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January 31, 2013

The Honorable Hillary Rodham Clinton  
Secretary of State  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

Dear Madam Secretary:

Thank you for your recent testimony before the Committee on Foreign Affairs. I share your expressed desire to strengthen security for our diplomats around the world, and in that context, I appreciate your accepting the recommendations of the Accountability Review Board (“ARB”) for the Benghazi attack of September 11, 2012. One of these recommendations called upon the Department to review the ARB’s authorizing statute (22 U.S.C. 4834).<sup>1</sup>

Based on that recommendation, the Department has submitted a legislative proposal to our Committee. This proposal appears to increase the ARB’s authority to recommend disciplinary action, when an employee’s unsatisfactory performance leads to a security incident. Under this proposed standard, the Board likely would have recommended disciplinary action against those “certain senior State Department officials within two bureaus in critical positions of authority and responsibility in Washington [who] demonstrated a lack of proactive leadership and management ability appropriate for the State Department’s senior ranks in their responses to security concerns posed by Special Mission Benghazi, given the deteriorating threat environment and the lack of reliable host government protection.”<sup>2</sup>

<sup>1</sup> Department of State, *Accountability Review Board for Benghazi Attack of September 2012*, December 19, 2012, p. 12.

<sup>2</sup> Department of State, *Accountability Review Board for Benghazi Attack of September 2012*, December 19, 2012, p. 39.

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While I agree that the ARB should have more discretion to make disciplinary recommendations, I do not understand why the absence of such a recommendation would prevent the Department from disciplining or firing one of its employees. During last week's testimony, in response to a question concerning the status of four Department employees who were placed on administrative leave, you implied that the Board's inability to find a breach of duty by those employees prevented their termination. You then asked Congress to produce legislation, to enable future ARBs to recommend disciplinary action for offenses that do not amount to a breach of duty.

However, it seems that current law grants the Department ample authority to discipline and pursue the separation of officials wholly apart from the ARB process. The Foreign Service Act explicitly states that "[t]he Secretary may decide to separate any member from the [Foreign] Service for such cause as will promote the efficiency of the Service," and the Foreign Affairs Manual lists "unsatisfactory performance of duties" as grounds for disciplinary action.<sup>3</sup> In sum, it appears the Department already has the power to do what it would like future ARBs to recommend.

To assist the Committee in its consideration of the Department's legislative proposal, can you please clarify what specific laws and/or regulations have prevented you from finalizing a separation for cause against the four employees discussed above?

Thank you in advance for your timely response, and please feel free to contact my staff should you need any additional information.

Sincerely,

A handwritten signature in black ink that reads "Ed. Royce". The signature is written in a cursive, slightly slanted style.

EDWARD R. ROYCE

Chairman

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<sup>3</sup> 22 U.S.C. § 4010; 3 FAM 4314 ("Grounds for Admonishment and Disciplinary Action").