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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

July 1, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable James B. Comey, Jr.
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535

Dear Attorney General Lynch and Director Comey:

On June 22, 2015, the Department of Defense (DoD) announced the death of Ali Awni al Harzi, a Tunisian ISIS operative who was involved in the September 11, 2012, attack against U.S. personnel in Benghazi, Libya.¹ According to the DoD, al Harzi was killed in an airstrike in Mosul, Iraq on June 15, 2015.

While it is reassuring that al Harzi will no longer be able to commit terrorist acts, it is deeply troubling that, despite being detained by Turkey and Tunisia in 2012, and questioned by the FBI as part of the Benghazi investigation, he nonetheless was subsequently able to join ISIS in fighting in Iraq. The FBI has the primary responsibility for the Benghazi investigation, and the Department of Justice assigned the responsibility for any Benghazi prosecutions to its U.S. Attorney for the District of Columbia.² Although al Harzi was on our radar in 2012 for his terrorist activities, he somehow slipped out of our government's reach, only to continue his terrorist career for years. This raises important questions about the Obama administration's

¹ <http://www.defense.gov/news/newsarticle.aspx?id=129101>.

² Michael S. Schmidt, *Holder Decision on Benghazi Case Reverberates*, THE NEW YORK TIMES, Oct. 17, 2014, available at <http://www.nytimes.com/2014/10/18/us/holder-decision-on-benghazi-case-reverberates.html>.

policies and procedures related to the apprehension, interrogation, and detention of terrorists and the roles of the Justice Department and the FBI.

According to the UN's official designation of him as a terrorist, al Harzi "[p]lanned and perpetrated the attack against the Consulate of the United States in Benghazi, Libya on 11 Sep. 2012."³ Indeed, it has been reported that video taken on the night of the attack placed him at the consulate⁴ and that he posted a social media update about the attack shortly after it began.⁵ In October of 2012, al Harzi was arrested in Turkey and extradited to Tunisia on charges of membership in a terrorist organization.⁶ In response to reports that the Tunisian government was refusing to allow U.S. investigators access to al Harzi, Senators Graham and Chambliss pressed the Tunisians for such access, and Senator Chambliss met with the FBI to emphasize the need for direct access to him.⁷ In December of 2012, FBI agents interviewed al Harzi in Tunisia.⁸ In response, members of al Harzi's al Qaeda-linked group reportedly released pictures of the interviewing FBI agents to jihadist websites.⁹ Regardless, in January of 2013, a Tunisian judge, over the objections of Tunisia's attorney general's office,¹⁰ released al Harzi from custody.¹¹ In response to media inquiries about the release, both the State Department and the Department of Defense refused to answer questions, asserting that the FBI was the lead agency handling the al Harzi situation, and directing all media inquiries about al Harzi to the FBI.

At the time, members of Congress also expressed their concerns about al Harzi's release. In a hearing on the Benghazi attacks held by the Senate Foreign Relations Committee in January of 2013, then-Secretary Clinton responded to these concerns, stating:

Upon [al Harzi's] release, I called the Tunisian prime minister. A few days later Director Mueller met with the Tunisian prime minister. We have been assured that he is under the monitoring of the court. He was released, because at the time – and Director Mueller and I spoke about this at some length – there was not an ability for evidence to be presented yet that was capable of being presented in open court. But the Tunisians have assured us that they are keeping an eye on him. I have no reason to believe he is not still in Tunis, but we are checking that all the time.

³ <http://www.un.org/press/en/2015/sc11856.doc.htm>.

⁴ Luis Martinez, *Key Suspect in Benghazi Attack Killed in US Airstrike in Iraq*, ABC NEWS, June 22, 2015, available at <http://abcnews.go.com/Politics/key-suspect-benghazi-attack-killed-us-airstrike-iraq/story?id=31953157>.

⁵ Eli Lake, *Benghazi Suspect Held in Tunisia*, THE DAILY BEAST, Oct. 23, 2012, available at <http://www.thedailybeast.com/articles/2012/10/23/benghazi-suspect-held-in-tunisia.html>.

⁶ Bouazza Ben Bouazza, *FBI Questions Benghazi Consulate Attack Suspect*, ASSOCIATED PRESS, Dec. 22, 2012, available at <http://news.yahoo.com/fbi-benghazi-consulate-attack-suspect-154510084.html>.

⁷ *Senators: US Gets Access to Libya Attack Suspect*, ASSOCIATED PRESS, Nov. 2, 2012.

⁸ *Id.*

⁹ Thomas Joscelyn, *Ansar al Sharia Tunisia Releases Pictures of FBI Agents*, THE LONG WAR JOURNAL, Dec. 23, 2012, available at http://www.longwarjournal.org/archives/2012/12/ansar_al_sharia_tuni_1.php.

¹⁰ Bouazza Ben Bouazza, *Tunisian Prosecutors Opposed Freeing Libya Suspect*, Associated Press, Jan. 10, 2013, available at <http://news.yahoo.com/tunisian-prosecutors-opposed-freeing-libya-suspect-170306370.html>.

¹¹ Thomas Joscelyn, *Why is Ali Harzi Still at Large?*, THE WEEKLY STANDARD, Oct. 21, 2013, available at http://www.weeklystandard.com/articles/why-ali-harzi-still-large_762276.html.

Secretary Clinton similarly stated to the House Committee on Foreign Affairs that the Tunisians had made “a very clear commitment [. . .] to us that they will be monitoring the whereabouts of Harzi and we’re going to hold them to that and watch carefully.”

Clearly that was not the case. As noted in press reports, al Harzi was subsequently responsible for planning hundreds of suicide attacks around the world, was one of the first foreign fighters to join ISIS, and was responsible for recruiting foreign fighters and sending them to the fight in Syria.¹² According to the New York Times, “[h]e recruited fighters from Europe and North Africa, helped them travel to Iraq and Syria, procured weapons and other matériel, and organized attacks. [. . .H]is links with ISIL recruitment and financial networks in such locations as Europe, Africa and the Persian Gulf helped ISIL expand from a local group to a more globalized organization.”¹³

In order to evaluate the Obama administration’s handling of al Harzi and its overall approach to the apprehension, interrogation, and detention of terrorists, please answer the following questions and provide the requested materials by July 22, 2015:

1. Please provide all records relating to the terrorist designation of al Harzi by the United States government in April 2015.
2. Please provide all records relating to al Harzi’s arrest and detention in Turkey in October 2012.
3. What role, if any, did the United States government play in al Harzi’s arrest?
4. Did the United States government seek to interview al Harzi in Turkey? If not, why not?
5. Did the United States government seek to extradite al Harzi from Turkey? If so, please provide all records relating to the request and the response. If not, why not?
6. Please provide all records relating to the United States government’s request to interview al Harzi in Tunisia.
7. Please provide all records relating to the FBI’s 2012 interview with al Harzi, including any transcripts or FD-302s.
8. Was al Harzi ever interrogated by the High-Value Interrogation Group? If so, please provide copies of all related records. If not, why not?

¹² *US Says IS Suspect in Benghazi Attack Killed in Airstrike*, ASSOCIATED PRESS, June 22, 2015, available at <http://bigstory.ap.org/article/354649d910734b40af3f4aca5f2d0a9c/us-says-suspect-benghazi-attack-killed-airstrike>.

¹³ Helene Cooper and Eric Schmitt, *U.S. Says Drone Killed an ISIS Operative*, THE NEW YORK TIMES, June 23, 2015, available at http://www.nytimes.com/2015/06/23/world/middleeast/us-says-drone-killed-an-isis-operative.html?_r=0.

9. Please provide all records relating to communications about al Harzi's detention and criminal trial in Tunisia.
10. Did the United States government provide any assistance to the Tunisian government in connection with al Harzi's criminal trial in Tunisia? If not, why not?
11. Did the government request al Harzi's extradition from Tunisia? If so, please provide all records relating to the request and the response. If not, why not?
12. Please provide all records relating to then-Director Mueller's meeting with the Tunisian prime minister.
13. Please provide all records relating to the communications between then-Director Mueller and then-Secretary Clinton about al Harzi, including documents relating to discussions about the problems with presenting the evidence against al Harzi in open court, which then-Secretary Clinton acknowledged in her statement to the Senate Foreign Relations Committee.
14. Was a request made to use classified information as evidence in a criminal case against al Harzi? If so, was such a request granted? Please provide copies of all such evidence, all documents relating to requests to use the evidence in a criminal case, and all documents relating to discussion and decisions on the issue. If not, why not?
15. Did anyone from the US Attorney's Office, the FBI, or any other component of the Justice Department seek authorization to prosecute al Harzi? If not, why not? If so, please provide all records related to that request.
16. Did anyone from the U.S. Attorney's Office, the FBI, or any other component of the Justice Department prepare a prosecution memorandum related to al Harzi? If so, please provide a copy of that memorandum and all records relating to any decision on the issue. If not, why not?
17. Was al Harzi considered for law-of-war detention pursuant to the Authorization for Use of Military Force at any time, rather than an Article III prosecution? If so, please provide all records relating to such consideration. If not, why not?
18. Was anyone in the Department involved in or otherwise aware of any consideration of the use of a military operation to take custody of al Harzi at any time, similar to what was reportedly later undertaken to take custody of his fellow Benghazi attacker, Abu Khattala? If so, please provide all documents relating to such consideration.

19. Did the FBI or any other component of the Justice Department know of the terms of Tunisia's promised monitoring of al Harzi? If so, please describe them and provide all related records.

20. Did the FBI or any other component of the Justice Department receive updates from Tunisia about al Harzi's whereabouts and activities? If so, when did they cease? Please provide copies of any such reports.

Please number your answers according to their corresponding questions. If any of these documents are classified, please deliver them to the Office of Senate Security. If you have any questions about this request, feel free to contact Patrick Davis of my Committee staff at (202) 224-5225. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on the Judiciary