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Congress of the United States

House of Representatives

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May 6, 2013

The Honorable John F. Kerry
Secretary
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

Dear Mr. Secretary:

The Committee on Oversight and Government Reform is investigating the facts and circumstances surrounding the September 11-12, 2012, attacks on U.S. diplomatic facilities in Benghazi, Libya. In the course of that investigation, numerous individuals with direct knowledge of the Benghazi terrorist attacks have been in contact with the Committee. In many cases, these witnesses - many of whom are State Department employees - have been reluctant to identify themselves publicly, fearing that their supervisors and other senior officials will retaliate against them or subject them to reprisal.

On May 8, 2013, the Committee will hold its second hearing on the Benghazi attacks. At the hearing, entitled "Benghazi: Exposing Failure and Recognizing Courage," at least two State Department employees will testify. Mr. Mark Thompson, Acting Deputy Assistant Secretary for Counterterrorism, and Mr. Gregory Hicks, Foreign Service Officer and former Deputy Chief of Mission in Libya, possess critical information about what occurred before, during, and after the Benghazi terrorist attacks. While additional witnesses may also testify, we expect that Mr. Thompson and Mr. Hicks will certainly answer many outstanding questions and raise new ones that require answers.

I applaud these individuals for answering the call to testify before the Committee. Mr. Thompson and Mr. Hicks have performed their duties as public servants admirably, and the Committee is grateful that they are assisting the investigation by giving sworn testimony. Their willingness to identify themselves publicly is courageous, especially in light of reports that the Administration has already retaliated against federal employees who have indicated an interest in sharing information with Congress.¹ The Committee considers these two gentlemen to be whistleblowers.

On April 16, 2013, I requested that Principal Deputy Legal Adviser Mary McLeod make clear to all State Department employees that they are free to furnish information to Congress in

¹ James Rosen, *Obama administration officials threatened whistle-blowers on Benghazi, lawyer says*, FOXNEWS.COM, Apr. 29, 2013, <http://www.foxnews.com/politics/2013/04/29/obama-administration-officials-have-threatened-whistle-blowers-on-benghazi>.

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accordance with their statutory rights.² I urge you to direct the Office of the Legal Adviser to take this small - but meaningful - step to assure employees that they will not face retaliation from their supervisors if they choose to communicate with Congress about the Benghazi attacks.

I also request that you and your staff make a commitment to refrain from taking any adverse personnel action or otherwise retaliating against Mr. Thompson and Mr. Hicks at any time. Other State Department employees may testify at the May 8, 2013, hearing or assist the Committee's investigation. Please make the same commitment to any additional State Department witnesses that identify themselves publicly or to the Office of the Legal Adviser. The commitment to refrain from retaliating against State Department employees who disclose information to Congress is consistent with statutory protections for whistleblowers. As you know, it is unlawful to retaliate against federal employees who report mismanagement to Congress.³ Retaliation against the Committee's witnesses may also implicate federal statutes pertaining to obstruction of a congressional investigation.⁴ These statutes carry penalties of both fines and imprisonment.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

If you have any questions about this request, please contact Jonathan Skladany of the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

² 5 U.S.C. § 7211 states: "The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied."

³ 5 U.S.C. § 2302, in pertinent part, prohibits a federal agency from taking, or failing to take, a personnel action against any employee "because of any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences (i) any violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety."

⁴ 18 U.S.C. § 1505 states, in pertinent part:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress-- Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.