applicants against to rule out people of high risk. That is just at the front end.

With regard to specific people who would be applying to flight maintenance schools or flight operations schools, there is a special Transportation Security Administration security check that would both validate the schools to which they applied, as well as an additional security check, based on biometric and biographic information.

With regard to those who would be seeking to participate in nuclear-related fields, there is a special program called the Visas Mantis program——

Ms. LOFGREN. Right.

Mr. BERSIN [continuing]. Which would involve very specific vetting and a security advisory opinion that is geared specifically to that. After people would come to the United States, there would be a monitoring of their activities through the SEVIS program——

Ms. LOFGREN. Right.

Mr. BERSIN. The Student and Exchange Visitor Program.

Ms. LOFGREN. That is pretty effective, yeah?.

Mr. BERSIN. And there are other layers of security I would be happy to go into.

Ms. LOFGREN. Well, I think—I see my time has expired. I will just mention something I mentioned to the Chairman that years ago, when I was a practitioner, before this ban was in place, I had occasion to meet someone from Libya who had a post-doctoral degree in nuclear physics, and he was getting offers from all over the world, I mean, for his own lab to go develop nuclear programs for other countries, and the Defense Department was quite interested that he not go to those other countries, and we ended up getting a national interest waiver so that that Libyan could not leave the country and eventually did become an American and became an employee of the Department of Defense. So it is important that we have our friends here. And blanket decisions will not allow us to make those kind of fine decisions. I mean, for example, the idea of doing a blanket prohibition on visas to Syria, I mean, we have got Christians who are fleeing Syria and who are seeking refuge in the United States. Surely we don't want to turn those people away. So I think it is important to use our decisionmaking in a way that serves American interests.

Mr. BERSIN. Ms. Lofgren, if I might, the Congress itself made that decision in the Enhanced Border Security and Visa Entry Reform Act of 2002 in the immediate aftermath of 9/11, when restrictions on issuance of visas to nonimmigrants from countries that are state sponsors of international terrorism did not go to the ban as a technique but rather insisted that there be judgments made case by case, visa by visa before entering. And so this a—this has defined the way in which we approach this matter.

Ms. LOFGREN. Thank you, Mr. Chairman. My time has expired.

Mr. GOWDY. I thank the gentlelady from California.

And the Chair would now recognize the gentleman from Utah, the Chairman of the OGR Subcommittee, Mr. Chaffetz.

Mr. CHAFFETZ. I thank the Chairman.

Mr. Bersin, what is the driving need to have a Libyan national trained on nuclear sciences?

Mr. BERSIN. Mr. Chairman, there are two policy judgments that are basically involved here. One had to do with the desirability of the engagement and the need to engage with those elements of the Libyan Government with whom our Defense Department and State——

Mr. CHAFFETZ. But they don't have any nuclear power plants there.

Mr. BERSIN. That is a decision that was made, a policy decision that was made, and I can't—I can point you to the letters on which I relied and the points that were made in those letters, but for reasons that are not clear to me, representatives of the Defense Department and the State Department are not here to respond.

Mr. CHAFFETZ. So you are going to provide to both the Judiciary and the Oversight Committee all the letters articulating the need for Libyan nationals to be trained on nuclear sciences as well as aviation?

Mr. BERSIN. The ones that I have seen, yes, sir.

Mr. CHAFFETZ. And when will you provide those?

Mr. BERSIN. You have the two letters plus the third that was filed this week that made reference to that request.

Mr. CHAFFETZ. I still don't understand for this Committee why the driving need to train Libyan nationals on the nuclear sciences.

Let me also ask you, Mr. Bersin, why not issue a public notice and allow for a comment period?

Mr. BERSIN. As you know, Mr. Chairman, in the letter from Assistant Secretary de Vallance to this Committee, the decision on whether or not to apply the foreign policy exception which would preclude the need for a hearing is a decision that is still under consideration, and no decision has been made, and the matter will be determined in due course.

Mr. CHAFFETZ. I know it is not required in the regulation. Why not do it?

Mr. BERSIN. The matter is being considered, and Secretary——

Mr. CHAFFETZ. But you listed out all the different agencies that are allowing comment period. Why not allow the American people? Why not allow the United States Congress? Why exclude them?

Mr. BERSIN. Mr. Chairman——

Mr. CHAFFETZ. What is the harm?

Mr. BERSIN. I have no official authority to make the decision. I hear you, and I don't disagree personally, but my personal view is unimportant.

Mr. CHAFFETZ. Who makes that decision?

Mr. BERSIN. The Secretary would make it in consultation with——

Mr. CHAFFETZ. What sort of consultation have you been in with the White House?

Mr. BERSIN. The National Security Council is aware of the request that was made by the Defense Department, the State Department, and is also aware that DHS has decided that given that policy direction, we can adequately and will adequately protect the American people.

Mr. CHAFFETZ. What is your viewpoint of the status, what is it like in Libya right now?

Mr. BERSIN. Libya is, as Dr. Wehrey described it, an unstable, dangerous, and insecure place. There is no question about that. That does not mean, from the standpoint of the Defense Department and the State Department, that we should stand back and not work with those people within the government that we can work with. Normalization does not mean secure nor does it mean peaceful nor does it mean halcyon; it means that we will engage.

Mr. CHAFFETZ. So when we are doing these visa applications, you listed out a number of things that we look at in order to assess somebody's viability, and you talked about the big databases we have. How many Libyan criminal records do we have in our database?

Mr. BERSIN. Inside our databases, the FBI would not maintain criminal records unless it was collected as part of a previous case.

Mr. CHAFFETZ. So the answer is zero. How many of——

Mr. BERSIN. It is not zero. Respectfully, sir, it is not zero. We would have to find out.

Mr. CHAFFETZ. When will you give me that number?

Mr. BERSIN. We will make inquiry because I could tell you as a former Federal prosecutor, if there were Libyan criminal cases, we would have those records in our database.

Mr. CHAFFETZ. I am just wondering when you are going to give those to the Committee. You said you have those, you can get those.

Mr. BERSIN. I will make inquiry. I don't have them available now.

Mr. CHAFFETZ. How many fingerprints, photos, terrorist screening centers? I mean, part of the issue here is the fact that you don't have a fully functional host nation government. We have to deal with the fact that after a 40-year regime there under Muammar Qadhafi, they are not a functioning country at this point. You can't get to—have you ever been to Libya?

Mr. BERSIN. I have not, sir.

Mr. CHAFFETZ. As a Member of Congress I have been there twice. I couldn't even go to the eastern part of the country. And so if we are trying to assess an individual who comes from Darnah or pick anyplace, how are we going to assess that? We can't even get there, let alone be able to work with the host nation government. There is no host nation government to work with.

Mr. BERSIN. I understand that, sir, and I understand that many of our diplomats and particularly our soldiers go to places that are very dangerous. You could add to the example of Libya what is going on in Egypt today on occasions, what is going on in Yemen, what is going on as our soldiers are under attack in Afghanistan.

Mr. CHAFFETZ. It doesn't excuse or explain the idea that Libya is a very unique case. I see no urgency to try to get this through, particularly as it relates to the nuclear sciences. I wish the Admin-

istration would work with Congress. I think we could probably figure something out. But what the Administration has done is worked with a whole host of agencies, except Congress. We send you a letter. Chairman Goodlatte sends you a letter. No response. And then we get some partial information back, didn't answer all of the questions, and we have got to yank you up here for a hearing.

Mr. BERSIN. May I say, in response to that, while we may disagree on many matters this afternoon, we do not disagree on the inexcusability of that late response. And I want to reiterate the apology that was contained in Secretary de Vallance's letter, and I know because it was included, and you have been informed that Secretary Jeh Johnson, now in his 100th day, together with his chief of staff has put into place procedures that would not lead to that result. I, again, apologize for that.

Mr. CHAFFETZ. I appreciate your sincerity. I am 0 for 2 with him so far, but I do appreciate his leadership. I am glad he is in that role, look forward to working with him.

Yield back.

Mr. GOWDY. I thank the gentleman from Utah.

And the Chair would now recognize the gentleman from Massachusetts, Mr. Tierney.

Mr. TIERNEY. I basically think Ms. Lofgren covered most of the ground on this perspective, but Secretary Bersin let me just ask you, with respect to a review from an individual coming from Afghanistan to the United States, would their security check be the same as, less than, or more intensive than one for proposed process for Libyans?

Mr. BERSIN. It would be the same unless there were special condition, and then it would be the additional security checks and layers that would be applied.

Mr. TIERNEY. How about Yemen?

Mr. BERSIN. Same, same answer.

Mr. TIERNEY. How about Somalia?

Mr. BERSIN. Same answer.

Mr. TIERNEY. Sudan?

Mr. BERSIN. Same answer.

Mr. TIERNEY. Djibouti?

Mr. BERSIN. Same.

Mr. TIERNEY. Thank you.

Yield back, Mr. Chairman.

Mr. GOWDY. I thank the gentleman from Massachusetts. The Chair would now recognize himself.

Mr. Bersin, I want to start by thanking you for your service as a Federal prosecutor and tell you what you have probably already picked up on, which is that I am a simpleminded guy, and I find myself in some instances having to piggyback on the equally simpleminded questions of Mr. Chaffetz.

It strikes me that the prohibition would not have been put in place except for a desire to be punitive whenever the Reagan administration put it in place, right? It was designed and calculated to be punitive. So the lifting of it would be a reward. Is that fair?

Mr. BERSIN. Well, I would never refer to the Chairman as simpleminded.

Mr. GOWDY. Everybody else does, it is okay.

Mr. BERSIN. But the decision, sir, respectfully, was because circumstances have changed and because after 9/11, we have a completely different approach to the way in which we look at how we vet people coming into this country.

Mr. GOWDY. I get that, but your position would be buttressed if this move were made more contemporaneous with 9/11. It has been quite some time since 9/11, and the move has not yet been made.

Mr. BERSIN. Well, Mr. Chairman, the fact is that the engagement with Libya began in the Bush administration; 2003 and 2004 is when Libya renounced terrorism and renounced its use of weapons. President Bush sent an ambassador to Tripoli. In 2006, it was the Bush administration that removed Libya from the list of state sponsors of terrorism.

Mr. GOWDY. I am with you. And Mr. Chaffetz said that part of his frustration was that there had not been a lot of consultation with Congress, which is not your fault, but nonetheless that is his perception. I want to tell you what my perception is because you seem like somebody I would be very pleased to have a conversation with about this. It strikes me that when you talk about normalization or what kind of countries, to use your quote, Libyan Government with whom we could do business, that was a quote that you used in response to another answer—question. And it strikes me that a government with whom I would be interested in doing business would be a government that has some semblance of a civil or criminal justice system. So I understand that some of my colleagues on the other side of the aisle don't want to go back to Benghazi, but it is tough. It would be tough in my district to explain to people why a government that can't help us make a single solitary arrest in 18 months or a prosecution would be a government that we would trust to vet applicants to come to this country. How is that analysis flawed?

Mr. BERSIN. Chairman, we don't trust the Libyans nor do we trust any other country to do the vetting that we are required to do under the law, and we do that. When we can, through the intelligence community or otherwise, receive information on people because of inquiries that are made, we take it, but this is a responsibility of our government to do this.

With regard to the state, I admit and concur with you that Libya is in a very unstable place. Dr. Wehrey, I think, outlined the considerations quite directly. But I can tell you as a vice president of INTERPOL, the international criminal police organization, that in fact there are many countries around the world, not only the ones that Mr. Tierney mentioned, but many countries that don't have the rule of law established. We do everything we can to help build the capacity for that, but it is a fact of life so that when we invite someone to enter this country, it has got to be based on capacity and knowledge and data that we have.

Mr. GOWDY. Well, I am not disagreeing with you there, but I do believe that having a normalized, whatever that definition may be, I am not a diplomat, but whatever that definition is, a normalized relationship between our country and another country is a reward or a benefit to that country.

It may also be a reward and a benefit to our country, but I would imagine that there are countries that want to have a better relationship with ours, and I don't think it is asking too much that we tell that country, this is what we would like to see. And Benghazi leaps to mind. There was a schoolteacher that was murdered in Benghazi. It didn't get nearly the attention that our diplomats and our Stevens and Smith and Doherty and Woods got, but a teacher named Ronnie Smith was murdered in Benghazi. There have been no arrests. I have heard nothing about it. If you are going to seek a reward from this government, which is how I view this, then I would expect to see something on your behalf, and a stable criminal justice system, which results in arrest and prosecutions, would be something I would be interested in.

Mr. BERSIN. Mr. Chairman, first of all, I would also welcome the opportunity to discuss this with you in the aftermath of the hearing. With regard to the suggestion you just made, I urge you to take that up with the State Department in a similar kind of discussion.

Mr. GOWDY. Oh, excuse me. The Chair would now recognize Ms. Kelly.

Ms. KELLY. Thank you, Mr. Chair.

Doctor, I am glad you are here today because it would appear that you have firsthand knowledge of the situation in Libya and have knowledge from a military perspective training, why training Libyans may further security goals. What is your military expertise, and how did that lead you to your understanding of U.S.-Libya military relationships?

Mr. WEHREY. Nineteen years in the Air Force, 9 years active duty, 10 years in the Reserves. I am what is called a foreign area officer. I speak Arabic. I served for 2 and a half months in Libya as the acting chief of security cooperation, where I was assisting the active duty defense attache, essentially spearheading this nascent training effort in 2009 that included English language training to the Libyan military, C-130 maintenance, so it gave me a sense of the Libyan military, their structure, their weaknesses, their shortcomings.

Ms. KELLY. Okay. You seem to be arguing that in order to maintain security within Libya, the central government needs a strong airlift capability, and currently, the Libyans have minimal capability in that regard with both aging equipment and aging pilots. Is that correct?

Mr. WEHREY. That is correct. We are talking about systems that have fallen into real disrepair throughout the sanctions era. They are legacy U.S. systems. The pilots are aging. They need these systems really to project the government's authority over a very expansive country, to include border control, an issue that the international community cares about, to include securing oil facilities in the far south of the country. The roads are in disrepair. So we are really talking about giving the government, the military, an essential military capability. And I should also add that the air force of Libya's institutions or of its military services is among the most coherent and most pro-Western elements in the country. I mean, Air Force officers defected en masse during the revolution, entire air bases went over to the rebel side. These are Western-oriented offi-

cers. They could not have gotten to where they are in Libya's military if they were extremists or Islamists. Qadhafi made sure of that, so——

Ms. KELLY. So the airlift capabilities would help in maintaining security?

Mr. WEHREY. Absolutely, yes.

Ms. KELLY. And also you seem to be saying that in order to have a strong security force with airlift capabilities, DOD needs to be able to provide training to the Libyans. The current regulation CFR 214.5 is hampering that training. Is that accurate?

Mr. WEHREY. That is accurate, yes.

Ms. KELLY. Okay. And can the Department of Defense sufficiently train Libyans in Libya do you think?

Mr. WEHREY. I believe they can. I mean, obviously, this is an international effort as well. We have to remember that many of our allies have also committed to helping Libya's military, the Turks, the British, the Italians, the U.N. is heavily involved, so it is really an international effort, and the Libyans I think welcome U.S. expertise, and they want this training.

Ms. KELLY. So do you feel like they need to come to the U.S. for training or not necessarily, or there are practical limitations of training Libyans in Libya?

Mr. WEHREY. Well, again, I think that is a question for the Department of Defense. My understanding, as was mentioned, that there are a number of cost issues and practicalities to having this training at a third country outside of Libya. Certainly it would be easier and more efficient to have it in the United States.

Ms. KELLY. Thank you.

I yield back.

Mr. GOWDY. I thank the gentlelady from Illinois.

The Chair would now recognize the gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman, and thank you for this hearing and the testimony of the witnesses here today.

And I would turn first to Dr. Wehrey and just inquire, your last trip into Libya was November 2013, and you talked about the presence of militia there. Hard to distinguish whether they were Islamic extremists or whether they were from other entities. Does the government of Libya have a full military and security presence in Benghazi?

Mr. WEHREY. They have a marginal presence. They have a special forces unit there. They have infantry. They do have regular Army units. I mean, I visited the base of a Libyan military unit there in Benghazi. The problem is they are ill-equipped. They lack training. They lack essential communications. So they are competing with these other militias, so the way they control the city is by, in some sense, cooperating with these militias, and they can't push too hard against them.

Mr. KING. Okay. Somewhat like Beirut then, would that be similar? Have you traveled there?

Mr. WEHREY. It is a very, I think, rough and I think, frankly, crude analogy. I mean, you do have——

Mr. KING. With Hezbollah standing on the streets in Beirut along with—okay, I will just skip away from that, and we will focus

on Benghazi for a moment. Do government security personnel, are they, do they openly patrol the streets?

Mr. WEHREY. In places like Tripoli, yes.

Mr. KING. Benghazi.

Mr. WEHREY. Yes, and in Benghazi, they do. When I went to Benghazi, there were government military personnel at every checkpoint. They were out in force.

Mr. KING. Where?

Mr. WEHREY. The government has made an effort with what it has to patrol the streets, and I visited the country four times since the revolution, and in each visit, I have seen more and more uniformed police and military on the streets and less and less informal militias, technicals.

Mr. KING. Tell me about your security detail there in Benghazi.

Mr. WEHREY. I am sorry?

Mr. KING. Your security detail in Benghazi, did you wear a bulletproof vest or helmet?

Mr. WEHREY. I did not have a security detail.

Mr. KING. You walked down the streets——

Mr. WEHREY. Yes.

Mr. KING. And you were anonymous enough that you didn't fear for your life?

Mr. WEHREY. Yes.

Mr. KING. Okay. What about the operation of militia or, say, Islamic extremism in places like Tripoli that might come from places like Benghazi, can you tell us about the instability in Tripoli?

Mr. WEHREY. It is not really an issue in Tripoli. Again, the Islamist presence is primarily or the radical Islamist presence is primarily in the east, in Darnah.

Mr. KING. Didn't they once circle the parliament and shut down the parliament in Tripoli, and didn't that force come from Benghazi and not——

Mr. WEHREY. Part of it came from Benghazi. Part of it was from Misrata. It was actually a diverse coalition of interests. There were people from the south, people from the west. I spoke to many of these individuals about what they wanted. I actually talked to them about what they wanted, and they were not doing it out of an Islamic cause. They were pressing the government for certain infrastructural requirements. They believed they needed to use force. It was not an Islamic takeover of the parliament.

Mr. KING. Just I appreciate you willing to take this risk, not the risk of testifying before Congress, that is relatively safe, but walking the streets of Benghazi is not. And I would reflect upon after hearing the testimony here that this is a difficult question. We want to help stand up a security force and detail in Libya that will be our friend and our ally that can project force into all of Libya and perhaps beyond if called upon to do that. I hear the testimony that if we are going to have a Libyan Air Force, we need to have personnel that are trained to take care of the maintenance on that and to get that Air Force in the air, but it is not practical to train them in Libya, and I don't know who has got the best answer to that question, but I would turn perhaps to Mr. Bersin on that.

Why is it not practical? Who testified to that? Was that you, Doctor? Who testified that it is not practical to train them in Libya?

Mr. WEHREY. I did, sir.

Mr. KING. Okay. Then I would direct the question to you, Doctor, please.

Mr. WEHREY. Well, again, I would defer the ultimate answer to that to the Department of Defense. I mean, they do the assessments, but my understanding is there is very—I mean, the actual air bases are in a state of disrepair. There are certain air bases and certain facilities that are, in fact, under the control of militias, they have not been turned over. So have the armories. Something I didn't mention was the fact that if you put U.S. personnel, boots on the ground, contractors, you introduce a dynamic I think that could undermine a lot of the goodwill that Libyans feel toward the United States right now.

Mr. KING. Okay. Ms. Kephart, could you respond to that same question, please? I watch my clock ticking down here.

Ms. KEPHART. Could—the last part of your question was the practicalities of training the Libyans here in the United States? Yes?

Mr. KING. Versus that in Libya, yes.

Ms. KEPHART. Right. I think the biggest problem you have is you have got an incredibly—you have got no infrastructure really with the government right now that can provide border security in Libya, so you really don't know who your applicants are going to be. I think the infusion of a lack of intelligence about who you are actually dealing with is the big problem here. I think there is a concern about DOD and DOD being able to do its business, but the problem with this rule rescission is it is so broad that it could apply to anybody, and the militias that have been testified about here today all have access to those visas as well, so bringing them here creates the enforcement issues with immigration, as well as all the other security and counterterrorism issues that you all have heard about multiple times.

Mr. KING. I hear your testimony on that, and I appreciate it. I know the light is red, but I would ask unanimous consent to yield to the gentleman from Utah for 1 minute or to the Chairman at their choice. They are talking.

Mr. GOWDY. Will this be in lieu of a second round would be my question to the gentleman from Utah?

Mr. CHAFFETZ. I would like to simply make a point if my colleagues are okay with that.

I think they are overstating the security situation in Benghazi and Libya. I just wanted to inject in here as you are talking about what it is like in Benghazi, let's remember that Libya's first post-Qadhafi prosecutor was shot and killed, let's also understand that the head of Libya's military police was assassinated in Benghazi in October, let's remember that our U.S. SEALs had to board a ship that had gone into the port there in eastern Libya. I mean, we are having to deploy SEALs to go over and take care of business over there, and for us to suggest that, hey, it is just getting better, we see a few more police out there—can anybody here name who is the prime minister of Libya? You can't because he had to flee. This place is falling apart. The military, the militias have over 8,000 people in prisons. You have got another town in Libya where they had 40,000 people had to leave. You had an Indian doctor who was

assassinated. Consequently, according to press reports, 1,600 doctors have left the country. This place is falling apart, and we are over here trying to figure out how to get more Libyans into the United States to be trained on nuclear sciences. It doesn't add up.

Yield back.

Mr. GOWDY. I thank the gentleman from Iowa and the gentleman from Utah.

And the Chair would now recognize the gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you.

First of all, let me thank both Committees for joining together on an important question, and I believe that we do ourselves a disservice to come to a hearing like this with a closed mind.

We recognize that part of the engine behind the decision, Mr. Bersin, is a reality of the small world in which we live, and the question is, do we turn our backs and utilize the turtle theory, or do we answer questions from Members of Congress, legitimate questions, about breach of security that would result in a terrorist act on our soil? I think that is what my friend from Utah is suggesting, that we would allow individuals into the United States unchecked and that they would perpetrate horrors because, one, they would not be tracked. So let me say to you that I think the premise of this repeal of this particular regulation has value, but I do think, as someone who has been in the region, is on Homeland Security, I think we have just seen each other recently, I recognize that our ultimate responsibility, I just got through interviewing on the question of Fort Hood and the issue of whether we can protect our soldiers on domestic soil. Our soldiers are not supposed to be armed. We are a civilian government. But whether or not we can protect against this potential of happening.

So let me ask this question to you: The title of the hearing is provocative. It says that we are going to be training nuclear scientists, and that raises an ugly head that we are going to be training people who will use nuclear bombs to implode. Why don't you tell us what you think the impact of such a regulation will be? Is it your goal to bring over nuclear scientists? Can you kind of describe what kind of training and the level that individuals will be at, and then I would like to ask Mr. Wehrey—am I pronouncing your name right, sir?

Mr. WEHREY. Yes.

Ms. JACKSON LEE. All right. You were on the ground, and I want you, in fact both of you to answer the question that I think has been asked is, what will be our checks and balances? What will be our screening process? And I ask Mr. Bersin a larger question of the types of individuals that will come over. Let me yield at this point.

Mr. BERSIN. Ms. Jackson Lee, the people that would be selected would not be a casual process. The Defense Department would select and vet those people who they would recommend apply for visas.

Ms. JACKSON LEE. The Defense Department?

Mr. BERSIN. That is correct. At that point, the whole panoply of screening mechanisms that I described in my testimony would

apply to these particular individuals. So this would be a very carefully monitored and——

Ms. JACKSON LEE. Would this be a crowd of thousands?

Mr. BERSIN. No, ma'am.

Ms. JACKSON LEE. And so let's just say if we framed it in that way, you would expect what? Because we have done training in Egypt, remember that was a longstanding relationship that we had with the Egyptian military, of course, over the period of time, and certain other countries in the Mideast, we have the Saudis trained over here. So what level of size are we talking about?

Mr. BERSIN. I am unable to give you a specific number, but you are talking about a manageable group, not numbering in the hundreds or the thousands, that would be presumably affected by this.

Ms. JACKSON LEE. And what would be the focus of tracking or maintaining the whereabouts of these individuals?

Mr. BERSIN. There are, in addition to the security measures that would be applied and the vetting procedures that would be applied before they would be permitted entry, there is a process called the SEVIS, which is the Student Exchange Visitor Information System, that would actually require that a school continually update the status of that particular element. In addition, there would be the so-called Visas Mantis program that would be an especially rigorous security advisory opinion applied to those individuals.

Ms. JACKSON LEE. Well, let me just say this, and I appreciate that. Being on Homeland Security, I know some of the fractures in that system. I would want the Department of Defense to commit to a collaboration with Homeland Security for a definitive way of respecting the dignity of these individuals, but even beyond the SEVIS process, because you are leaving it to colleges, and I think it would be very important. I think the process is important.

Let me just ask this, are you specifically training people to be nuclear scientists? Are you calling them over and saying, I want you to be a nuclear scientist, to be a bomb thrower?

Mr. BERSIN. I am unable to identify any particular case and tell you what that particular person is, so——

Ms. JACKSON LEE. So it is not—the headline of the hearing says "nuclear scientists." That is not the whole label of what you are doing?

Mr. BERSIN. We are certainly not bringing over someone who doesn't know anything about atomic or nuclear physics, I think that is a fair assumption.

Mr. CHAFFETZ. Will the gentlewoman yield?

Ms. JACKSON LEE. I would be happy to yield if I could get—if I have the Chairman's unanimous consent to allow me to have Mr. Wehrey answer my question and Mr. Bersin to just answer the question, I would be happy to yield, ask unanimous consent.

Mr. GOWDY. Without objection.

Ms. JACKSON LEE. All right.

Mr. Bersin, before I yield to the gentleman from Utah, what I was saying, Mr. Bersin, are you saying that you don't know if they are going to be that or you don't know the types of training or individuals, is that what you are saying?

Mr. BERSIN. I am not familiar with any specific application of people who have applied or who would apply or who the Defense Department may have identified as wanting to participate.

Ms. JACKSON LEE. Okay. So it is no glaring announcement that it has just these nuclear scientists. That is what I wanted to make sure. Thank you.

Mr. Wehrey, and then I will yield to the gentleman. My question was on the idea—you have been on the ground, and the idea of the value of having Libyan, I will put the word students, but also the value of having them having some system of knowing who they are and where they are.

Mr. GOWDY. You may answer as quickly as you can.

Mr. WEHREY. That is absolutely essential, and I would defer to the Defense Department on that. I mean, they have to do the vetting. They have to do the screening. There are programs in place. My sense, again, I want to emphasize that this is about a partnership with a specific Libyan institution, the air force, that overwhelmingly has been pro-Western and supportive of U.S. objectives in that country.

Ms. JACKSON LEE. And you would support the importance of that?

Mr. WEHREY. Absolutely, yes.

Ms. JACKSON LEE. I yield to the gentleman from Utah.

Mr. CHAFFETZ. We are fine, thank you. I think we are——

Ms. JACKSON LEE. Oh, you are getting your own time?

Mr. CHAFFETZ. Yes, thanks.

Mr. GOWDY. Yes.

Ms. JACKSON LEE. Okay.

Mr. Chairman, let me just thank you very much and indicate in conclusion that we must be careful, but what we are trying to do is reestablish government in Libya. That is of concern to the United States homeland security, national security. And I think we have to be tough, but I think the door has to be opened carefully, cautiously, but we have to be responsible or responsive to trying to reconstruct a government. If that helps, we should do so.

I yield back.

Mr. GOWDY. I thank the gentlelady from Texas.

The Chair will now recognize himself and the gentlelady from California for 5 minutes for closing remarks. I will go briefly and then yield to the gentleman from Utah.

Dr. Wehrey, I want to thank you for your service to our military. I want to thank you, Mr. Chaparro, and you, Ms. Kephart, for your service to law enforcement. I know yours, I believe, was active, and you were with the 9/11 Commission, and I want to thank you for your service as a Federal prosecutor, which is very near and dear to my heart, and for your collegiality and expertise and comity, with a T, among yourselves and with the Members of the Committee.

And Mr. Bersin, I would like to take you up on your opportunity to meet privately at your convenience because if there is a leverage point by which we can impress upon the folks in Libya the importance of the civil and criminal justice system and bringing those to bear, not just in Benghazi but also the teacher, I would love to talk to you about that.

And with that, I would yield to the gentleman from Utah.

Mr. CHAFFETZ. I thank you, I thank all the panelists here, but to address what the gentlewoman from Texas brought up, the reason it is bringing nuclear scientists into the title of this hearing is the fact that based on what—during the Reagan administration did in 1983, the Department of Homeland Security is looking to rescind a prohibition of bringing Libyan nationals who are engaged in or seeking to obtain studies or training in aviation maintenance, flight operations, or nuclear related fields. That is what they are trying to rescind. The prohibition is there right now, and what is very telling about the answer is you know of no person, there is not one person that you are aware of that is trying to come here to get trained on nuclear sciences. Yet we are spending all this time and energy, all this effort to try to rescind it, and again, it begs the question that it sounds like it is best answered by the Department of Defense and the Department of State as to the need, the driving need to bring a Libyan national to the United States to train on nuclear sciences. That is what is mystifying to me.

I would hope that you would carry back to the senior management, including the White House, but certainly within Homeland Security, I think it would be prudent to allow public comment and to allow the public notice, and then public comment and to better inform Congress of what you are trying to do. If there is a driving need, then I want to hear it, but we have gone through this entire hearing, and I don't think anybody has adequately explained in this hearing on why we need to train Libyan nationals on nuclear sciences. It just mystifies me.

Ms. JACKSON LEE. Would you yield just for a moment?

Mr. CHAFFETZ. Sure.

Ms. JACKSON LEE. This is just a moment. You have just said what all of us are saying, which is the State Department I believe is doing well and I think the Defense is doing well, is that they will generate answers to these questions that you have, and we should allow those answers, and finally you are reading a 30-year commentary by, under President Reagan. The gentleman from the State Department indicated that he has no known knowledge of the level of individuals that will come. I think we are really recognizing that we have to do something to rebuild that government, and the United States is very much a player in that. I yield back.

Mr. CHAFFETZ. Reclaiming my time. I don't think bringing people in to train them on nuclear sciences when they have no nuclear power plants is where we would start. We need some basic rule of law. The gentleman is from the Department of Homeland Security, not from the Department of State. I would also ask—and part of the reason we are having this hearing here today is that Chairman Goodlatte and I did issue a letter asking for a response and explanation, of which we didn't get an answer, and I appreciate the gentleman's apology to that effect.

I would like to ask Mr. Bersin, under Executive Order 12866, the Department of Homeland Security is required to provide the Office of Information and Regulatory Affairs numerous assessments regarding needs, costs, and benefits among other items in writing regarding to this rescission. Have you done that?

Mr. BERSIN. I would have to confirm that. I have seen OMB, Office of Management and Budget, documents to that effect, so I believe so, but I would have to confirm that.

Mr. CHAFFETZ. Would you commit to providing those to this Committee, these Committees?

Mr. BERSIN. Yes, sir.

Mr. CHAFFETZ. And when would we—what is a reasonable——

Mr. BERSIN. I should say, because I am, I was a fair lawyer at one point, subject to whatever privileges.

Mr. CHAFFETZ. Fair and lawyer are not very often used in the same sentence, but I get what you are saying.

I remind the Chairman from South Carolina that I am not an attorney.

Mr. GOWDY. Quit apologizing.

Mr. CHAFFETZ. I thought I was bragging. But we would certainly appreciate it if you would provide those to these Committees, and I do appreciate your perspectives on this. We obviously care about this and would like more information. Thank you.

Yield back.

Mr. GOWDY. I thank the gentleman from Utah.

I now recognize the gentlelady from California.

Ms. LOFGREN. Thank you, Mr. Chairman. I will be brief.

I do think that we have managed to surface some useful information here today. You know, I think key to this issue is whether we are going to use the tools available to us to benefit our country or whether we are just going to use a blunt instrument that could do harm to our country. That is really the question before us. And when I think about, you know, normalized relations doesn't mean that you have a relationship with a country that is normal. You think about the countries that we maintain some kind of connection with when it is advantageous to us, you know. In Colombia, they assassinated the supreme court. You know, the drug cartels tried to take over the entire country, but we did not say no one from Colombia can ever come to the U.S., even though they were, I mean, a basket case at the time because, you know, there were things that we needed to do, and in fact, we have helped Colombia turn the corner and defeat the drug cartels. And part of that was training their people, and you know, it is a success story that is not over with yet. But I mean, they are in much better shape than they were, and I think this, hopefully, could be a similar situation.

I do think that it is a legitimate question of why would we have study in the nuclear field. I think it is worth pointing out that Libya as a nuclear, a former nuclear power, has weapons scientists there. They have nuclear weapons scientists in the country, or they did at one time. Historically, we have sought to take weapons scientists from potential enemies and teach them something useful to do, other than weapons scientists, because if that is all you know how to do, that skill is for sale in the world, and if you have something useful to do with that level of information, it is much safer for the United States.

I would note also that we are not asking to repeal the deemed export rule, and for those of you who are not aware of this, the deemed export rule means that if you have got sensitive information and you have got a foreign national, they can't actually study

that because it is deemed that you are exporting that sensitive information to a nation, hence the name deemed export rule. So this would seem to preclude, I think, bringing in new scientists to learn how to make new weapons. But you know, I think we would like to follow up with the Department kind of what the intentions are and if it really matches what I have described here, which I think so far as I have been able to learn, it does.

And Mr. Bersin, let me——

Mr. BERSIN. Ranking Member Lofgren, I want to point out that after we have been talking about the Department of State and the Department of Defense, but actually, the Department of Energy actually also weighed in for precisely the reason you suggest.

Ms. LOFGREN. Right.

Mr. BERSIN. After, and I would have to get you the date when this began, but they started a Libyan scientific, scientist engagement program precisely on this notion that there are nuclear scientists in Libya as a result of the Qadhafi years, and it is in our interest to see that they get gainful employment that is not hostile to us.

Ms. LOFGREN. Right.

With that, Mr. Chairman, I thank you, and I would yield back my time and go meet the people who are amassing in my office for a meeting.

Mr. GOWDY. I thank the gentlelady from California.

Before we adjourn, I would move, I would ask unanimous consent to move two things in the record. One is the statement from our colleague, Mr. Bentivolio, and the other is an article by Patrick Cockburn entitled, "Three Years After Gaddafi, Libya is Imploding Into Chaos and Violence."

[The information referred to follows:]

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In our post 9-11 world, tragic events, such as Benghazi, continue to occur and expose existent gaps in our national security. In remaining vigilant, it's imperative that we carefully scrutinize any changes to the national security safeguards, which are designed to protect our nation's people.

We are making the decisions today that could potentially be the start of increased stability with our allies or adversely impact our national security. It is our responsibility to examine this DHS regulation to ensure that it will serve to protect, not threaten the American citizenry.

Kerry Bentivolio

Member of Congress

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Three years after Gaddafi, Libya is imploding into chaos and violence

World View: Its government has no real power; militias are ever more entrenched, and now the state itself is under threat

The Libyan former prime minister Ali Zeidan fled last week after parliament voted him out of office. A North Korean-flagged oil tanker, the Morning Glory, illegally picked up a cargo of crude from rebels in the east of the country and sailed safely away, despite a government minister's threat that the vessel would be "turned into a pile of metal" if it left port: the Libyan navy blamed rough weather for its failure to stop the ship. Militias based in Misrata, western Libya, notorious for their violence and independence, have launched an offensive against the eastern rebels in what could be the opening shots in a civil war between western and eastern Libya.

Without a central government with any real power, Libya is falling apart. And this is happening almost three years after 19 March 2011 when the French air force stopped Mu'ammer Gaddafi's counter-offensive

to crush the uprising in Benghazi. Months later, his burnt-out tanks still lay by the road to the city. With the United States keeping its involvement as low-profile as possible, Nato launched a war in which rebel militiamen played a secondary, supportive role and ended with the overthrow and killing of Gaddafi.

A striking feature of events in Libya in the past week is how little interest is being shown by leaders and countries which enthusiastically went to war in 2011 in the supposed interests of the Libyan people. President Obama has since spoken proudly of his role in preventing a "massacre" in Benghazi at that time. But when the militiamen, whose victory Nato had assured, opened fire on a demonstration against their presence in Tripoli in November last year, killing at least 42 protesters and firing at children with anti-aircraft machine guns, there was scarcely a squeak of protest from Washington, London or Paris.

Coincidentally, it was last week that Al-Jazeera broadcast the final episode in a three-year investigation of the Lockerbie bombing that killed 270 people in 1988. For years this was deemed to be Gaddafi's greatest and certainly best-publicised crime, but the documentary proved beyond reasonable doubt that the Libyan intelligence officer, Abdelbaset al-Megrahi, convicted of carrying out the bombing, was innocent. Iran, working through the Palestinian Front for The Liberation of Palestine – General Command, ordered the blowing up of Pan Am 103 in revenge for the shooting down of an Iranian passenger plane by the US navy earlier in 1988.

Much of this had been strongly suspected for years. The new evidence comes primarily from Abolghasem Mesbahi, an Iranian intelligence officer who later defected and confirmed the Iranian link. The US Defense Intelligence Agency had long ago reached the same conclusion. The documentary emphasises the sheer number of important politicians and senior officials over the years who must have looked at intelligence reports revealing the truth about Lockerbie, but still happily lied about it.

It is an old journalistic saying that if you want to find out government policy, imagine the worst thing they can do and then assume they are doing it. Such cynicism is not deserved in all cases, but it does seem to be a sure guide to western policy towards Libya. This is not to defend Gaddafi, a maverick dictator who inflicted his puerile personality cult on his people, though he was never as bloodthirsty as Saddam Hussein or Hafez al-Assad.

But the Nato powers that overthrew him – and by some accounts gave the orders to kill him – did not do so because he was a tyrannical ruler. It was rather because he pursued a quirkily nationalist policy backed by a great deal of money which was at odds with western policies in the Middle East. It is absurd to imagine that if the real objective of the war was to replace Gaddafi with a secular democracy that the West's regional allies in the conflict should be theocratic absolute monarchies in Saudi Arabia and the Gulf. This is equally true of Western and Saudi intervention in Syria which has the supposed intention of replacing President Bashar al-Assad with a freely elected government that will establish the rule of law.

Libya is imploding. Its oil exports have fallen from 1.4 million barrels a day in 2011 to 235,000 barrels a day. Militias hold 8,000 people in prisons, many of whom say they have been tortured. Some 40,000 people from the town of Tawergha south of Misrata were driven from their homes which have been

destroyed. "The longer Libyan authorities tolerate the militias acting with impunity, the more entrenched they become, and the less willing to step down" said Sarah Leah Whitson, Middle East and North Africa director at Human Rights Watch. "Putting off repeated deadlines to disarm and disband militias only prolongs the havoc they are creating throughout the country."

Unfortunately, the militias are getting stronger not weaker. Libya is a land of regional, tribal, ethnic warlords who are often simply well-armed racketeers exploiting their power and the absence of an adequate police force. Nobody is safe: the head of Libya's military police was assassinated in Benghazi in October while Libya's first post-Gaddafi prosecutor general was shot dead in Derna on 8 February. Sometimes the motive for the killing is obscure, such as the murder last week of an Indian doctor, also in Derna, which may lead to an exodus of 1,600 Indian doctors who have come to Libya since 2011 and on whom its health system depends.

Western and regional governments share responsibility for much that has happened in Libya, but so too should the media. The Libyan uprising was reported as a simple-minded clash between good and evil. Gaddafi and his regime were demonised and his opponents treated with a naïve lack of scepticism and enquiry. The foreign media have dealt with the subsequent collapse of the Libyan state since 2011 mostly by ignoring it, though politicians have stopped referring to Libya as an exemplar of successful foreign intervention.

Can anything positive be learnt from the Libyan experience which might be useful in establishing states that are an improvement on those ruled by Gaddafi, Assad and the like? An important point is that demands for civil, political and economic rights – which were at the centre of the Arab Spring uprisings – mean nothing without a nation state to guarantee them; otherwise national loyalties are submerged by sectarian, regional and ethnic hatreds.

This should be obvious, but few of those supporting the Arab uprisings, for reasons other than self-interest, seem to have taken it on board. "Freedom under the rule of law is almost unknown outside nation-states," writes the journalist and MEP Daniel Hannan in a succinct analysis of why the Arab Spring failed. "Constitutional liberty requires a measure of patriotism, meaning a readiness to accept your countrymen's disagreeable decisions, to abide by election results when you lose."

Even this level of commitment may not be enough, but without it only force can hold the state together. The escape of Morning Glory, the ousting of Ali Zeidan and the triumph of the militias all go to show that the Libyan state has so far neither the popular support nor military power to preserve itself.

Mr. GOWDY. With that, this concludes today's hearing.

Thanks to all the witnesses for attending.

Without objection, all Members will have 5 legislative days to submit additional questions for the record for the witnesses or additional materials for the record.

With that, this hearing is adjourned.

[Whereupon, at 5:09 p.m., the Subcommittees were adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable Trey Gowdy, a Representative in Congress from the State of South Carolina, and Chairman, Subcommittee on Immigration and Border Security, Committee on the Judiciary

The Administration is moving to lift the longstanding prohibition against Libyans entering the United States to work in aviation maintenance, flight operations, or to study or train in nuclear-related fields.

Despite concerns expressed last November by Rep. Chaffetz and Chairman Goodlatte, DHS moved forward with this change and sent the draft final regulation to OMB. Under the terms of the regulation, the removal of the prohibition will go into effect without prior notice and comment. We would have to trust the Libyan Government and Administration to appropriately vet which Libyans would be allowed to learn to fly planes and study nuclear technology.

The current prohibition was put into place in the early 1980s after a series of terrorist incidents involving Libyan nationals. On December 2, 1979, a mob attacked and burned the U.S. Embassy in Tripoli, and on December 29, 1979, the United States designated Libya as a state sponsor of terrorism.

In order to protect Americans, on March 11, 1983, the Reagan administration implemented this rule to prohibit Libyan nationals, or other foreign nationals acting on behalf of a Libyan entity, from obtaining certain immigration benefits for the purpose of engaging in or seeking to obtain aviation maintenance, flight operations, or nuclear-related studies or training.

While we have hope for a democratic Libya, the question we must consider today is: has enough changed to lift this longstanding ban? Why now? Is post-Revolutionary Libya secure enough to justify the change?

Let's consider some recent events:

The National Transitional Council has struggled to govern Libya effectively since the fall of Qaddafi.

The majority of territory outside Tripoli has fallen under the control of armed militias that have refused to disarm.

Just three weeks ago, on March 12, 2014, the Libyan Prime Minister fled after parliament voted him out of office.

Militias based in western Libya, notorious for their violence and independence, have launched an offensive against the eastern rebels in what could be the opening shots in a civil war between western and eastern Libya. Without a central government with any real power, Libya may be falling apart.

Only two weeks ago, Libya acknowledged for the first time that "terrorist groups" were behind dozens of attacks against security services. The government issued a statement on March 19 saying: "Benghazi and other cities are facing a terrorist war waged by Libyan and foreign elements who have hostile, evil agendas."

On March 20, Libya's government called for international help to fight terrorism that is threatening internal stability in the country. On the same day, a missile was launched at the Tripoli Airport runway shutting down the airport.

And finally, the head of Libya's military police was assassinated in Benghazi in October while Libya's first post-Gaddafi prosecutor general was shot dead on February 8, 2013.

Unfortunately, these new reports indicate that the militias are getting stronger, not weaker. Why is the Administration proposing to lift a 30-year ban on Libyans coming to the US to train as nuclear scientists now?

The administration's draft regulation justifies the change because the US relationship with Libya has been "normalized."

In November my colleagues Rep Chaffetz and Chairman Goodlatte wrote to Acting Homeland Security Secretary Beers about this rule change, and spelled out specifi-

cally the violent threats and actions against American anti-terrorism operations in the country.

And we cannot talk about the Libyan-American relationship without acknowledging the attack against the diplomatic post in Benghazi resulting in the murder of four Americans. How is this relationship "normalized" when our Ambassador was murdered in Benghazi 18 months ago? And not one single person has been arrested, prosecuted or brought to justice.

It seems unjustifiable then, to rescind a 30 year rule at this time. Why are we willing to risk, no matter the likelihood, chancing Libyan extremists and terrorists to come here to essentially learn the skills to commit acts of terror? Why? Why now? What has changed? And the burden of advocating for a change in the status quo lies with the administration.

Prepared Statement of the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration and Border Security, Committee on the Judiciary

Based on the letters that the Majority has sent to DHS, as well as their opening statements today, I believe their concerns can be summarized as follows: the Libyan government is fragile and there are extremist elements in the region that would do us harm, so we can't lift the visa restriction because people might somehow harm us.

This argument, however, is entirely illogical.

First, as the Department of Defense—which initiated the request to rescind the visa restriction in the first place—makes clear, the **whole point** of lifting the visa restriction is to help the Libyan government **defeat those very extremists**. Members on both sides of the aisle—including Republican Senators John McCain, Lindsey Graham, and Saxby Chambliss—have recognized the critical importance of helping the new democratically elected Libyan government secure itself against militant extremism in the region.

But the visa restriction stands in the way. Because the restriction affects all Libyans, it means we can't even train the pro-Western forces within the Libyan Air Force on the aircraft they need to secure their own country against extremist forces. The Libyan government's ability to fight such forces depends on being able to move troops and equipment throughout the country. And the country currently uses Lockheed C–130 military transport planes and Boeing CH–47 cargo helicopters to do so.

But according to the Defense Department, that fleet is aging and needs repair and replacement, and many more pilots and flight crew need to be trained. There are proposals to buy additional aircraft and parts from U.S. companies and provide training to pilots and flight crew, but the visa restriction stands in the way of those deals.

The Members on the other side of the aisle will likely raise the unfortunate attacks in Benghazi repeatedly at this hearing today. But that event actually underscores why we should lift the visa restriction.

On the night of the attack, it was one of those very same Lockheed C–130 transport planes that the Libyan government used to rescue and evacuate the surviving consular personnel at the U.S. compound in Benghazi. Rather than used against us, that plane helped Americans survive.

Will my colleagues on the other side of the aisle nevertheless raise the Benghazi attack, as well as other terrorist incidents within Libya, as grounds for keeping the visa restriction in place? We must keep in mind that there is a difference between the extremist forces behind these incidents and the pro-Western Libyan military that is trying to defeat them.

And that's the point of lifting the visa restriction. Like my Majority colleagues, it simply does not differentiate between the Libyan forces we are trying to help and the forces we are trying to defeat. It bars friend and foe alike, and that just isn't smart policy.

This gets us to the second big reason we should rescind the visa restriction. It simply isn't needed to keep America safe from harm.

We must bear in mind that the 30-year-old Libyan visa restriction is the only such country-specific visa ban of its kind. It is an anachronistic relic of a by-gone era.

If a ban were necessary with respect to Libya—which is not a designated state sponsor of terrorism since the Bush Administration removed them from the list in

2006—wouldn't it be even more necessary with respect to countries that are actually designated as state sponsors of terrorism?

But such bans don't exist. There are no country-specific bans for Iran, Syria, Sudan or Cuba—the countries currently listed as state sponsors of terrorism. Nor is there a ban for rogue nations like North Korea.

That's because our immigration laws provide plenty of authority to prevent the travel of individuals who pose a danger to the U.S. and its interests.

Our immigration laws already require the denial of visas to persons with suspected ties to terrorism, as well as anyone who is otherwise suspected of posing a threat to national security.

Our immigration laws also require consular officials to deny visas for an individual whose travel raises significant foreign policy concerns. The same is true for any individual suspected of potentially violating the terms of their visa or admission to the United States.

Over the years, including after the attacks of September 11, 2001, this country has not seen fit to erect more country-specific restrictions like the Libyan visa ban. Instead, the U.S. moved in a different direction—erecting bans that actually focused on whether admission of a particular individual was helpful or harmful to U.S. interests.

In other words, we adopted policies that allowed us to let in or friends and keep out our enemies, rather than barring them all.

Doesn't that just make more sense?

But sense is rarely what congressional hearings are about these days. I'm afraid all we will see today are scare tactics and political attacks to try and hurt the administration.

I thank the witnesses for joining us today and I yield back the balance of my time.

Prepared Statement of the Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Chairman, Committee on the Judiciary

On February 1, 2010, then-Assistant Secretary of State for the Bureau for Near Eastern Affairs, Jeffrey Feltman, requested ending the longstanding prohibition against Libyans entering the United States to work in aviation maintenance, flight operations, or to study or train in nuclear-related fields.

Shortly thereafter, widespread unrest in Libya precluded the U.S. Government from engagement with Libya. The post-Arab Spring civil war in Libya led to the fall of the Qadhafi regime in August 2011, and Qadhafi was captured and then killed by rebel forces in October 2011. Following the revolution, the Obama Administration once again began the process of "normalizing" relations with that country.

Yet, on September 11, 2012, U.S. Ambassador John Christopher Stevens and three other State Department officials were killed when terrorists stormed the U.S. Consulate in Benghazi, Libya and set it ablaze.

A statement by U.S. State Department spokeswoman Victoria Nuland said the United States condemned the attack "in the strongest terms" and was working with Libyan security forces to secure the compound. President Obama called the attack in Benghazi "outrageous and shocking," and vowed its perpetrators will face justice. "I've also directed my administration to increase our security at diplomatic posts around the world," Obama said. "And make no mistake—we will work with the Libyan government to bring to justice the killers who attacked our people." To date no one has been brought to justice for these attacks.

Instead and despite these attacks, on May 31, 2012, Feltman, along with Joseph McMillan, Acting Assistant Secretary of Defense for International Security Affairs, again asked DHS to end the prohibition, stating the "outdated regulation does not reflect current U.S. Government policy towards Libya". Unbelievably, the letter makes no mention of the attacks, acting as if they had never occurred.

Rather, as outlined in a February 12, 2013 memo from Alan Bersin signed by Secretary Napolitano: "According to the U.S. Embassy in Tripoli, there is a robust plan in place to encourage engagement and educational exchanges in coming years with the Libyan government. DOD is attempting to initiate a program of aircraft sales, pilot training, and ground crew training early this year worth $2 billion, the contracts for which would go to other countries if training could not be conducted in the United States. The Departments of Defense and State have made it clear that absent its rescission, the [regulation] will significantly hamper these efforts." On April 1, 2014, just two days before this hearing, DOD reiterated its desire to see the regulation lifted to Mr. Bersin.

The memo from Mr. Bersin also fails to mention the attack in Benghazi—the first time an ambassador for the United States had been killed since 1979. The long-standing prohibition on Libyans was put in place to protect the homeland against serious threats from terrorists from a particularly unstable and dangerous country. The Obama Administration argues that it is no longer needed.

However, many of the characteristics regarding Libya that caused the regulation to be put in place persist today. Regardless of any progress that may have been made following the removal of Muammar Qadhafi from power, many extremist and terrorist groups operate unfettered in Libya.

Two weeks ago, Libya acknowledged for the first time that "terrorist groups" were behind dozens of attacks against security services. And on March 20th, Libya's government called for international help to fight terrorism that is threatening internal stability in the country. That same day, a missile was launched at the Tripoli Airport.

Four 9/11 hijacker pilots obtained their expertise in aviation primarily at U.S. flight schools. Do we want to risk Libyan terrorists learning how to fly airplanes in the U.S.? Given the desire of radical regimes and terrorists to obtain or build nuclear weapons or dirty bombs, do we want to possibly train Libyan terrorists in nuclear engineering? If the prohibition is lifted, not only can Libyans supposedly vetted by the administration receive this training, but any Libyan can seek to do so.

Ultimately, it does not appear that national security has been adequately considered in the effort to end the prohibition. It is uncertain whether our immigration system has sufficient integrity to ferret out applicants' long term motivations for receiving an education in sensitive topics from the United States.

As a final note, we have long been seeking information from DHS regarding the status of the rescission of the regulation and the role of the White House. We only received answers to some of the questions we asked after this hearing was announced. It is troubling that it takes such actions by the Committees to receive information from DHS that is vital for us to fulfill our legitimate oversight role.