



November 3, 2017

VIA OVERNIGHT DELIVERY SERVICE

The Honorable Rex Tillerson
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Secretary Tillerson:

As you evaluate all available options to better protect American citizens in light of the brutal terror attack in New York City this week, we are writing to bring to your attention one option available to you now to immediately close the loophole used by Sayfullo Saipov to enter the United States: the Diversity Visa Program. This option allows you to effectively end the Diversity Visa Program pending permanent action by Congress.

As you know, on October 31, 2017, Sayfullo Saipov perpetrated a cowardly act of terrorism on innocent pedestrians in New York City.¹ He rented a truck, mowed down pedestrians, crashed into a school bus, and then proceeded to exit the vehicle while armed and yelling “Allahu Akbar.”² In his truck, investigators found a letter in which Saipov pledged his allegiance to ISIS and have found thousands of ISIS and terror related pictures and videos on his cellphone.³ Saipov’s murderous rampage left eight innocents dead and at least twelve wounded. Reports suggest Saipov shows no remorse for his crimes and rejoices at the loss of innocent American lives.⁴

¹ Katherine Lam, *NYC Terror Attack Suspect Planned Assault for Weeks, Did Prior Reconnaissance*, FOX NEWS (Nov. 1, 2017), <http://www.foxnews.com/us/2017/11/01/nyc-terror-attack-suspect-planned-assault-for-weeks-did-prior-reconnaissance.html>.

² *Id.*

³ Nicole Chavez & Eric Levenson, *Terror Suspect Wanted to Attack People on Brooklyn Bridge, Documents Say*, CNN (Nov. 2, 2017), <http://www.cnn.com/2017/11/02/us/new-york-terror-attack/index.html>.

⁴ Kevin McCoy & Mike James, *NYC Terror Attack: Suspect Charged; Tells Fed He Wants ISIS Flag in Hospital Room*, USA TODAY (Nov. 1, 2017), <https://www.usatoday.com/story/news/nation/2017/11/01/nyc-terror-attack/820251001/>.

Saipov legally entered the United States from Uzbekistan in 2010 through the Diversity Visa Program.⁵ He has lived in the U.S. as a permanent resident alien for seven years.⁶ The Diversity Visa Program was created in 1990 by the Immigration and Nationality Act, codified in 8 U.S.C. §1153(c). Four of the top ten lottery winning countries under this program “are on the government’s watch list of terrorism-connected countries.”⁷ Saipov’s home country, Uzbekistan, is number five on that list.⁸

In 2007, the Government Accountability Office issued a report finding, among other things, that the Diversity Visa Program is “vulnerable to fraud committed by and against” applicants and “posed significant risks to national security from hostile intelligence officers, criminals, and terrorists attempting to use the program for entry into the United States as permanent residents”⁹ The report also recognized the “Department of Homeland Security, terrorism experts, and federal law enforcement officials familiar with immigration fraud believe that some individuals, including terrorists and criminals, could use fraudulent means to enter or remain in the United States” through this program.¹⁰ A 2011 Congressional Research Service report reiterated these and other similar findings.¹¹

As you know, 8 U.S.C. §§1153(c) and 1153(e) require the Attorney General to establish parameters for the issuance of diversity visas and the Secretary of State to then issue them “strictly in a random order.” However, 8 U.S.C. §1201 governs the issuance of all visas for immigrants and non-immigrants alike. Under 8 U.S.C. §1201(i) the Secretary of State has the unreviewable discretionary authority to revoke the issuance of any visas or other documents.

Accordingly, in light of the evidence and in response to this week’s tragic terror attack, we believe it is prudent for you to take immediate action pending a permanent legislative solution from Congress. We believe you should exercise your statutory authority to revoke all diversity visas issued from this point forward concurrently with their statutorily required issuance and, in light of recent Supreme Court guidance, before any visa recipient has established substantial ties to the United States.

⁵ Travis Fedschun, *NYC Terror Attack Suspect, Sayfullow Saipov, Entered US Through Diversity Visa Program*, FOX NEWS (Nov. 1, 2017), <http://www.foxnews.com/us/2017/11/01/nyc-terror-attack-suspect-sayfullo-saipov-entered-us-through-diversity-visa-program.html>.

⁶ *Id.*

⁷ Stephen Dinan, *Republicans Take Aim at ‘Diversity’ Visa Lottery Program that Let Terror Suspect into U.S.*, WASHINGTON TIMES (Nov. 1, 2017), http://www.washingtontimes.com/news/2017/nov/1/donald-trump-vows-to-end-diversity-visa-lottery/?utm_source=RSS_Feedutm_medium=RSS.

⁸ *Id.*

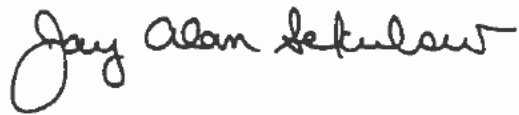
⁹ U.S. GOV’T ACCOUNTABILITY OFF., GAO-07-1174, BORDER SECURITY: FRAUD RISKS COMPLICATE STATE’S ABILITY TO MANAGE DIVERSITY VISA PROGRAM 5 (Sept. 21, 2007), *available at* <http://www.gao.gov/assets/270/267124.pdf>.

¹⁰ *Id.*

¹¹ RUTH ELLEN WASEM, DIVERSITY IMMIGRANT VISA LOTTERY ISSUES, CONGRESSIONAL RESEARCH SERVICE (Apr. 1, 2011), <https://fas.org/sgp/crs/misc/R41747.pdf>.

It is critical that we update our immigration programs to eliminate any random selection for entry into the country. The United States must instead adopt a strategic policy that prioritizes our national security. In the meantime, we encourage you to exercise your authority to protect the American people from this vulnerability.

Sincerely,

A handwritten signature in black ink that reads "Jay Alan Sekulow". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

Jay Alan Sekulow
Chief Counsel