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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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STAFF DIRECTOR

May 28, 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 and the Committee on Foreign Affairs are investigating the facts and circumstances surrounding the September 11-12, 2012, terrorist attacks on U.S. diplomatic facilities in Benghazi, Libya. In a series of letters, my colleagues in Congress and I have requested documents and information related to the ongoing investigation. To date, the Administration has largely ignored these requests, despite various pledges both you and the President have made to cooperate with Congress.

On November 14, 2012, President Obama committed “to cooperate in any ways that Congress wants” with respect to the Benghazi investigation.¹ President Obama also stated that “[w]e have provided every bit of information that we have, and we will continue to provide information,” and that “all that information will be disgorged to Congress.”² On April 17, 2013, in testimony before the House Committee on Foreign Affairs, you pledged to work with Congress to ensure that the State Department provides information to Congress in a timely and efficient manner.³ On April 30, 2013, you committed to work closely with Congress to resolve outstanding questions about the Benghazi attacks. Speaking to reporters at the State Department, you stated:

The American people deserve answers. I’m determined that this will be **an accountable and open State Department**, as it has been in the past. And we will continue to do that, and **we will provide answers**.⁴

¹ President Barack Obama, Remarks by the President in a News Conference (Nov. 14, 2012), <http://www.whitehouse.gov/the-press-office/2012/11/14/remarks-president-news-conference>.

² President Barack Obama, Remarks at a News Conference (Nov. 14, 2012), <http://www.whitehouse.gov/the-press-office/2012/11/14/remarks-president-news-conference>.

³ *Securing U.S. Interests Abroad: The FY 2014 Foreign Affairs Budget: Hearing before the H. Comm. on Foreign Affairs*, 113th Cong. (Apr. 17, 2013) (statement of Hon. John F. Kerry, Sec’y, U.S. Dep’t of State).

⁴ Dana Hughes, *Obama Administration Denies Benghazi Whistleblowers Being Kept Quiet*, ABC NEWS, May 1, 2013 (emphasis added).

The State Department has not lived up to the Administration's broad and unambiguous promises of cooperation with Congress. Therefore, I am left with no alternative but to compel the State Department to produce relevant documents through a subpoena. The enclosed subpoena covers documents and communications related to talking points prepared for Members of the House Permanent Select Committee on Intelligence and used by Ambassador Susan Rice during her September 16, 2012, appearances on CBS, NBC, ABC, Fox, and CNN.

The State Department is withholding documents related to the Benghazi talking points.

On April 23, 2013, five House committee chairmen sent a letter to President Obama requesting that he immediately provide all versions of the talking points and any relevant e-mails or other documents. On April 30, 2013, Counsel to the President Kathryn Ruemmler responded on behalf of the President. Ruemmler stated:

[The State Department and the Office of the Director of National Intelligence] are in the best position to consider any new or pending requests for information related to the attacks, and I therefore encourage you to continue working with these agencies on any remaining oversight interests your committees have in this matter.⁵

With that in mind, on May 15, 2013, House Foreign Affairs Committee Chairman Ed Royce and I wrote you to request the documents and communications that are covered by the enclosed subpoena.⁶ Later that day, "the White House released 100 pages of e-mails and other documents related to the preparation of the talking points provided both to Congress and to Ambassador Susan E. Rice in advance of her September 16 media appearances."⁷

On May 20, 2013, the State Department responded to our May 15, 2013, document request by forwarding those 100 pages to the Committee, with a cover letter that explained the documents included "the e-mails and other documents created by State Department personnel in connection with their participation in the interagency process led by the CIA to prepare the talking points in question."⁸

Aside from the fact that it consisted entirely of documents that had been released to the press five days earlier, the State Department's response was incomplete. The State Department's response failed to acknowledge that we requested all communications related to the talking points, to or from nine State Department officials. Despite the fact that you assigned your chief of staff, David Wade, to be responsible for managing the response to the congressional

⁵ Letter from Hon. Kathryn H. Ruemmler, Counsel to the President, to Chairmen Howard P. "Buck" McKeon, Mike Rogers, Ed Royce, Bob Goodlatte, & Darrell E. Issa (Apr. 30, 2013).

⁶ Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, and Hon. Ed Royce, Chairman, H. Comm. on Foreign Affairs, to Hon. John F. Kerry, Sec'y, U.S. Dep't of State (May 15, 2013).

⁷ Letter from Thomas B. Gibbons, Acting Ass't Sec'y, Legislative Affairs, U.S. Dep't of State, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (May 20, 2013).

⁸ *Id.*

investigation, the Department has given no indication that it intends to produce these documents voluntarily.

The documents being withheld are crucial to the Committee's investigation.

The documents the White House released on May 15, 2013, did not answer outstanding questions about who at the State Department, other than spokesperson Victoria Nuland, expressed reservations about certain aspects of the talking points, including language that made clear the State Department had received prior warnings of threats in the region and was aware of previous attacks on foreign interests in eastern Libya, and that extremists linked to al Qa'ida may have participated in the attacks. Nuland's correspondence to the interagency suggests that she did not raise these concerns in a vacuum. For example, after changes were made to address State Department concerns, Nuland responded that the changes did not "resolve all my issues **or those of my building leadership.**"⁹

The fact that the reference to Islamic extremists was removed from the final version of the talking points is notable. According to an e-mail from Acting Assistant Secretary for Near Eastern Affairs Beth Jones, on September 12, 2013, some senior State Department leadership believed that Islamic extremists did in fact play a prominent role in the attacks. Jones wrote:

I spoke to the Libyan Ambassador. . . . When he said his government suspected that former Qaddafi regime elements carried out the attacks, I told him that the group that conducted the attacks – Ansar al Sharia – is affiliated with Islamic [extremists].¹⁰

The documents the enclosed subpoena covers will help the Committee understand why, although on the day after the attacks senior State Department leadership believed that Islamic extremists were involved, there were reservations about publicly acknowledging any such involvement just three days later. This issue is at the heart of the Committee's ongoing investigation.

The various iterations of the Benghazi talking points and related e-mails are critical to our effort to understand how and why officials at the State Department, the White House, and other agencies revised the message that would be shared with Congress and the public in the wake of terrorist attacks that claimed the lives of four Americans. Publicly available information about the talking points creates the appearance that Administration officials were interested in sparing the State Department from political criticism in the wake of the attacks.

The State Department is withholding or restricting the Committee's access to other key documents.

⁹ E-mail from Victoria Nuland to unnamed staff (Sept. 14, 2012, 9:24 p.m.), available at <http://www.cnn.com/interactive/2013/05/politics/white-house-benghazi-emails/> (emphasis added) (last accessed May 23, 2013).

¹⁰ *Benghazi: Exposing Failure and Recognizing Courage: Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (May 8, 2013) (statement of Rep. Trey Gowdy).

The State Department has ignored or otherwise failed to cooperate with a number of document requests besides the ones described above.¹¹ For example, this Committee and the House Committee on Foreign Affairs have submitted multiple requests for documents and information the Accountability Review Board on Benghazi reviewed or produced. This information was first requested on January 28, 2013.¹² The State Department's response on March 23, 2013 contained no relevant documents. The Committees followed up with a second request for this information on April 15, 2013.¹³ These requests remain unanswered.

In addition, despite multiple requests, the Department continues to refuse to turn over any documents, including unclassified materials, to the Committee on a permanent basis. Instead, the Department uses a courier to deliver boxes containing thousands of relevant documents to the Committee's offices every day. A Department minder sits and watches Committee investigators review them. No documents, even unclassified material, are allowed to leave the room, even temporarily, and all documents are returned to the Department at the end of each day.

The use of compulsory process is necessary to obtain documents from the State Department.

I prefer to advance the Committee's investigation without having to use the compulsory process to obtain the entire universe of documents that the Department has withheld from Congress. With that in mind, the enclosed subpoena is narrowly tailored to cover documents and communications related to the Benghazi talking points. It is my hope that you will reconsider the Department's posture towards congressional oversight and produce documents voluntarily going forward, as you and the President have repeatedly committed to do.

In light of your continuing refusal to provide documents in response to my requests, however, I have found it necessary to issue a subpoena to compel documents related to the Benghazi talking points. This subpoena creates a legal requirement that you produce the specified documents to room 2157 of the Rayburn House Office Building no later than 12:00 noon on Friday, June 7, 2013. The subpoena covers all documents and communications referring or relating to the Benghazi talking points, to or from the following current and former State Department personnel:

1. William Burns, Deputy Secretary of State;
2. Elizabeth Dibble, Principle Deputy Assistant Secretary for Near Eastern Affairs;
3. Beth Jones, Acting Assistant Secretary for Near Eastern Affairs;

¹¹ See, e.g., Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, Hon. Jason Chaffetz, Chairman, Subcomm. on Nat'l Security, Homeland Defense & Foreign Ops., & Hon. Edward R. Royce, Chairman, H. Comm. on Foreign Affairs, to Hon. Hillary Clinton, Sec'y, U.S. Dep't of State (Jan. 28, 2013) [hereinafter Jan. 28, 2013 Letter]; Letter from Chairman Darrell Issa, Chairman Jason Chaffetz, & Chairman Edward R. Royce to Sec'y John Kerry (Apr. 15, 2013) [hereinafter Apr. 15, 2013 Letter].

¹² Jan. 28, 2013 Letter, *supra* note 12.

¹³ Apr. 15, 2013 Letter, *supra* note 12.

The Honorable John F. Kerry


May 28, 2013

Page 5

4. Patrick Kennedy, Under Secretary for Management;
5. Cheryl Mills, Counselor and Chief of Staff to former Secretary of State Hillary Clinton;
6. Thomas Nides, Deputy Secretary for Management;
7. Victoria Nuland, Spokesperson;
8. Philippe Reines, Deputy Assistant Secretary;
9. Jake Sullivan, Director of Policy Planning; and,
10. David Adams, Assistant Secretary for State for Legislative Affairs.

Thank you for your attention to this important matter. Please contact Brien Beattie or Jonathan Skladany of the Committee staff at (202) 225-5074 with any questions about this request.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Darrell Issa', is written over the printed name.

Darrell Issa
Chairman

Enclosure

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