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ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

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http://oversight.house.gov

June 13, 2016

The Honorable Michele T. Bond
Assistant Secretary for Consular Affairs
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

Dear Assistant Secretary Bond:

On April 28, 2016, Immigration and Customs Enforcement (ICE) Director Sarah Saldaña testified at a Committee hearing titled, "Criminal Aliens Released by the Department of Homeland Security." Director Saldaña took questions about difficulties with respect to removing foreign nationals. Specifically, she testified about a lack of cooperation by certain countries that refuse to accept their nationals who had been ordered removed, also known as "recalcitrant countries."

The use of section 243(d) of the Immigration and Nationality Act (INA) to address such non-cooperation was discussed at the hearing. The provision states, in pertinent part:

> On being notified by the Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country . . . the Secretary of State shall order consular officers in that foreign country to discontinue granting immigrant visas or nonimmigrant visas, or both, to citizens, subjects, nationals, and residents of that country until the Attorney General notifies the Secretary of State that the country has accepted the alien.[1]

The Attorney General's statutory authority to make the initial notification under section 243(d) of the INA has now been designated, *de facto*, to the Secretary of Homeland Security.[2]

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[1] Section 243(d) of the INA, 8 U.S.C. § 1253(d).

[2] *See* Responses from Hon. Jeh Johnson, Sec'y, U.S. Dep't of Homeland Security, to Hon. Charles E. Grassley, Chairman, S. Comm. on the Judiciary, at question 13, *available at* https://www.judiciary.senate.gov/imo/media/doc/Johnson%20Responses.pdf ("Section 243(d) of [INA] provides the Department of [] State (DOS) with authority to discontinue the granting of visas to citizens, nationals, subjects, or residents of a country that fails to or unreasonably delays repatriation of its nationals after being notified of the failure or unreasonable delay by the Department of Homeland Security.").

During the hearing, Director Saldaña testified that she notified the Department of State (DOS) in accordance with section 243(d) of the INA. In support of her testimony, Director Saldaña provided the Committee with communications between ICE and DOS concerning recommendations ICE has made to DOS about recalcitrant countries that have refused to repatriate their nationals.[3]

The communications provided by Director Saldaña state: "ICE works with foreign governments and the Department of State, Bureau of Consular Affairs, through a suite of tools to encourage countries to comply with ICE requests to accept repatriated nationals."[4] The documents provided by ICE also state:

> ICE has regularly asked DOS for assistance with such actions as the withholding of funds and visa sanctions for countries that refuse to accept their nationals. DOS has noted that these measures could have significant potential impact on U.S. foreign and domestic policy interests. DOS prefers to instead attempt to use diplomacy and the other tools of the 2011 MOU to try and garner cooperation from countries. . . . ICE has written letters to DOS to specifically ask that such actions including visa sanctions and the withholding of aid or other funding be considered since informal requests have not worked.[5]

While the communications provided by ICE succinctly describe steps ICE has taken in an effort to deal with recalcitrant countries, it is unclear what steps DOS has taken pursuant to the requirements mandated by Congress in section 243(d) of the INA. It is also unclear whether DOS has responded to any of ICE's requests.

So the Committee can better understand how DOS is responding to notifications from the Department of Homeland Security (DHS) pursuant to section 243(d) of the INA, please provide responses to the following requests for information as soon as possible, but no later than June 27, 2016:

1. All documents and communications since December 2014, including, but not limited to, responses from DOS, referring or relating to DHS/ICE's concerns and recommendations regarding recalcitrant countries that do not accept their nationals under final orders of removal;

2. The 2011 memorandum of understanding between ICE and DOS consular affairs regarding recalcitrant countries; and

3. Documents sufficient to show whether DOS has agreed to work with ICE, either formally or informally, to utilize visa sanctions under section 243(d) of the INA, or discussed other potential measures to address recalcitrant countries.

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[3] See attachments.
[4] *Id.*
[5] *Id.*

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

Please contact Dimple Shah of Chairman Chaffetz' staff at (202) 225-5074 or Karen Kudelko of Ranking Member Cummings' staff at (202) 225-5051 with any questions about this request. Thank you for your attention to this matter.

Sincerely,

Jason Chaffetz
Chairman

Elijah E. Cummings
Ranking Member

Enclosure

Office of the Director

U.S Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

JUN 0 7 2016

U.S. Immigration and Customs Enforcement

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Chaffetz:

Thank you for the opportunity to testify before the House Oversight and Government Reform Committee on April 28, 2016. We appreciate your courtesy and candor as we continue to openly address the challenges faced by U.S. Immigration and Customs Enforcement (ICE).

ICE is committed to providing accurate responses to the questions regarding ICE's work with the State Department raised by the Chairman of the Committee. In the spirit of that commitment, please find enclosed the responses to those questions and requests.

As I stated at the hearing, we are committed to implementing ICE's priorities in a smart and strategic manner to maximize success and enhance cooperation with state and local stakeholders. We look forward to working with each member of this committee and its staff to forge a strong and productive relationship moving forward as we work toward more comprehensive immigration reform.

Thank you again for your courtesy and consideration as we continue our dialogue.

Sincerely,

Sarah R. Saldaña
Director

Enclosures

Cc: Ranking Member Cummings

U.S. Immigration and Customs Enforcement Responses to the House Committee on Oversight and Government Reform Following the April 28, 2016 Hearing

1. **Copies of all letters sent (since December 2014) to the Department of State and/or the Attorney General pertaining to the countries which do not permit ICE to remove criminal aliens to their country of origin.**

The Department of Homeland Security (DHS) as a whole, as well as U.S. Immigration and Customs Enforcement (ICE) specifically, take very seriously the issue of removing foreign nationals in a timely and efficient manner, and the consequences associated with limitations on the ability to do so. ICE works with the Department of State (DOS) to improve cooperation with countries that systematically refuse or delay the repatriation of their nationals.

ICE works with foreign governments and the Department of State, Bureau of Consular Affairs, through a suite of tools to encourage countries to comply with ICE requests to accept repatriated nationals. The process for ICE begins with requests for travel documents from the appropriate foreign government. If a travel document is not issued then the ICE Executive Associate Director for Enforcement and Removal Operations (ERO) can, in appropriate circumstances, send a letter to the nation's Embassy in the United States seeking cooperation with the removal process. These are called Annex 9 letters. Another possible tool is a joint meeting between ICE, DOS Consular Affairs and the Ambassador of the uncooperative nation. The ICE Director may also issue a Demarche Letter to the Embassy.

An April 2011 Memorandum of Understanding between ICE and DOS Consular Affairs outlines a variety of ways in which ICE and DOS will work together to ensure that countries accept the return of their nationals in accordance with international law. The MOU, among other things, establishes a target average travel document issuance time of 30 days and outlines measures to address those countries that systemically refuse or delay repatriation of their nationals. ICE and Consular Affairs will pursue the following in attempts to gain compliance for countries that systematically refuse or delay repatriation of their nationals:

a. Issue a demarche or series of demarches at increasingly higher levels;
b. Hold joint meetings with the Ambassador to the United States, DOS Assistant Secretary for Consular Affairs and the Director of ICE;
c. Consider whether to provide notice of the U.S. government's intent to formally determine that the country is not accepting the return of its nationals and that the U.S. government intends to exercise the provisions of Section 243(d) of the Immigration and Nationality Act to gain compliance;
d. Consider visa sanctions under Section 243(d) of the Immigration and Nationality Act; and
e. Call for an inter-agency meeting to discuss withholding aid or other funding.

In a letter dated September 19, 2014, DHS Secretary Johnson wrote to DOS Secretary Kerry seeking assistance in efforts to explore measures that would be helpful in prompt removal of dangerous individuals in accordance with the Immigration and Nationality Act. Enclosed are copies of subsequent letters from ICE Director Saldaña to DOS Assistant Secretary Bond

regarding Cuba (April 1, 2016), seeking measures in accordance with the 2011 Memorandum of Understanding (MOU) between ICE and DOS Consular Affairs. A letter regarding Guinea, requesting exploration of more aggressive actions to address the removal issue, including the temporary discontinuation of visa issuance under Section 243(d) of the Immigration and Nationality Act (INA) was sent to DOS on March 28, 2016. On April 28, 2016, Director Saldaña and Assistant Secretary Bond jointly met with the Ambassador of Guinea to push Guinea on the need to be more compliant on the issuance of travel documents. On May 13, 2016, ICE sent a letter to DOS concerning removals to Liberia. On May 13, 2016, ICE also sent a letter to DOS requesting assistance in coordinating a high-level meeting with China on removal issues, but did not specifically request invocation of Section 243(d). These letters are also enclosed.

2. **Has ICE/ERO reached out to the Attorney General or Department of State (DOS) for assistance in withholding funds, withholding visas, etc., for countries who refuse to accept their nationals? If so, which countries?**

Section 243(d) of the INA, Discontinuing Granting Visas to Nationals of Country Denying or Delaying Accepting Alien, was first invoked on September 7, 2001, when the Attorney General requested that DOS implement visa sanctions against Guyana. On October 10, 2001, DOS discontinued granting nonimmigrant visas to employees of the Government of Guyana, along with their spouses and children. Within 2 months, the Government of Guyana issued travel documents to 112 of 113 Guyanese aliens who had been ordered removed from the United States. DOS lifted the visa sanctions against Guyana on December 14, 2001. Similarly, threats of visa sanctions have resulted in the timelier issuance of travel documents from Ethiopia and Jamaica.

ICE has regularly asked DOS for assistance with such actions as the withholding of funds and visa sanctions for countries that refuse to accept their nationals. DOS has noted that these measures could have significant potential impact on U.S. foreign and domestic policy interests. DOS prefers to instead attempt to use diplomacy and the other tools of the 2011 MOU to try and garner cooperation from countries. As noted above, ICE has written letters to DOS to specifically ask that such actions including visa sanctions and the withholding of aid or other funding be considered since informal requests have not worked.

There have been two demarches issued since December 2014. The Government of Algeria was issued a demarche on March 13, 2015, and the Government of Iraq was issued a demarche on March 31, 2015.

ICE has also sent so-called Annex 9 letters to certain International Civil Aviation Organization (ICAO) Member States. In Annex 9 to the Convention on International Civil Aviation, ICAO has issued standards regarding the issuance of replacement travel documents for nationals subject to removal, including time frames for the issuance of such documents. Since December 19, 2015, ICE has sent 64 Annex 9 letters on individual cases to China, Eritrea, Gambia, Ghana, Guinea, Jordan, Liberia, Mali, Morocco, Senegal, and Uganda. DOS is copied when ICE delivers such a letter to a foreign government. Enclosed is a list of recent Annex 9 letters sent by ICE.

When was the last time ICE/ERO asked the DOS to intervene?

ICE asked DOS to intervene at the most recent Removal Cooperation Initiative meeting, on April 21, 2016, and routinely engages with DOS Consular Affairs and DOS Regional Bureaus to request assistance with regard to individual cases. Most recently, in two separate letters dated May 13, 2016, ICE Director Saldaña wrote to DOS Assistant Secretary Bond regarding the People's Republic of China and Liberia, seeking DOS assistance consistent with the 2011 Memorandum of Understanding (MOU) between ICE and DOS Consular Affairs.

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

U.S. Immigration and Customs Enforcement

APR 1 2016

The Honorable Michele T. Bond
Assistant Secretary for Consular Affairs
Department of State
2201 C Street, NW
Washington, DC 20520

Dear Assistant Secretary Bond:

It has been over a year since Secretary Johnson enlisted the support of Secretary Kerry in his September 19, 2014 letter regarding a significant immigration enforcement matter where recalcitrant countries are not cooperating in the timely removal of their nationals.

During this past year, the Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) have continued to seek the cooperation of many of these recalcitrant countries through multiple engagements with respective Embassy officials, communications with government representatives abroad, and through liaison and coordination with officials from within the Department of State's (DOS) Bureau of Consular Affairs. Unfortunately, these efforts have been unsuccessful in soliciting any significant changes to the removal practices of these recalcitrant countries.

ICE has advised DOS of the Cuban government's lack of cooperation many times, and it is important to note that Cuba was brought to the attention of the Assistant Secretary of State for Consular Affairs on March 9, 2015. The time has come to begin aggressively taking the first measures against Cuba in accordance with the 2011 Memorandum of Understanding (MOU) between ICE and the Bureau of Consular Affairs. As you know, per the MOU, our agencies agreed to take the following measures when dealing with countries that refuse to accept the return of their nationals who have been ordered removed from the United States:

- issue a demarche or series of demarches at increasingly higher levels;
- hold joint meetings with the Ambassador to the United States, DOS Assistant Secretary for Consular Affairs, and the Director of ICE;
- consider whether to provide notice of the U.S. Government's intent to formally determine that the country is not accepting the return of its nationals and that the U.S. Government intends to exercise the provisions of Section 243(d) of the Immigration and Nationality Act (INA) to gain compliance;
- consider visa sanctions under Section 243(d) of the INA; and
- call for an inter-agency meeting to pursue withholding of aid or other funding.

As the normalization of relations and the re-opening of embassies in respective countries continues, it is imperative that the removal process normalize. On November 30, 2015, DOS hosted the 29th migration talks with Cuba. ICE participated, along with Deputy Assistant Secretary (DAS) Alex Lee and other DOS and DHS delegates. During these talks, DOS was extremely supportive of the repatriation issue and DAS Lee presented the issue to the Cubans on numerous occasions. ICE is extremely appreciative of DAS Lee's efforts to ensure the issue received appropriate attention. Furthermore, ICE presented a proposal to establish a workgroup (WG) to address the removal issue. The proposal included establishing the WG within 30 days and having an agreement in place within 90 days. ICE proposed that a pilot program be established that would include two routine flights a month for the removal of Cubans with an order of removal who are a current ICE prioritiy and entered the United States on or after January 1, 2006. Under this proposal, up to 3,240 removals would occur on an annual basis. This number is less than 10 percent of the years-long backlog, but would show a good faith attempt on the part of Cuba to honor its international obligations, consistent with the reestablishment of diplomatic relations.

The Government of Cuba also submitted a proposal to address the repatriation issue, adding that any agreement must include an overhaul of the existing migration agreements. This is something that ICE finds unreasonable since the acceptance of citizens under final order of removal is an international obligation and this discussion should not be limited to occurring every 6 months at the migration talks. Further, at the end of the talks, it appeared that the repatriation issue would not be taken up again until the next round of migration talks, tentatively set for June 2016. ICE believes it is unreasonable to continue to allow the issue to wait, as ICE currently conducts a very small number of removals based on the limitations outlined in the 1984 Mariel Agreement. Moreover, during the November 30th migration talks, U.S. Customs and Border Protection reported that encounters with Cuban nationals have increased by 405 percent from fiscal year 2011 to 2016. With continued migration to the United States both legally and illegally, the backlog of cases released due to an ability to remove will only continue to grow.

ICE considers Cuba to be the most uncooperative country based on its refusal to accept nationals outside of the 1984 Mariel Agreement. The Government of Cuba only allows the repatriation of specific Cuban nationals in accordance with the 1984 Mariel Agreement.

- Since the inception of the 1984 Mariel Agreement, the number of convicted criminal Cuban nationals that ICE has been unable to remove has reached approximately 35,000. On March 19, 2015, ICE proposed that 20 non-list Mariel Cubans be substituted for 20 Cubans remaining on the Cuban repatriation list for a proposed charter flight on April 16, 2015, based on information received from Government of Cuba officials that a substitution was acceptable. On March 24, 2015, the Government of Cuba responded via diplomatic note that they would not accept ICE's request to substitute the new individuals for those on the original list and indicated that there had been a miscommunication. During migration talks in November 2015, Cuba stated it would allow ICE to substitute individuals on that list but only as part of a bigger migration agreement.

- The DOS Bureau of Consular Affairs had proposed to increase Cuban student and exchange visitor visas from 3-month single entry to 60-month multiple entry. In January 2015, DHS reviewed the DOS's visa extension proposal and advised that DHS did not concur with DOS's proposed increases due to the Government of Cuba's position regarding repatriation of Cuban nationals ordered removed from the United States. DHS has since agreed to concur on the visa extension proposal in the hopes of better cooperation in several areas and most notably the repatriation issue.

ICE and DOS agree that countries that refuse or delay removal should not do so with impunity. When a country routinely ignores the obligation to accept the return of its nationals, ICE and DOS must pursue steps to achieve comity and compliance with international norms. As diplomatic efforts to date have failed to yield any progress, I request your assistance in exploring more aggressive actions as outlined in the MOU to accomplish this goal, starting with the issuance of a demarche. I believe that DOS should put forth a concerted effort to remedy this stalemate, as existing practices and efforts aimed at garnering cooperation from such countries have been ineffective. DHS and ICE have exhausted standard diplomatic approaches and seek alternative measures that fall within the purview of DOS.

The intent of this letter is to request that DOS acknowledge and commit to the importance of enforcing the Nation's immigration laws with respect to countries that refuse to honor their international obligations. The steps outlined in the 2011 MOU further our national security interest. Your support will facilitate removal of Cuban nationals subject to a final order of removal, particularly those who have committed serious criminal offenses in this country. The removal of such individuals remains a significant national security interest for both our Departments, and a more comprehensive and effective approach to address this problem is warranted.

Thank you for your continued support and cooperation in these combined efforts.

Sincerely,

Sarah R. Saldaña
Director

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

U.S. Immigration and Customs Enforcement

MAR 18 2016

The Honorable Michele T. Bond
Assistant Secretary for Consular Affairs
Department of State
2201 C Street, NW
Washington, DC 20520

Dear Assistant Secretary Bond:

It has been over a year since Secretary Johnson enlisted the support of Secretary Kerry in his September 19, 2014 letter regarding a significant immigration enforcement matter where recalcitrant countries are not cooperating in the timely removal of their nationals.

During this past year, the Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) have continued to seek the cooperation of many of these recalcitrant countries through multiple engagements with respective Embassy officials, communications with government representatives abroad, and through liaison and coordination with officials from within the Department of State's (DOS) Bureau of Consular Affairs. Unfortunately, these efforts have been unsuccessful in soliciting any significant changes to the removal practices of these recalcitrant countries.

At this time, I believe that a more concerted effort is needed from DOS, as existing practices and efforts aimed at garnering cooperation from such countries have been ineffective. DHS and ICE have exhausted available avenues of approach and seek alternative measures that fall within the purview of the DOS.

As was discussed during our meeting in April 2015, ICE and the Bureau of Consular Affairs entered into a Memorandum of Understanding in 2011 concerning measures to take when dealing with countries that refuse to accept the return of their nationals who have been ordered removed from the United States:

- issue a demarche or series of demarches at increasingly higher levels;
- hold joint meetings with the Ambassador to the United States, DOS Assistant Secretary for Consular Affairs, and the Director of ICE;
- consider whether to provide notice of the U.S. Government's intent to formally determine that the country is not accepting the return of its nationals and that the U.S. Government intends to exercise the provisions of Section 243(d) of the Immigration and Nationality Act (INA) to gain compliance;
- consider visa sanctions under Section 243(d) of the INA; and
- call for an inter-agency meeting to pursue withholding of aid or other funding.

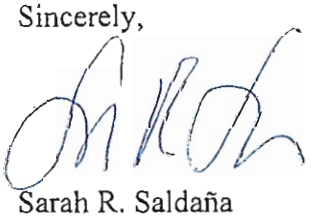
The Republic of Guinea has been identified as one of the more recalcitrant and problematic of these countries. Over the past 5 years, ICE, in conjunction with the Bureau of Consular Affairs, has made considerable efforts to work with the Republic of Guinea to address the matter of cooperation with removals, as outlined in the enclosure. The steps highlight the major collective efforts of both our Departments to work with the Republic of Guinea since 2010. These combined efforts have failed and are representative of the failures we have experienced when implementing similar actions with other recalcitrant countries.

I understand that your Department believes that continued close interagency cooperation and coordinated approaches, both in Washington and at posts overseas, is the recommended course of action; however, as evidenced by the enclosure, these efforts have failed to yield any progress. Consequently, I request your assistance in exploring more aggressive actions to address the removal issue including the temporary discontinuance of visas under Section 243(d) of the INA. The governing statute provides that "the Secretary of State shall order consular officers in that foreign country to discontinue" visa issuance upon appropriate notification from DHS. 8 U.S.C. § 1253(d).

The removal of aliens subject to final orders of removal remains a significant national security interest for both our Departments. A more comprehensive and effective approach to address this problem is warranted.

Thank you for your continued support and cooperation in these combined efforts.

Sincerely,



Sarah R. Saldaña
Director

Enclosure

U.S. Immigration and Customs Enforcement and the Bureau of Consular Affairs' Engagement with the Republic of Guinea Regarding the Removal of Guinean Nationals

- In July 2010, a demarche was issued to the Embassy of the Republic of Guinea.

- On August 25, 2011, then-U.S. Immigration and Customs Enforcement (ICE) Director John Morton met with Ambassador Blaise Cherif for the first time to discuss removals.

- On May 22, 2012, ICE Director Morton and Assistant Secretary Janice Jacobs met jointly with Ambassador Cherif to discuss the removal issues.

- On June 22, 2012, as a result of the May 2012 meeting, a delegation from Guinea was sent to the United States to discuss removals and conduct interviews of alleged nationals of Guinea with final orders of removal. Although the interviews were conducted and individuals were deemed to be nationals of Guinea, no travel documents were issued, as the delegation conveyed that Conakry would not proceed without a written removal agreement.

- On April 23, 2013, a draft Memorandum of Understanding (MOU) was delivered to the Embassy of Guinea for review as a result of the June 2012 delegation visit. Despite numerous requests for follow up from the Embassy, ICE has yet to receive any response to the proposed draft.

- On June 11, 2015, ICE and Bureau of Consular Affairs representatives met with the new Ambassador, Mamady Conde, to discuss the lack of cooperation and feedback to the MOU presented in 2013. Ambassador Conde indicated he would take steps to improve on the cooperation and indicated that he would re-address the MOU with authorities back in Conakry during an upcoming trip. However, these sentiments are no different than the responses routinely provided by his predecessor.

- On August 18, 2015, ICE was notified that any discussions related to the MOU and removals in general would not occur until after the October 2015 elections in Guinea.

- In December 2015, ICE met with the Embassy on two occasions. On December 8, 2015, the Assistant to the Ambassador indicated that no action would be taken until the new President was sworn in and a new Cabinet appointed. In the interim, on December 22, 2015, ICE met with the First Secretary and the Ambassador and presented a list of 15 individuals for reconsideration of travel document issuance in furtherance of the bilateral relationship. The Ambassador agreed to present the cases and discuss removals and the MOU during his trip to Conakry in January 2016.

- On February 4, 2016, ICE and Department of State (DOS) representatives, both in Washington, DC, and in Conakry, conducted a teleconference to discuss the overall state of removals to Guinea, including the MOU and the list of 15 individuals provided to the Ambassador on December 22, 2015.

- On February 5, 2016, DOS notified ICE that efforts were underway to schedule meetings with the Ambassador, upon his return from Conakry in late February, to discuss removals and the outcome of his meetings while in country.

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

U.S. Immigration and Customs Enforcement

MAY 13 2016

The Honorable Michele T. Bond
Assistant Secretary for Consular Affairs
Department of State
2201 C Street, NW
Washington, DC 20520

Dear Assistant Secretary Bond:

It has been more than a year since Secretary of Homeland Security Jeh Johnson enlisted the support of Secretary of State John Kerry on a significant immigration enforcement matter regarding recalcitrant countries not cooperating in the timely removal of their nationals. In response to Secretary Johnson's September 19, 2014 letter, Secretary Kerry pledged his and your support in raising this issue to the highest levels with foreign governments.

During this past year, the U.S. Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) have continued to seek the cooperation of many of these recalcitrant countries through multiple engagements with respective embassy officials, communications with government representatives abroad, and through liaison and coordination with officials from within the Department of State (DOS), Bureau of Consular Affairs. Unfortunately, these efforts have been unsuccessful in soliciting any significant changes to the removal practices of these recalcitrant countries.

At this time, I believe that a more concerted effort is needed from DOS, as existing practices and efforts aimed at garnering cooperation from such countries have been ineffective. DHS and ICE have exhausted available avenues of approach and seek alternative measures that fall within the purview of DOS.

As discussed during our meeting in April 2015, in 2011, ICE and the Bureau of Consular Affairs entered into a Memorandum of Understanding (MOU) concerning measures to take when dealing with countries that refuse to accept the return of their nationals who have been ordered removed from the United States. These measures include:

1. issue a demarche or series of demarches at increasingly higher levels;
2. hold joint meetings with the Ambassador to the United States, DOS Assistant Secretary for Consular Affairs, and the Director of ICE;
3. consider whether to provide notice of the U.S. Government's intent to formally determine that the country is not accepting the return of its nationals and intent to exercise the

provisions of Section 243(d) of the Immigration and Nationality Act (INA) to gain compliance;
4. consider visa sanctions under Section 243(d) of the INA; and
5. call for an interagency meeting to pursue withholding of aid or other funding.

The Republic of Liberia has been identified as one of the more recalcitrant and problematic of these countries. Since 2009, ICE, in conjunction with the Bureau of Consular Affairs, has made considerable efforts to work with the Republic of Liberia to address the matter of cooperation with removals, as outlined in the enclosure.

The steps highlight the major collective efforts of both our Departments to work with the Republic of Liberia since 2009. These combined efforts have failed and are representative of the failures we have experienced when implementing similar actions with other recalcitrant countries. Prior to 2009, ICE had limited success with removals to Liberia. However, even these successes were limited in the number of travel documents issued compared to the subjects ICE released back into our communities.

I understand that your Department believes that continued close interagency cooperation and coordinated approaches, both in Washington and at posts overseas, is the recommended course of action; however, these efforts have failed to yield any progress. Consequently, I request your assistance in taking more aggressive actions to address the removal issue.

Specifically, ICE is requesting that DOS initiate actions under Section 4 of the MOU between ICE and the Bureau of Consular Affairs, which includes the temporary discontinuance of visas under Section 243(d) of the INA. The governing statute (8 U.S.C. § 1253(d)) provides that "the Secretary of State shall order consular officers in that foreign country to discontinue" visa issuance upon appropriate notification from DHS. ICE is requesting such specific action as all efforts in the past 6 years have failed to produce any significant change as removals are negligible, detention costs continue to increase, and aggravated felons from Liberia continue to be released into the community.

The removal of aliens subject to final orders of removal remains a significant national security interest for both our Departments, and a more comprehensive and effective approach to address this problem is warranted.

Thank you for your continued support and cooperation in these combined efforts.

Sincerely,

Sarah R. Saldaña
Director

Enclosure

U.S. Immigration and Customs Enforcement and Liberia Address the Matter of Cooperation With Removals

- On October 27, 2009, a delegation traveled to Liberia for a meeting to discuss removals. As a result, two charter flights were conducted, one in January 2010 with 20 Liberian nationals and a second in October 2010 with 16 Liberian nationals. Following the last charter flight in 2010, the Embassy of Liberia submitted a diplomatic note requesting a 1-year moratorium on removals as well as placing a restriction on the number of removals allowed per year.
- In June 2011, the Embassy interviewed 35 individuals and identified all but 3 as Liberian nationals. However, when the findings were forwarded to the Ministry of Justice in Monrovia, they were deemed to have been unsanctioned and therefore invalid.
- On July 27, 2011, a demarche was issued to the Embassy of the Republic of Liberia addressing Liberia's lack of cooperation pertaining to the issuance of travel documents.
- On November 15, 2012, ICE Director John Morton and Deputy Assistant Secretary Janice Jacobs met with Ambassador Jeremiah C. Sulunteh to discuss the removal issues jointly. The Ambassador indicated that the Government of Liberia would conduct quarterly interviews and streamline the process for the issuance of travel documents.
- On September 25, 2013, the U.S. Ambassador met with the Liberian representatives in Monrovia to discuss the failure to issue travel documents.
- On December 10, 2013, officials from the U.S. Embassy in Monrovia also met with the Liberian representatives to again discuss the lack of issuance of travel documents. Discussions continued over the next several months but no change to travel document issuance practices and returns occurred. In May 2014, ICE sponsored the travel for a senior Liberian Immigration Official from Monrovia to conduct personal interviews of 22 subjects in ICE detention. Despite this gesture, travel documents were not issued upon completion of this endeavor.
- On June 17, 2014, the Political Officer from the U.S. Embassy in Monrovia indicated that meetings were held with senior Immigration Officers in Monrovia. In August 2014, the Political Officer indicated that all efforts for removal would be suspended until the Ebola outbreak was under control.
- Since 2011, a total of 8 sets of interviews have been conducted, resulting in over 300 subjects being interviewed with only 30 having been issued travel documents and/or ultimately removed.
- The most recent interviews were conducted from November 18-20, 2015, where a total of 34 subjects were interviewed and all were deemed by Embassy Officials to be Liberian. However, travel documents have yet to be issued and over $1 million has been incurred on detention of these individuals, mostly aggravated felons, who ultimately were released back into the community.
- ICE has continually engaged the Embassy of Liberia on ways to resolve this problem. All efforts have produced no results.

- ICE has also engaged with DOS, in both Washington, D.C. and in Monrovia, for assistance to find a joint solution with Liberia. To date, this approach has also failed to yield any substantive changes.

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

U.S. Immigration and Customs Enforcement

MAY 13 2016

The Honorable Michele T. Bond
Assistant Secretary for Consular Affairs
Department of State
2201 C Street, NW
Washington, DC 20520

Michele

Dear Assistant Secretary Bond:

It has been more than a year since Secretary of Homeland Security Jeh Johnson enlisted the support of Secretary of State John Kerry on a significant immigration enforcement matter regarding recalcitrant countries not cooperating in the timely removal of their nationals. In response to Secretary Johnson's September 19, 2014 letter, Secretary Kerry pledged his and your support in raising this issue to the highest levels with foreign governments.

During this past year, the U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement (ICE) have continued to seek the cooperation of many of these recalcitrant countries through multiple engagements with respective embassy officials, communications with government representatives abroad, and through liaison and coordination with officials from within the Department of State (DOS), Bureau of Consular Affairs (CA). Unfortunately, these efforts have been unsuccessful in soliciting any significant changes to the removal practices of these recalcitrant countries.

As discussed during our April 2016 meeting, in 2011, ICE and CA entered into a Memorandum of Understanding outlining measures to take when dealing with countries that refuse to accept the return of their nationals who have been ordered removed from the United States. ICE and CA agreed to pursue the following steps in attempts to gain compliance from countries that systematically refuse or delay repatriation of their nationals:

1. issue a demarche or series of demarches at increasingly higher levels;
2. hold joint meetings with the Ambassador to the United States, DOS Assistant Secretary for CA, and the Director of ICE;
3. consider whether to provide notice of the U.S. Government's intent to formally determine that the country is not accepting the return of its nationals and the intent to exercise the provisions of Section 243(d) of the Immigration and Nationality Act to gain compliance;
4. consider visa sanctions under Section 243(d) of the Immigration and Nationality Act; and;
5. call for an interagency meeting to pursue the withholding of aid or other funding.

The People's Republic of China (PRC) has been identified as one of the more recalcitrant and problematic of these countries. Over the past 4 years, ICE, in conjunction with CA, has made considerable efforts to work with the PRC to address the matter of cooperation with removal, as outlined in the enclosure. The steps highlight the major collective efforts of both our departments to work with the PRC since 2011. These combined efforts have failed and are representative of the failures we have experienced when implementing similar actions with other recalcitrant countries. The removal of aliens subject to final orders of removal remains a significant national security interest for both our departments, and a more comprehensive and effective approach to address this problem is warranted.

I understand that continued, close interagency cooperation and coordinated approaches, both in Washington and at posts overseas, is your department's recommended course of action; thus, I would like to propose that you and I hold a joint meeting with the Chinese Ambassador to the United States to discuss China's designation as an uncooperative country.

Thank you for your continued support and cooperation in these combined efforts.

Sincerely,

Sarah R. Saldaña
Director

Enclosure

U.S. Immigration and Customs Enforcement and the Bureau of Consular Affairs' Engagement with the People's Republic of China Regarding the Removal of Chinese Nationals

- From 2011 through 2015, U.S. Immigration and Customs Enforcement (ICE) continued negotiations with the Ministry of Public Security (MPS) on a Memorandum of Understanding (MOU) which would enable Chinese experts to work with ICE in the United States to verify the identities of individuals with final orders of removal.
- On January 11, 2013, the U.S. Embassy in Beijing delivered a non-paper outlining ICE's concerns regarding the failure of the People's Republic of China (PRC) to readily accept the return of its nationals and establishing benchmarks for improvement. The non-paper also outlined a key incentive for walk-in service for Chinese diplomats in exchange for improved cooperation with removals.
- On March 27, 2015, ICE and MPS signed the MOU inviting Chinese experts to the United States to conduct interviews of suspected Chinese nationals ordered removed from the United States.
- In April 2015, Secretary Johnson met with Minister of Public Security Guo Shengkun. During the meeting, the two sides agreed to use charter flights to remove Chinese nationals who cannot be returned via commercial airlines.
- In July 2015, MPS sent experts to the United States, during which time ICE and public security experts verified the identities of 30 Chinese nationals ready for removal. In addition, the experts advised ICE that 43 of those interviewed needed further review for identity verification.
- In early September 2015, only after Secretary Johnson raised the issue with Secretary Meng Jianzhu, did the MPS schedule two charter flights. Secretary Johnson underscored to Secretary Meng that he expects regular use of charter flights for cases that cannot be removed via commercial means; however, the Chinese continue to insist that charter flights are not a standard procedure. The Chinese also consistently assert that their cooperation on removal cases is contingent upon the United States returning fugitives wanted by the Chinese Government.
- On October 22, 2015, ICE met with the Chinese Counselor and Consular General at the PRC Embassy to discuss repatriation and assistance with the 30 travel documents pending from the July 2015 interviews.
- On October 30, 2015, ICE and Department of State's (DOS) Bureau of Consular Affairs (CA) representatives met to discuss the lack of cooperation and feedback from PRC, including the MOU presented in March 2015. ICE discussed facilitating a meeting between ICE, the PRC Ambassador to the United States, and the Assistant Secretary for CA.
- On November 17, 2015, ICE, DHS, and DOS met with the Chinese Counselor and Consul General to discuss continued efforts and cooperation with the issuance of travel documents. All parties agreed to a monthly working group.
- On January 21, 2016, ICE met with MPS to discuss the issuance of travel documents for those individuals interviewed during the experts' trip in July 2015, the scheduling of a second experts' trip, and proposed changes to the MOU, which expired on March 25, 2016. During the meeting, MPS stated the following:

- ICE has misunderstood the MOU. The experts have provided ICE with only their personal opinions regarding the identity of those interviewed and they do not represent the views of the Chinese Government.
- There are different authorities involved in the verification process and it is the Ministry of Foreign Affairs, not MPS, who verifies and issues travel documents.
- The lack of results from the MOU is correlated to the lack of resources within MPS.

- In February 2016, after 8 months of waiting and the release of 22 of the 30 verified Chinese nationals, the travel documents for the 30 Chinese nationals were issued. Travel documents have not been issued for the 43 individuals whose identities needed further review.
- As of May 2016, there are approximately 1,900 travel document requests pending with the Chinese Government dating back to 2008.

Date	Country	Name	Date TD Request Submitted
12/18/2015	Mali	Niang, Ousmane	9/18/2015
12/18/2015	Senegal	Fall, Bala	9/16/2015
12/18/2015	Morocco	Mansouri, Hacane	2/4/2015
12/18/2015	Morocco	Moughanim, Badr	12/26/2013
12/18/2015	Ghana	William Quartey, Nigel	7/28/2015
12/18/2015	Ghana	Achampong, Barimah Otuo	6/23/2015
12/18/2015	Ghana	Ansah-Okwaning, Samuel	6/2/2015
12/18/2015	Ghana	Karimu, Faruk	5/8/2015
12/18/2015	Ghana	Cann, Josheph	4/28/2015
12/18/2015	Ghana	Mohammed, Abdul Fail	5/28/2015
12/18/2015	Ghana	Asomani, Ernest	10/27/2014
12/18/2015	Ghana	Afriyie, Nana	2/26/2015
12/18/2015	Ghana	Asiedu, Edward	12/15/2014
1/7/2016	Senegal	Ndiaye, Same	8/5/2015
1/7/2016	Senegal	Ndiaye, Mouhamet	1/8/2014
1/7/2016	Senegal	Kebe, Djim	7/31/2015
1/7/2016	Ghana	Norgbey, Prosper	5/26/2015
1/7/2016	Ghana	Nuamah, Kojo	7/9/2015
2/22/2016	Guinea	Diallo, Karimou	7/30/2015
2/22/2016	Ghana	Mensah-Yawson, Steven	6/17/2015
2/24/2016	Guinea	Camara, Mamoudou	8/11/2015
2/24/2016	Gambia	Barrow, Lamin Sarjo	9/14/2015
2/24/2016	Gambia	Jaiteh, Alieu	10/29/2015
2/24/2016	Uganda	Nantume, Catherine Leonie	5/20/2014
2/24/2016	Uganda	Mugenzi, Richard Sabune	11/4/2013
3/31/2016	China	Chen, Ying	2/17/2015
3/31/2016	China	Li, Guo Yao	6/30/2015
3/31/2016	China	Chen, Li Ming	10/28/2015
3/31/2016	China	Chi, Shih Luh	9/18/2015
3/31/2016	Jordan	Talafhah, Bassam	1/27/2015
3/8/2016	Jordan	Musa, Shehadeh	7/27/2015
3/15/2016	Liberia	Parker, Emmanuel	7/21/2015
3/15/2016	Liberia	Peal, Augustus	10/13/2015
3/15/2016	Liberia	Johnson, Siabo	9/2/2015
3/15/2016	Liberia	Kerbay, Tonney	7/25/2015
3/15/2016	Eritrea	Gebrekidan, Sebhatu	10/9/2015
3/15/2016	Guinea	Diallo, Nene Safiatou	9/4/2015
3/15/2016	Liberia	Karmee, Aldophus	8/18/2015
3/15/2016	Liberia	Nimpson, Anthony	6/3/2015
3/15/2016	Liberia	Tahmen, Prince	6/10/2015
3/15/2016	Liberia	Green, Alvin	1/11/2010
3/15/2016	Liberia	Whaplo, Edwin	9/4/2015
3/15/2016	Liberia	Karla, Tody	6/5/2015
3/15/2016	Liberia	Bowman, Albert	6/8/2015
3/15/2016	Liberia	Duopu, Guo Moses A	6/1/2015

3/15/2016	Liberia	Gayekpar, Michael	5/27/2015
3/31/2016	China	Wu-Ming	1/30/2015
3/31/2016	China	Jie, Yu	1/22/2015
3/31/2016	China	Zheng-Lin, Qingwang	7/31/2015
3/31/2016	China	Wu, Fu	8/26/2015
3/31/2016	China	Zhang, Shi Zhong	8/18/2015
3/31/2016	China	Shi, Xiaojing	5/14/2015
3/31/2016	China	Han, Zhan	6/12/2015
3/31/2016	China	Lin, Chang	12/8/2014
3/31/2016	China	Sen, Hua	5/19/2014
3/31/2016	China	Lin, Youfeng	2/6/2015
3/31/2016	China	Wu, Guanhua	8/3/2015
3/31/2016	China	Tian, Zong	10/15/2014
3/31/2016	China	Guan-Wang, Haichun	8/4/2015
4/14/2016	Jordan	Tal, Montaser	12/15/2011
4/14/2016	Jordan	Alyazjeen, Ibrahim	8/13/2013
4/14/2016	Jordan	Abu Adas, Akram	7/11/2011
4/14/2016	Jordan	Obaid, Omar	3/18/2013
4/14/2016	Jordan	Ahmad, Basem	9/17/2012

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

   (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

   BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT,CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.