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# 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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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.<sup>1</sup> 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.”<sup>2</sup> 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.<sup>3</sup> 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**.<sup>4</sup>

<sup>1</sup> 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>.

<sup>2</sup> 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>.

<sup>3</sup> *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).

<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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."<sup>7</sup>

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."<sup>8</sup>

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

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<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> *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.**"<sup>9</sup>

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].<sup>10</sup>

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.***

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<sup>9</sup> 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).

<sup>10</sup> *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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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;

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<sup>11</sup> 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].

<sup>12</sup> Jan. 28, 2013 Letter, *supra* note 12.

<sup>13</sup> Apr. 15, 2013 Letter, *supra* note 12.

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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,



Darrell Issa  
Chairman

Enclosure

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

**SUBPOENA**

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE  
CONGRESS OF THE UNITED STATES OF AMERICA**

To The Honorable John F. Kerry

You are hereby commanded to be and appear before the Committee on Oversight and Government Reform

of the House of Representatives of the United States at the place, date and time specified below.

- to testify** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

- to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2157 Rayburn House Office Building, Washington, D.C. 20515

Date: June 7, 2013

Time: 12:00 noon

To any authorized staff member or the U.S. Marshals Service

\_\_\_\_\_ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States,  
at the city of Washington, this 25<sup>th</sup> day of May, 2013.

  
\_\_\_\_\_  
Chairman or Authorized Member

Attest:  
Karen P. Naan  
Clerk

## SCHEDULE

In accordance with the attached schedule instructions, you, John F. Kerry, are required to produce all records in unredacted form described below:

1. All documents and communications referring or relating to the Benghazi talking points, to or from the following individuals:
  - a. David Adams;
  - b. William Burns;
  - c. Elizabeth Dibble;
  - d. Beth Jones;
  - e. Patrick Kennedy;
  - f. Cheryl Mills;
  - g. Thomas Nides;
  - h. Victoria Nuland;
  - i. Philippe Reines; and,
  - j. Jake Sullivan.

### Schedule Instructions

1. In complying with this subpoena, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Subpoenaed records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this subpoena has been, or is also known by any other name than that herein denoted, the subpoena shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the subpoena was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the subpoenaed information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the subpoena cannot be made in full by June 7, 2013 at 12:00 noon, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided no later than June 6, 2013 at 12:00 noon.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this subpoena is from September 11, 2012 to May 28, 2013.
16. This subpoena is continuing in nature and applies to any newly-discovered information as to the time period September 11, 2012 to May 28, 2013. Any responsive record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered 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.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

## Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

7. The term “Benghazi talking points” means the talking points prepared for Members of the House Permanent Select Committee on Intelligence regarding attacks on U.S. diplomatic facilities in Benghazi, Libya on September 11-12, 2012, and used by Ambassador Susan Rice during her September 16, 2012 appearances on CBS, NBC, ABC, Fox, and CNN.