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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051

<http://oversight.house.gov>

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May 3, 2013

The Honorable Chuck Hagel
Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301

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. The investigation continues in spite of the Administration's efforts to limit the Committee's access to documents and witnesses, as described in my April 24, 2013, letter to Secretary of State John Kerry.

Numerous individuals have approached the Committee to provide information related to the Benghazi attacks. Some of these witnesses have described mismanagement by senior administration officials related to the attacks and subsequent attempts to obstruct the congressional investigation. Witnesses who have contacted the Committee are concerned that providing information to Congress may expose them to retaliation from Department leadership.

With that in mind, I previously requested that Acting General Counsel Robert Taylor make clear to all Defense Department employees that they are free to furnish information to Congress in accordance with their statutory rights.¹ The Department still has not taken 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.

To the contrary, it appears that the Administration is attempting to intimidate employees who cooperate with the Committee's investigation. Victoria Toensing, counsel for a witness in the investigation of the Benghazi attacks, recently revealed that Obama Administration officials have threatened her client and others.² She stated:

¹ 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."

² 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>.

They're doing some very despicable threats to people. . . . **They're taking career people and making them well aware that their careers will be over** [if they cooperate with congressional investigators].³

These allegations are serious because retaliation against employees who communicate with Congress does grave harm to those brave individuals who report mismanagement at their own risk and creates a chilling effect on other employees who may be considering coming forward to assist the Committee.

It is also unlawful to retaliate against federal employees who report mismanagement to Congress.⁴ Members of the armed forces have additional statutory protections from retaliation for communicating with Congress.⁵ Retaliation occurs whenever a federal agency takes an adverse personnel action against a whistleblower because he or she communicated with Congress.⁶ The mere threat of an adverse personnel action interferes with the investigative process by discouraging employees from disclosing relevant information to Committee investigators. Federal statutes that cover obstruction of a congressional investigation prohibit interference with the Committee's access to information.⁷ These statutes carry penalties of both fines and imprisonment.

The retaliation and obstruction statutes prohibit a wide range of actions. Threats of the sort that Ms. Toensing described are certainly covered. Prohibited actions also include, but are not limited to, asking employees to discuss their meetings and conversations with Committee

³ *Id.* (emphasis added) (parenthetical in original).

⁴ 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.

⁵ 10 U.S.C. § 1034(a)(1) states that: "No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General." In addition, 10 U.S.C. § 1034(b) (1)(A) & (B)(i) further provide that: "No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing a communication to a Member of Congress or an Inspector General . . . or . . . a communication . . . that is made (or prepared to be made) to (i) a Member of Congress. . . ." Finally, 10 U.S.C. § 1034(b)(2) provides, in pertinent part: "Any action prohibited by paragraph (1) (including the threat to take any unfavorable action and the withholding or threat to withhold any favorable action) shall be considered for the purposes of this section to be a personnel action prohibited by this subsection."

⁶ *Id.*

⁷ 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.

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investigators, withholding clearance for attorneys to discuss sensitive or classified information with their whistleblower clients, or otherwise discouraging employees to speak with Committee investigators. To protect the integrity of the investigation, the Committee asks witnesses not to divulge any information about their participation in it.

I request that you make clear to Defense Department employees that they are free to furnish information to Congress in accordance with their statutory rights, and that the Department will not retaliate against employees who choose to exercise those rights.

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,

A handwritten signature in blue ink, appearing to read "Darrell Issa", with a large, sweeping flourish extending to the right.

Darrell Issa
Chairman

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