

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
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WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

January 29, 2015

The Honorable Chuck Hagel  
Secretary  
U.S. Department of Defense  
Washington, DC 20301

Dear Mr. Secretary:

The Committee on Oversight and Government Reform is conducting oversight of the U.S. Army's investigation of, and disposition of charges against, Sergeant Bowe Bergdahl. It is our understanding that the matter has been referred to the General Courts Martial Convening Authority and that General Mark Milley will announce his decision with respect to whether to charge Sgt. Bergdahl soon.<sup>1</sup> So that the Committee can better understand the investigative process and the final disposition of the Bergdahl case, we are writing to request documents and information related to the Article 32 investigation and Gen. Milley's final determination.

On June 18, 2014, the House Committee on Foreign Affairs conducted a joint subcommittee hearing on the prisoner exchange involving Sgt. Bergdahl and five Taliban members previously detained at the Guantanamo Bay detention facility.<sup>2</sup> During the hearing, witnesses testified that Sgt. Bergdahl's departure from his post in Afghanistan may have been premeditated.<sup>3</sup> Several of Sgt. Bergdahl's former platoon members have publicly expressed the belief that Sgt. Bergdahl's departure from his post constituted desertion, and that Sgt. Bergdahl's fellow soldiers risked their lives to find him.<sup>4</sup> In December 2014, the Pentagon issued a statement that said Gen. Milley will "determine appropriate action—which ranges from no further action to convening a court-martial."<sup>5</sup> In light of the nature of the allegations against Sgt. Bergdahl, and the extraordinary measures to secure his return, we believe the Committee has a right to know what information Gen. Milley relied on when making the final determination with respect to Sgt. Bergdahl, and the process by which he made the decision.

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<sup>1</sup> Richard Sisk, *Dempsey Expects Bergdahl Court-Martial Decision 'Fairly Soon,'* MILITARY.COM NEWS, Jan. 12, 2015, available at <http://www.military.com/daily-news/2015/01/12/dempsey-expects-bergdahl-court-martial-decision-fairly-soon.html> (last accessed Jan. 20, 2015).

<sup>2</sup> *The Bergdahl Exchange: Implications for U.S. National Security Strategy and the Fight Against Terrorism: Joint Hearing Before the Subcomm. on Terrorism, Nonproliferation, and Trade, and the Subcomm. on the Middle East and North Africa, H. Comm. on Foreign Affairs, 113th Cong.* (2014).

<sup>3</sup> *Id.*

<sup>4</sup> See, e.g., Jake Tapper, *Fellow Soldiers Call Bowe Bergdahl a Deserter, Not a Hero*, CNN, June 4, 2014, available at <http://www.cnn.com/2014/06/01/us/bergdahl-deserter-or-hero>.

<sup>5</sup> News Release, Dep't of Def., Statement by U.S. Army on Sgt. Bowe Bergdahl Investigation, Release No: NR-628-14 (Dec. 22, 2014), available at <http://www.defense.gov/Releases/Release.aspx?ReleaseID=17087> (last accessed Jan. 20, 2015).

The Uniform Code of Military Justice (UCMJ) recognizes the importance of allowing the Convening Authority to operate without command influence.<sup>6</sup> Article 37 of the UCMJ states, in pertinent part, that “[n]o person . . . may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case.”<sup>7</sup> The Committee recognizes the Army’s interest in protecting the Convening Authority process from interference. With that in mind, please provide the following documents immediately after Gen. Milley announces his decision with respect to Sgt. Bergdahl:

1. The Article 32 investigation forwarded to the Convening Authority on December 22, 2014, including the written recommendation by the investigating officer, Major General Dahl to the Convening Authority, General Milley;
2. The Article 34 recommendation from the legal advisor to the Convening Authority regarding the disposition of charges;
3. The written determination by the Convening Authority, General Milley; and,
4. The 2009 investigation into Sgt. Bergdahl’s disappearance from post on June 30, 2009.

In addition, we request that you designate officials within the Department to provide a briefing to the Committee staff as soon as possible, but no later than one week after the Convening Authority announces its decision.

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.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter contains additional instructions for responding to the Committee’s request.

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<sup>6</sup> UCMJ art. 37(a).

<sup>7</sup> *Id.*

If you have any questions about this request, please contact Art Arthur of Chairman Chaffetz' staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman



Ron DeSantis  
Chairman  
Subcommittee on National Security

cc: The Honorable Elijah E. Cummings, Ranking Minority Member  
Committee on Oversight and Government Reform

The Honorable Stephen F. Lynch, Ranking Minority Member  
Subcommittee on National Security

The Honorable Bob Goodlatte, Chairman  
House Committee on the Judiciary

The Honorable John Conyers, Jr., Ranking Minority Member  
House Committee on the Judiciary

The Honorable Mac Thornberry, Chairman  
House Committee on Armed Services

The Honorable Adam Smith, Ranking Minority Member  
House Committee on Armed Services

The Honorable Edward R. Royce, Chairman  
House Committee on Foreign Affairs Committee

The Honorable Eliot L. Engel, Ranking Minority Member  
House Committee on Foreign Affairs

Enclosure