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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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January 15, 2016

VIA ELECTRONIC TRANSMISSION

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

Dear Secretary Kerry:

On June 22, 2015, the Department of Defense announced that the U.S. had killed the Tunisian terrorist Ali Awni al Harzi in an airstrike against ISIS targets in Mosul, Iraq.¹ On July 1, 2015, I wrote to Attorney General Lynch and FBI Director Comey regarding prior efforts by the FBI and the Department of Justice (DOJ) to bring al Harzi to justice. I write today to inquire about the State Department's actions in conjunction with those efforts.

According to the United Nations' official designation of al Harzi as a terrorist, he "[p]lanned and perpetrated the attack against the Consulate of the United States in Benghazi, Libya on 11 Sep. 2012."² In October of 2012, al Harzi was detained in Turkey as a suspect in the attack and sent to Tunisia on charges of membership in a terrorist organization.³ The State Department reportedly played a role in efforts to persuade the Tunisian government to allow the FBI access to al Harzi, including a meeting between Deputy Secretary of State William Burns and a senior Tunisian foreign ministry official.⁴ After this initial reluctance by the Tunisian

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

² <http://www.un.org/press/en/2015/sc11856.doc.htm>.

³ 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>.

⁴ Larry Margasak, *Senators: U.S. Gets Access to Libya Attack Suspect*, THE SEATTLE TIMES, Nov. 2, 2012 ("Deputy Secretary of State William Burns met Thursday with Hedi Ben Abbes, a senior Tunisian foreign ministry official, but there were no details on the meeting.") available at <http://www.seattletimes.com/seattle-news/politics/senators-us-gets-access-to-libya-attack-suspect/>.

government to let the FBI speak with al Harzi, and subsequent intervention by Senators Graham and Chambliss, the FBI questioned al Harzi in Tunisia in December of 2012.⁵ In response, members of al Harzi's al Qaeda-linked group reportedly released pictures of the interviewing FBI agents to jihadist websites.⁶ Nonetheless, rather than being tried for any offense by the Tunisian court or transferred to U.S. custody, al Harzi was released from Tunisian custody in January of 2013.⁷ His al Qaeda-linked group posted a celebratory video of his release online.⁸

In multiple Congressional hearings that same month, then-Secretary of State Clinton responded to Congressional concerns about al Harzi's release. She acknowledged that al Harzi was a suspect in the Benghazi attacks and stated that his release stemmed from an issue at the time regarding the availability of evidence "that could be provided in an open court" in Tunisia. She testified that, despite al Harzi's release, the Tunisian government had assured the U.S. government that it was monitoring him and that he was forbidden to leave Tunis. Secretary Clinton further assured Congress that the State Department would hold the Tunisians to that pledge and would monitor the situation carefully.

Specifically, in a hearing before the Senate Foreign Relations Committee, she provided the following explanation and assurance:

Senator Risch: Only one person has been arrested regarding the attack on Benghazi and was then released. [...]

Secretary Clinton: [...] I think you're referring to the Tunisian, Harzi, who appeared in a Tunisian court. Upon his 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 that 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 an 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.⁹

In a hearing before the House Foreign Affairs Committee, Secretary Clinton and Representative Poe had the following exchange:

Rep. Poe: As of today, several months later, after the attack in Benghazi, has, to your knowledge, any person been put currently in

⁵ *Id.*; *supra* note 4.

⁶ 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.

⁷ 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.

⁸ *Id.*

⁹ *Benghazi: The Attacks and The Lessons Learned: Hearing Before the Senate Foreign Relations Committee*, 113th Cong. (2013), available at <http://www.c-span.org/video/?310496-1/senate-hearing-benghazi-consulate-attack> (56:16-57:14).

custody anywhere by any government for the responsibility or as a suspect involved in the Benghazi attack?

Secretary Clinton: Congressman, there is one potential suspect who has been placed under monitoring by the Tunisian government. [...]

Rep. Poe: My understanding is that the Tunisian, the person that was held in Tunisia was released by a judge there [...]

Secretary Clinton: Well, Congressman, I confirmed with Director Mueller, who was just in Tunisia meeting with their high officials that this person is basically under law enforcement surveillance and forbidden to leave Tunis. Director Mueller told me that that had been confirmed to him by the Tunisians.¹⁰

Later in that hearing, she had the following exchange with then-Representative Cotton:

Rep. Cotton: Both the Chairman and Mr. Poe have referenced a Tunisian suspect who has been released, I believe that's Mr. Ali Harzi, on January 8th it was reported in the New York Times. Do you find it distressing that the Tunisian government has released that gentleman [...]?

Secretary Clinton: At this point, Congressman, I do not, for two reasons. First, I had a long conversation with high ranking Tunisian officials about this, as did director Mueller of the FBI when he was there in person. We have been assured that there was an effort to have rule of law, judicial process, sufficient evidence not yet available to be presented, but a very clear commitment made to us that they will be monitoring the whereabouts of Harzi and we're going to hold them to that and watch carefully.¹¹

But that was not to be the case.

As noted in press reports, after being questioned by the FBI about the Benghazi attacks and released from Tunisian custody, al Harzi became an ISIS operative, was responsible for planning hundreds of suicide attacks around the world, 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. [...] his links with ISIL recruitment and financial networks in such locations as Europe, Africa and the Persian Gulf helped ISIL expand

¹⁰ *Hearing on the Terrorist Attacks in Benghazi, Libya: House Foreign Affairs Comm.*, 113th Cong. (2013), available at <http://www.c-span.org/video/?310545-1/house-hearing-benghazi-consulate-attack> (1:48:32-1:50:45).

¹¹ *Id.* at 2:50:42-2:51:39.

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>.

from a local group to a more globalized organization.”¹³ Then, on June 22, 2015, the Department of Defense announced that al Harzi had been killed in a U.S. airstrike in Mosul, Iraq on June 15, 2015, further stating that “[h]is death degrades ISIL’s ability to integrate North African jihadists into the Syrian and Iraqi fight and removes a jihadist with long ties to international terrorism.”¹⁴

In light of these circumstances, my July letter to Director Comey and Attorney General Lynch asked a number of questions in an attempt to get more information to evaluate the situation. In response, on September 30, 2015, the FBI provided a classified briefing to members of my Committee staff.¹⁵ That briefing answered a few of the questions I raised in my letter, but left the majority unaddressed. The FBI declined to discuss then-Director Mueller’s reported discussions with the Tunisian government or the State Department regarding al Harzi. Moreover, the FBI personnel declined to speak to issues involving other parts of the Department of Justice or other government agencies, even on matters involving the FBI’s interaction with those other DOJ components or other agencies. Instead, the FBI requested that the Committee direct its inquiry to officials from the Department of Justice and the Department of State.

Accordingly, in order to further evaluate this situation, please respond to the following by January 29, 2016:

1. Did the State Department undertake any diplomatic efforts toward the government of Turkey to persuade it to allow the FBI to interview or otherwise have access to al Harzi while he was in Turkish custody? If so, please describe these efforts and their effects, and please provide all related records, including diplomatic notes, records of demarches, instruction cables, aides-mémoire, letters, non-papers, and reporting cables. If the Department did not make any such efforts, why did it not?
2. Did the State Department undertake any diplomatic efforts toward the government of Turkey relating to the execution of a provisional arrest of al Harzi pending a possible extradition? If so, please describe these efforts and their effects, and please provide all related records. If the Department did not make any such efforts, why did it not?
3. Did the State Department take any action relating to a request to the Turkish government to extradite al Harzi to U.S. custody? If so, please describe these actions and their effects, and please provide all related records. If not, why not?

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; see U.S. Department of State, *Terrorist Designation of Ali Ouni Harzi*, Apr. 14, 2015, available at: <http://www.state.gov/r/pa/prs/ps/2015/04/240667.htm>; *supra* note 2.

¹⁴ *Supra* note 1.

¹⁵ At his confirmation hearing, CIA Director Brennan testified that “we didn’t have anything” on al Harzi at the time of his release by the Tunisians. That assertion is inconsistent with information Committee staff received in the FBI briefing. Nor does his assertion comport with Secretary Clinton’s testimony that the issue involved the availability of evidence “that could be provided in an open court” in Tunisia.

4. Did the State Department undertake any diplomatic efforts toward the government of Tunisia to persuade it to allow the FBI to interview or otherwise have access to al Harzi while he was in Tunisian custody? If so, please describe these efforts and their effects, and please provide all related records. If not, why not?
5. Regardless of the absence of an extradition treaty with Tunisia, did the State Department undertake any diplomatic efforts toward the government of Tunisia relating to the execution of a provisional arrest of al Harzi pending a possible extradition? If so, please describe these efforts and their effects, and please provide all related records. If the Department did not make any such efforts, why did it not?
6. Regardless of the absence of an extradition treaty with Tunisia, did the State Department take any action relating to a request to the Tunisian government to extradite al Harzi to U.S. custody? If so, please describe these actions and their effects, and please provide all related records. If not, why not?
7. Please provide all records relating to the reported meeting between Deputy Secretary of State William Burns and senior Tunisian foreign ministry official Hedi Ben Abbes in October or November of 2012.¹⁶
8. Please provide all records relating the Secretary Clinton's communication with the Tunisian prime minister and other Tunisian officials about al Harzi, as referenced in her Congressional testimony.
9. Please provide all records relating to Secretary Clinton's communication with Director Mueller about al Harzi, as referenced in her Congressional testimony.
10. Please provide all records relating to the State Department's interactions with any other parts of the executive branch relating to al Harzi.
11. Did the State Department receive updates from the Tunisian government about al Harzi after his release? If so, please provide all related records. If not, why not?
12. Did the State Department contact the Tunisian government after al Harzi's release to inquire about the Tunisian government's monitoring of al Harzi, the results of that monitoring, and the whereabouts and activities of al Harzi? If so, please provide all related records. If not, why not?

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

¹⁶ *Supra* note 4.

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

cc: The Honorable Patrick J. Leahy
Ranking Member
Senate Committee on the Judiciary

The Honorable Lindsey O. Graham
Chairman, Subcommittee on Crime and Terrorism
Senate Committee on the Judiciary

The Honorable James E. Risch
United States Senate

The Honorable Ted Poe
United States House of Representatives

The Honorable Tom Cotton
United States Senate