JOINT HEARING BEFORE THE

HOUSE JUDICIARY SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

AND

HOUSE OVERSIGHT AND GOVERNMENT REFORM SUBCOMMITTEE ON NATIONAL SECURITY

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

TESTIMONY OF JANICE L. KEPHART

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

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Introduction

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

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

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

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

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

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

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

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

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

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

National Security Oversight Issues

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

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

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

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

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

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

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

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

National Security Questions.

1. On March 20, 2014, according to the *Libyan Herald*, Libya's government called for international help to fight terrorism that is threatening internal stability of the country. On the same day, a missile was launched at the Tripoli runway shutting down the airport. Are the reasons asserted for a rescission of visa restrictions in 2010, still valid today?
2. Mr. Feltman's May 2012 letter asserts that the Libyan government wants 5,000 Libyans to have access to nuclear-related science education visas.
   - How can the United States be assured that Libyan government-sponsored visas will continue to be sponsored by a non-terrorist regime upon the close of study of these individuals, which could be anywhere from one to four or longer years in the future?
   - If these students' education is funded wholly or in part by the Libyan government, how will the United States be assured that the Libyan government has sufficient procedures in place to screen out potential terrorists?

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

Immigration and Border Security Issues

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Immigration and Border Security Questions.

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

Conclusion

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

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

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

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

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

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

9/11 Commission Recommendations Relevant to Visa Interviews and Issuance

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

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

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