



TESTIMONY OF

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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

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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and terrorism led to the lifting of international sanctions against Libya in 2003 and 2004, and the Secretary of State rescinded Libya's designation as a state sponsor of terrorism in 2006.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.