

Statement for the Record

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"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.