SECRETARY CALL WITH CHAIRMAN GOODLATTE AND TREY GOWDY
May 22, 2014

Overview:

- You will speak with Chairman Robert Goodlatte (R-VA) and Representative Trey Gowdy (R-SC) before your hearing with the House Judiciary Committee.
- This is an opportunity to build goodwill and get a preview of some of the issues House Republicans may raise with you next week.

Background: (Bullets)

- On April 25, you spoke with Chairman Goodlatte to discuss your immigration enforcement review. This will be your first conversation with Representative Gowdy. Representative Gowdy is Chair of the House Judiciary Committee's Subcommittee on Immigration and Border Security; in this capacity, he is Congresswoman Zoe Lofgren's counterpart.
- The Chairmen will likely press for the Department to make available to the Committee a full accounting of the ICE release of criminal aliens in 2013. OGC is currently working to provide a more detailed accounting of these releases to the Committee and you can reiterate that we expect a more fulsome response from the Department in a matter of days. As part of that inquiry the Chairman may note that they believe the Zadvydas decision is being over-applied and that DHS should maintain more individuals in custody who commit serious crimes.
- Chairman Goodlatte has been provided with information by the Department on the developing situation on the US/MX border where unprecedented numbers of unaccompanied alien children are arriving. He is likely to ask for background information including current statistics and what the USG is doing to handle the situation. He is also likely to press to what extent the USG is attempting to prevent this wave from continuing.
- The Chairman favors a piecemeal approach to reforming the immigration system. He is opposed to executive action on immigration and believes that the Department is well outside its legal authorization on actions such as DACA.
- In April, the Committee held a hearing on the Administration's proposal to change a 1983 rule that bans Libyan nationals coming to the US for training in aviation and nuclear science fields. The rule was enacted as a response to the Qadaffi regime and the Lockerbie bombing; Libya is the only country in the world subject to such a rule. At the April hearing, both Chairman Goodlatte and Gowdy expressed significant concern that the rule change was ill-advised and that this rule change creates a vulnerability for the United States. The US position is that the rule change is necessary to foster positive change and create a secure and stable central government in Libya.

Participants:

Secretary Johnson
Chairman Goodlatte (R-VA)
Representative Gowdy (R-SC)
Acting Deputy Assistant Secretary Alexandra Veitch

Attachments:

A. Biographies

Staff Responsible for Briefing Memo: Alexandra Veitch, Acting Deputy Assistant Secretary, Office of Legislative Affairs, (b)(6) and Ted Lovett, Director, Office of Legislative Affairs, (b)(6)

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

Homeland Security

March 21, 2014

The Honorable Darrell E. Issa
Chairman, Subcommittee on National Security
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Issa:

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, Goodlatte, 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 (b)(6)

Respectfully,

Brian de Vallance
Acting Assistant Secretary for Legislative Affairs

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).

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

From:	Shahoulian, David (b)(6)
To:	"Olavarria, Esther </O=DHS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Esther.Olavarria>"
Subject:	FW: Need to talk ASAP
Date:	2014/03/21 10:44:29
Type:	Note

FYI. Also, what is Amy Pope's email? She's still at NSS right?

From: Shahoulian, David
Sent: Friday, March 21, 2014 10:19 AM
To: Escobar, Felicia; Moran, Tyler
Cc: Shahoulian, David
Subject: Need to talk ASAP

Do you all know about the hearing that has been set up for next Wednesday?

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY

and

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON NATIONAL SECURITY

NOTICE OF JOINT HEARING

TIME	DATE	PLACE
1:00 p.m.	**Wednesday, March 26, 2014**	**2141 Rayburn House Office Building**

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

By Direction of the Chairman

Subcommittee on Immigration and Border Security
B-353 Rayburn House Office Building
Washington, DC 20515

Subcommittee on National Security
2157 Rayburn House Office Building
Washington, DC 20515

(b)(5)

(b)(5)

View Rule

Printer-Friendly Version Download RIN Data in XML

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

Agency Contact:

Katherine H. Westerlund
Acting Unit Chief, SEVP Policy, Student and Exchange Visitor Program
Department of Homeland Security
U.S. Immigration and Customs Enforcement
Potomac Center North, 500 12th Street SW., STOP 5600,
Washington, DC 20536-5600
(b)(6)

Sender:	Shahoulian, David (b)(6)
Recipient:	"Olavarria, Esther </O=DHS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Esther.Olavarria>"
Sent Date:	2014/03/21 10:44:09
Delivered Date:	2014/03/21 10:44:29

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November 25, 2013

2013 NOV 25 PM 3:48
RECEIVED BY DHS

The Honorable Rand Beers
Acting Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Beers:

Recently, we became aware of a Department of Homeland Security (DHS) draft final regulation (Billing Code 9111-28) to lift the longstanding prohibition on Libyans entering the United States to work in aviation maintenance, flight operations, or to study or train in nuclear science. Under the terms of this draft final regulation, removal of the prohibition will go into effect without prior notice and comment. The prohibition was wisely put into place (8 CFR §214.5) in the 1980s after a series of terrorist incidents involving Libyan nationals. The administration's draft regulation justifies lifting this ban by claiming the United States' relationship with Libya has been "normalized." Clearly, though, the U.S. relationship with Libya is anything but normal, as evidenced by the September 11th assault on the U.S. compound in Benghazi, Libya and horrific murder of our ambassador to that country last year. The terror threat from Libya remains unabated.

The long-standing prohibition was put in place by then-President Reagan's administration in order to protect the homeland against serious threats from terrorists from a particularly unstable and dangerous country – characteristics of Libya that persist today, regardless of any progress that may have been made following the removal of Muammar Gaddafi from power and attempts to improve relations with the fragile Libyan government in Tripoli. Unfortunately, the current regulation is needed as much now as ever before. Any such policy change is not only misguided but dangerous. The terror threat continues and numerous news reports document recent terror-related activity involving Libyans.

According to the draft final regulation, the rule would allow Libyans to come to the United States to study or obtain training in aviation maintenance, flight operations, or nuclear-related fields. Specifically, the draft rule states:

> [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 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 United Nations towards 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.
>
> The draft final regulation further states:
>
> DHS is of the opinion that the removal of 8 CFR 214.5 is exempt from §553 (Rulemaking) of the APA [Administrative Procedures Act] because it involves a foreign affairs function of the United States to the extent that it will impact 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 their relations and most restrictions and sanctions imposed by the United States and the United Nations have been lifted. Given these developments, the regulatory provisions of 8 CFR 214.5 are at odds with current U.S. 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 likely negative impact on the diplomatic relationship with Libya and other unwanted consequences.

We find it alarming that the draft regulation, which we understand is presently being circulated within DHS, goes on at length to discuss the manner in which relations with Libya have improved and are now "normalized," but fails to make any mention whatsoever of the terrorist attack in Libya on September 11, 2012. We must not forget that just over a year ago, the U.S. compound in Benghazi was attacked, which resulted in the murder of four Americans, including Ambassador Christopher Stevens. Ignoring this event in a draft regulation that deals squarely with the threat of terror from Libyan nationals will not change the fact that it occurred, nor will it do anything to address the safety of Americans.

In addition to ignoring the death of four Americans in Libya, the draft regulation turns a blind eye to more recent terrorist activity. For example, the regulation makes no mention that on September 10, 2013, a group calling itself the Islamic Emirate of Libya posted a notice online listing the U.S. Embassy in Tripoli as a possible target of a terror attack coinciding with the anniversary that week of the September 11th terrorist attacks. The group stated in an Arabic-language online posting that it was asking supporters to select a target for a bombing to be carried out that week to commemorate the September 11th attacks by al Qaeda. Further evidence of the unabated terror threat from Libya includes

- In July and August 2013, U.S. military equipment used by U.S. Special Forces in Libya was stolen by terrorist groups from a military training camp run by U.S. Special Forces outside Tripoli.

- On October 5, 2013, U.S. special operations forces captured Abu Anas al-Liby in Tripoli. He was a senior al Qaeda operative who helped mastermind the 1998 bombings of the U.S. embassies in Tanzania and Kenya, killing 224 people.

- On October 6, 2013, after Abu Anas al-Liby was captured, Libya's interim government condemned the United States for what it called the "kidnapping of a Libyan citizen" and Libyan lawmakers threatened to remove the prime minister if the government had been involved. The General National Congress, Libya's most senior national authority, also called the capture of al Liby "flagrant aggression" against sovereignty and demanded that he be turned over immediately.

- On October 8, 2013, Islamic militants called for the kidnapping of U.S. citizens in Libya and targeted attacks on American property following the raid by U.S. Special Forces to seize Abu Anas al-Liby from his home in the Libyan capital.

- On October 10, 2013, Libyan Prime Minister Ali Zeidan was kidnapped and held temporarily before being released unharmed by a group angered at the leader for alleged support for the U.S. operation against al Liby.

These incidents demonstrate the inevitable, violent backlash in Libya created by any U.S. anti-terror activity in that country, but, per the Obama administration's draft regulation, such actions are the benign fruit of a "normal" international relationship.

In light of the continued national security threat to America, we find the planned policy reversal to be outright dangerous. The decision to lift the ban on allowing nationals of such a terror-plagued country to come to the U.S. to engage in flight-related training is particularly disturbing in light of the role such training played in the preparations for the 9-11 terror attacks. Further, lifting the ban on Libyan nationals to come to the U.S. to study nuclear science and related fields is incomprehensible in light of the peril the U.S. and its allies in the Near East face from the potential acquisition of nuclear weapons technology by terrorists or hostile nations in the region. Hence, we request answers to following questions:

1. What is the current status of the draft regulation?
2. Does DHS plan to utilize the foreign affairs exception under the APA and publish this rule without prior public notice and comment?
3. What political appointees at DHS headquarters were involved in the development, promotion, or drafting of this draft regulation?
4. What political appointees in DHS components were involved in the development, promotion, or drafting of this draft regulation?
5. To what extent was the White House aware of this draft regulation?

6. To what extent were the Department of State and the Department of Defense involved in developing this regulation?
7. Has Jeffrey Feltman, the former Assistant Secretary of State for Near East Asian Affairs during the attack on the consulate in Benghazi, been in any way associated with the conception or development of this draft regulation?

We ask that you provide this information as soon as possible, but no later than December 16, 2013. In the event your response requires transmitting classified information, please contact House Judiciary Committee Counsel, (b)(6) to make the proper arrangements to ensure the security of documents.

Sincerely,

Bob Goodlatte
Chairman
Committee on the Judiciary

Jason Chaffetz
Member
Committee on the Judiciary

Congress of the United States
House of Representatives
Washington, DC 20515

2014 MAR 20 AM 8:3

March 19, 2014

Honorable Jeh Johnson
Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Johnson:

We write this letter as a follow up to a letter sent by Chairman Goodlatte and Congressman Jason Chaffetz on November 25, 2013. As discussed in the November 25th letter, we became aware of a Department of Homeland Security (DHS) draft final regulation (Billing Code 9111-28) to lift the longstanding prohibition on Libyans entering the United States to work in aviation maintenance, flight operations, or to study or train in nuclear-related fields. Under the terms of this draft final regulation, removal of the prohibition will go into effect without prior notice and comment. The prohibition (at 8 CFR §214.5) was wisely put into place in 1983 after a series of terrorist incidents involving Libyan nationals. The Administration's draft regulation justifies lifting this ban by claiming the United States' relationship with Libya has been "normalized."

We raised concerns, as, clearly, the U.S. relationship with Libya is anything but normal, as evidenced by the September 11th assault on the U.S. compound in Benghazi, Libya and horrific murder of our ambassador to that country over a year ago. Not only did four Americans die on that date, but, as we previously documented, numerous other terror threats have continued from Libya in recent months.

As we discussed in our November 25th letter, the long-standing prohibition was put in place by then-President Reagan's administration in order to protect the homeland against serious threats from terrorists from a particularly unstable and dangerous country – characteristics of Libya that persist today, regardless of any progress that may have been made following the removal of Muammar Gaddafi from power and attempts to improve relations with the fragile Libyan government in Tripoli. Unfortunately, the current regulation is needed as much now as ever before. Any such policy change is not only misguided but dangerous. The terror threat continues, and numerous news reports document recent terror-related activity involving Libyans. Yet the letter we sent to DHS on November 25, 2013 remains unanswered.

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The final draft regulation is neither prudent nor wise. According to the draft final regulation, the rule would allow Libyans to come to the United States to study or obtain training in aviation maintenance, flight operations, or nuclear-related fields. The draft rule also indicates, "DHS is of the opinion that the removal of 8 CFR 214.5 is exempt from §553 (Rulemaking) of the APA [Administrative Procedure Act] because it involves a foreign affairs function of the United States to the extent that it will impact relations with a foreign government." Hence, it appears that the rule is planned to be published as a final rule without any prior public notice and comment – essentially allowing the Administration to elevate and expedite the interests of Libyan nationals over the interests of Americans, including those previously affected by terrorism (Libyan or otherwise) who might wish to have notice and provide comment.

At the time of our prior letter, we understood that the final draft regulation was being circulated within DHS. Therefore we asked the following questions:

1. What is the current status of the draft regulation?
2. Does DHS plan to utilize the foreign affairs exception under the APA and publish this rule without prior public notice and comment?
3. What political appointees at DHS headquarters were involved in the development, promotion, or drafting of this draft regulation?
4. What political appointees in DHS components were involved in the development, promotion, or drafting of this draft regulation?
5. To what extent was the White House aware of this draft regulation?
6. To what extent were the Department of State and the Department of Defense involved in developing this regulation?
7. Has Jeffrey Feltman, the former Assistant Secretary of State for Near East Asian Affairs during the attack on the consulate in Benghazi, been in any way associated with the conception or development of this draft regulation?

Since November 25, 2013, House Judiciary Committee staff has contacted DHS over half a dozen times to determine the status of our inquiry. After these numerous inquiries, staff was informed on February 4, 2013, that the administration would provide a response to the letter "in about one week's time." However, the Committee did not receive a response within the promised timeframe. Staff followed up again, and DHS did not respond until March 1, 2014, when it indicated that it had sent "inquiries to all the relevant offices." On March 10, 2014, DHS again indicated that it had sent "inquiries to all the relevant offices."

On February 7, 2014, your Chief of Staff, Christian Marrone, issued a "Memorandum for All Component Heads," entitled "Secretary's Guidance on Responding to Members of Congress." According to the memo you expect "the Department to respond to Congress in a direct,

courteous, and timely manner." This memo implements a process that "affords the Department a ten (10) business day response time from the receipt of the inquiry to the transmittal of the response to Congress." The memorandum further states, "If a Component recognizes that preparation of a complete answer will require additional time, the Component must draft a substantive interim response to the Member of Congress indicating the reason why more time is needed and the date by which the Department will provide the Member(s) our final response."

In the short time that this policy has been in effect, your staff has already failed to comply with it. We have not received a final response or even an interim response to our inquiry. We certainly have not received a "date by which the Department will provide the Member(s) [your] final response."

Of even greater concern, we have learned that DHS already has moved forward with this regulation and sent it to the Office of Management and Budget (OMB) for review. DHS moved forward with the rule after we requested and did not receive information from DHS. A cursory review of the publicly available information on OMB's website demonstrates that DHS sent the regulation entitled, "Rescinding Suspension of Enrollment for Certain F and M non-immigrant Students from Libya and Third Country Nationals acting on behalf of Libyan Entities" (RIN: 1653-AA69) to OMB on January 1, 2014. While this rule is in the final stages of review prior to publication, the Administration continues to ignore Congressional inquiries.

In light of the continued national security threat to America, we find the planned policy reversal to be dangerous and irresponsible. The decision to lift the ban on allowing nationals of such a terror-plagued country to come to the U.S. to engage in flight-related training is particularly disturbing in light of the role such training played in the preparations for the September 11, 2001 terror attacks. Further, lifting the ban on Libyan nationals to come to the U.S. to study nuclear science and related fields is incomprehensible in light of the peril the U.S. and its allies in the Near East face from the potential acquisition of nuclear weapons technology by terrorists or hostile nations in the region.

We will convene a joint hearing between the House Judiciary Committee's Subcommittee on Immigration and Border Security and the House Oversight and Government Reform Committee's Subcommittee on National Security in the immediate future to determine the status of the rule and the impetus behind it. DHS will be called to testify in order to respond to Congress since it has failed to do so as of the date of this letter.

Should you require additional information, please contact House Judiciary Committee Counsel, (b)(6) or House Oversight and Government Reform Committee Professional Staff Member, (b)(6)

Sincerely,

BOB GOODLATTE
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House Committee on the Judiciary

DARRELL E. ISSA
Chairman
House Committee on Oversight and Government Reform

TREY GOWDY
Chairman
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