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Congress of the United States

House of Representatives

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September 10, 2013

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

Dear Mr. Secretary:

As part of the Committee on Oversight and Government Reform's ongoing investigation into the facts and circumstances surrounding the September 11, 2012, attacks on U.S. facilities in Benghazi, on August 14, 2013, the Committee requested that State Department survivors of the attacks appear for transcribed interviews.¹ In keeping with the overall lack of cooperation with this investigation, State Department officials informed Committee staff on August 23, 2013, that it was "not prepared to support the request for transcribed interviews."²

The survivors of the attacks are the only people who can give testimony to the Committee about what happened on the ground in Benghazi. They alone can describe the warning signals that should have put the compound on alert,³ the details of the attacks throughout the night of September 11-12, and the response to the attack by Americans and Libyans who were paid to guard the facility. Details provided by the survivors will not only help the Committee determine what took place during the attack, but will also help the Committee and other interested parties determine ways to prevent future tragedies. In short, their testimony is key in order to understand what took place in Benghazi and it is likely for this very reason, the Accountability Review Board (ARB) interviewed them. In fact, the ARB started its review by interviewing

¹ E-mail from H. Comm. on Oversight & Gov't Reform Majority Staff, to Joshua Dorosin, Office of the Legal Adviser, U.S. Dep't of State (Aug. 14, 2013, 3:16 p.m.).

² E-mail from Theodore Chuang, Office of the Legal Adviser, U.S. Dep't of State, to H. Comm. on Oversight & Gov't Reform, Majority Staff (Aug. 23, 2013, 11:26 a.m.).

³ For example, according to a recent *Vanity Fair* article, a Supreme Security Council vehicle pulled up to the compound before the driver suddenly "fired up his engine and headed west[.]" Further, Information Management Officer Sean Smith told "the director of his online-gaming guild" that one of the police that guarded the facility was seen taking pictures. Fred Burton & Samuel M. Katz, *40 Minutes in Benghazi*, VANITY FAIR (Aug. 2013), available at <http://www.vanityfair.com/politics/2013/08/Benghazi-book-fred-burton-samuel-m-katz>. The Committee cannot know what other warning signs may have been present without speaking with the witnesses who could have seen them.

these key witnesses.⁴ The ARB considered the surviving eyewitnesses to the attack to be part of a “core group” of witnesses.⁵

Furthermore, the ARB recommended that the Department establish a panel of outside independent experts to identify best practices and evaluate security issues at diplomatic posts around the world.⁶ That panel, chaired by former U.S. Secret Service Director Mark Sullivan, enjoyed the Department’s full support, with unfettered access to documents and personnel.⁷ The panel met with over 200 people, including at least one individual whom the Department is now refusing to make available to the Committee.⁸

Although the State Department has refused to make these witnesses available for interviews, it appears that they have spoken with media outlets. A recent article in *Vanity Fair* described in great detail the events that happened on September 11, 2012, – including details that only persons who survived the attack could possibly know.⁹ Similarly, *Fox News* reported in late July that it had made direct contact with David Ubben, one of the survivors the Committee seeks to interview.¹⁰ Ubben is a particularly important witness, as he is one of the few people who witnessed and survived all attacks that night on the Benghazi facility. The Department maintains that it did not arrange or otherwise permit media interviews with survivors of the attacks. If that is true, then it is unclear how reporters obtained detailed information from the survivors without the assistance of the Department. It is also unclear what, if any, repercussions employees face for unauthorized discussions with the media. It is highly unlikely, however, that, given the sensitive nature of this matter, witnesses would have spoken with the media about the Benghazi attacks without coordination or other approval by the State Department.

The State Department has further restricted the Committee’s access to these witnesses, claiming that they must be insulated from congressional investigators as they “would very likely be witnesses in any criminal proceedings relating to the Benghazi attacks.”¹¹ The Committee routinely speaks with law enforcement officials who may be witnesses in various criminal proceedings. The existence of a parallel criminal investigation, in particular one that has produced few if any tangible results, does not obviate the need for effective congressional oversight. The Department’s concerns about jeopardizing law enforcement efforts were not at issue during its own internal ARB investigation, and should not be an issue with the

⁴ Transcribed Interview of Adm. Michael Mullen by H. Comm. on Oversight and Gov’t Reform staff (June 19, 2013), at 21-22.

⁵ *Id.*

⁶ Trevor Aaronson, *Exclusive: Benghazi report details security flaws at US diplomatic posts*, AL JAZEERA AMERICA, Sept. 3, 2013, <http://america.aljazeera.com/articles/2013/9/3/exclusive-benghazireportdetailsssecurityflawsatusdiplomaticposts.html>.

⁷ *Id.*

⁸ *Id.*

⁹ Fred Burton & Samuel M. Katz, *40 Minutes in Benghazi*, VANITY FAIR (Aug. 2013), available at <http://www.vanityfair.com/politics/2013/08/Benghazi-book-fred-burton-samuel-m-katz>.

¹⁰ Catherine Herridge, *Benghazi here fought alongside fallen SEALs, still recovering at Walter Reed*, FOX NEWS (July 25, 2013), available at <http://www.foxnews.com/politics/2013/07/25/exclusive-benghazi-hero-wounded-in-action-identified-recovering-at-walter-reed/>.

¹¹ E-mail from Theodore Chuang, Office of the Legal Adviser, U.S. Dep’t of State, to H. Comm. on Oversight & Gov’t Reform, Majority Staff (Aug. 23, 2013, 11:26 a.m.).

congressional investigation. Furthermore, the Department's claims that it needs to "insulate" witnesses "from any perception of political influence or political accountability in fulfilling their responsibilities" actually creates the impression that the Department is exerting its own political influence to prevent survivors from speaking to Congress.

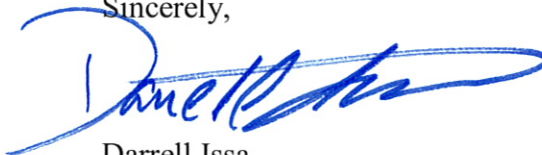
The President pledged "to cooperate in any ways that Congress wants" with respect to the Benghazi investigation.¹² The President further stated that "[w]e have provided every bit of information that we have, and we will continue to provide information. . . . All that information will be disgorged to Congress."¹³ Similarly, you committed to work closely with Congress to resolve outstanding questions about the Benghazi attacks. Speaking with 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.**¹⁴

The State Department has not lived up to these unequivocal commitments to "provide answers." Instead, the Department has attempted to limit the Committee's access to important documents and information, including witnesses such as the Benghazi survivors.

While the Committee is willing to assist in any of the special needs of the Benghazi survivors, it is imperative that Congress hear their stories. I must receive confirmation that the Department will make these witnesses available to Committee investigators by September 24, 2013. Otherwise, I will have no alternative but to consider the use of compulsory process. Please instruct your staff to contact Jonathan Skladany or Brien Beattie of the Majority staff at (202) 225-5074 to make arrangements to schedule these interviews without further delay.

Sincerely,



Darrell Issa
Chairman

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

¹² President Barack Obama, Remarks at a News Conference (Nov. 14, 2012), *available at* <http://www.whitehouse.gov/the-press-office/2012/11/14/remarks-president-news-conference>.

¹³ *Id.*

¹⁴ Dana Hughes, *Obama Administration Denies Benghazi Whistleblowers Being Kept Quiet*, ABC NEWS, May 1, 2013 (emphasis added).