The Honorable John F. Kelly

Secretary of Homeland Security

3801 Nebraska Ave., NW

Washington, DC 20016

The Honorable Rex C. Tillerman

Secretary of State

2201 C St., NW

Washington, DC 20520

Dear Secretaries Kelly and Tillerman:

We understand that you are, pursuant to Section 6 the Executive Order on Protecting the Nation from Foreign Terrorist Entry, undergoing a review of the exercises of authority issued pursuant to section 202 of the INA, 8 USC 1182. These exemptions are necessary to protect Iraqis that took up arms against Saddam Hussein, translators who risked their lives helping American troops, and leaders of the African National Congress (ANC) from being labeled as “terrorists” under our immigration laws and denied entry into the country.

As background, the exemption authority was enacted in 2008, as the result of a Jon Kyl and Patrick Leahy jointly sponsored amendment to the 2007 Consolidated Appropriations Act. It was adopted in response to the fact that a range of groups that the United States had long supported or that supported U.S. troops – included Hmong and Montagnards that fought alongside the United States in the Vietnam War and Burmese resistance fighters defending their people against the military junta then ruling the country – were being defined as terrorists under our immigration laws and denied admission into the country.

These rather concerning results stem from the very broad definition of “terrorist activity” and “terrorist organization” in immigration law. Together, they categorize as terrorist just about anyone who unlawfully bears an arm (including U.S. troops fighting in a foreign country) and anyone who provides “material support” to groups of two or more people that do so. On it face, these definition cover anyone that supports U.S. troops fighting abroad, groups that the United States has long defined as freedom fighters, and enslaved victims of terrorists.

To protect against the unintended consequences, the Kyl-Leahy amendment exempted 10 named groups (including groups associated with the Hmong and Montagnards, a range of Burmese resistance groups, and Cuban Alzados that fought Castro) from these bars and gave the Secretaries of State and Homeland Security the authority to exempt others. The Bush administration issued the first such exemption in 2008, so as to ensure that participants in these named groups (and not just their supporters) could be eligible for admission as well. There have been 19 additional exemptions issued since, covering, for example, the Iraqi National Congress, those who took part in the 1991 Iraqi uprising, doctors that consistent with their ethical obligations provided medical care to the wounded without regard to their group affiliation, those who provided material support to terrorist groups under duress.

These exemptions are necessary to protect Yazidi rape victims from being equated with the terrorists who raped and enslaved them; key allies in Iraq from being labeled terrorists; and other democratically elected government leaders with whom the United States engages in regular diplomatic interactions from being denied admission into this country. Without these exemptions, you personally would need to weigh in on each and every potentially applicant on a case-by-case basis. Every time an ANC member, member of the one of the leading parties in Iraq, or leader in one of the key ruling parties in El Salvador as well as a handful of other nations, wished to come to the United States, you, personally would be required to personally sign a waiver. Meanwhile, our law would be feeding into the terrorist’s hands by equating some of the worst victims of terror with the terrorists that brutalized them.

We urge you to keep in place the 20 existing exemptions, which were issued only after extensive interagency review and extensive input from the intelligence committee. Notably, *nothing* in the exemptions requires you to admit any particular alien into the country. Rather, each such entrant must undergo extensive security reviews and be explicitly deemed by reviewing authorities not to pose a threat to the United States. The exemptions thus enhance the administration’s ability to make sensible and case-by-case determinations as to who to let in and who to keep out, while avoiding the perverse, and ultimately damaging, consequences of labeling key allies and victims of terrorism as terrorists.

We look forward to hearing your thoughts on this matter, and thank you for your consideration.

Sincerely,