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Congress of the United States

House of Representatives SELECT COMMITTEE ON BENGHAZI

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March 19, 2015

Mr. David E. Kendall
Williams & Connolly LLP
725 12th Street NW
Washington, D.C. 20005

Dear Mr. Kendall:

I write to confirm the extension granted your client, former Secretary of State Hillary Clinton, to comply with the Select Committee on Benghazi's subpoena issued March 4, 2015. This extension was previously discussed by email and phone conversation between you and the Committee's Chief Counsel late last week. The original deadline for compliance was March 13, 2015. The new agreed-upon deadline for compliance is March 27, 2015.

While the Committee appreciates previous discussions with respect to document production, a number of significant issues have arisen recently regarding the capture, maintenance, custody, handling and production of relevant information exclusively in former Secretary of State Hillary Clinton's possession. Accordingly, I am formally requesting Secretary Clinton make her server available to a neutral, detached and independent third-party for immediate inspection and review. The Committee must have objective assurances it, and by extension the House of Representatives as a whole, has received all relevant information requested and necessary for a thorough investigation into what happened before, during and after the attacks in Benghazi, Libya. More broadly, the equities in these emails extend beyond this Committee. The House of Representatives and the American people are entitled to a complete accounting of the Secretary's official record during her time as Secretary of State. Before addressing why it is in the public's interest for the Secretary to comply with this request for a neutral, detached and independent arbiter to provide assurance the public record is intact, a review of the circumstances that brought us to this point is in order.

Background of Document Requests

In August 2014, the State Department produced to the Select Committee on Benghazi approximately 15,000 pages of documents relating to the events before, during, and after the terrorist attacks on U.S. diplomatic facilities in Benghazi, Libya on September 11-12, 2012. Included among those 15,000 pages—which had never before been shared with Congress—were eight emails to or from former Secretary Clinton, ranging in date from September 11, 2012, to September 27, 2012. This also marked the first time any communications to or from Secretary Clinton had been produced to Congress. Some of these eight emails were addressed to or from "hdr22@clintonemail.com," while other emails were simply addressed to or from "H," without further specificity as to the exact email address. The "H" address raised the possibility that

Secretary Clinton used more than one email address, including the possibility that the “H” address was associated with a “.gov” address.

After a review of each of these 15,000 pages of documents, and pursuant to the Committee’s mission, on November 18, 2014, I wrote the State Department seeking documents and communications authored by, sent to, or received by former Secretary of State Clinton regarding four distinct categories.¹ Separately, on December 2, 2014, I wrote you requesting “all documents and communications” sent to, or received by the email address “hdr22@clintonemail.com” for two distinct categories pertaining to our Committee’s mission.² In that letter, the Committee acknowledged the unique nature of asking you to provide emails from this private email address:

Accessing the private email account of individuals is not something I undertake lightly. However, given the minimal documents produced by the State Department to date on this matter and the seemingly frequent usage of this email address by Secretary Clinton, it is necessary for the Committee to take the step of asking you to produce emails that fall within the scope of the Committee’s mandate.³

On December 29, 2014, you replied to the Committee’s letter simply stating you had “referred [the letter] to the State Department, which will be responding to [the Committee’s] request, as it is in a position to produce any responsive emails.”⁴ Your letter made no mention of the fact that Secretary Clinton exclusively used this private email address to conduct official business at the State Department, nor did it mention the fact that Secretary Clinton’s emails were stored on a private server.

On February 13, 2015, two weeks after the State Department testified before this Committee at a public compliance hearing, the Department finally produced 847 pages of Secretary Clinton’s emails that were responsive to both the Committee’s November 18th and December 2nd requests. The dates of these emails ranged from March 3, 2011, to December 24, 2012. However, no emails were provided with respect to certain key time periods relating to events in Libya and Benghazi.

On February 27, 2015, Committee staff met with staff from the State Department to better understand the logistics surrounding the February 13th production. Despite months of discussions between the Committee, the State Department, and yourself, it was during this meeting, for the first time, that anyone told the Committee Secretary Clinton exclusively used a private email address during her entire tenure as Secretary. Nor was it disclosed that she

¹ Letter from Hon. Trey Gowdy, Chairman, H. Select Comm. on Benghazi, to Hon. John F. Kerry, Sec’y of State (Nov. 18, 2014).

² Letter from Hon. Trey Gowdy, Chairman, H. Select Comm. on Benghazi, to David Kendall, Williams & Connolly LLP (Dec. 2, 2014).

³ *Id.* at 4.

⁴ Letter from David Kendall, Williams & Connolly LLP, to Hon. Trey Gowdy, Chairman, H. Select Comm. on Benghazi (Dec. 29, 2014).

continued to retain exclusive control over her emails after her departure from the State Department. Moreover, the State Department never mentioned that Secretary Clinton returned paper copies of select emails in response to letters that were sent to former Secretaries seeking official records. Further to same, in public statements during this timeframe, the State Department never mentioned our Committee's requests for documents and emails as precipitating the requests to Secretary Clinton and others for the return of public records to the State Department. Based on subsequent reports regarding Secretary Clinton's use of a personal server, on March 4, 2015, the Committee issued a subpoena to Secretary Clinton for all documents referring or relating to Libya.

Secretary Clinton's Unprecedented Email Arrangement

Secretary Clinton's email arrangement with herself is highly unusual, if not unprecedented. Her arrangement places her as the sole arbiter of what she considers private and beyond the review of the public. Her arrangement allows her to resolve any close calls and err, if at all, on the side of non-disclosure. Her arrangement allows her to be the sole record keeper of her emails related to official business conducted between two private accounts. Her arrangement apparently also allowed her to delete those emails she alone determined to be personal in nature.⁵ The deletion of emails is not normal practice once any investigation, let alone litigation, commences. The fact that she apparently deleted some emails *after* Congress initially requested documents raises serious concerns.

These are substantial issues with respect to the Select Committee on Benghazi alone. However, it is also important to note—as has been recognized by a wide variety of respected experts across the political spectrum—that the equities in the Secretary's emails are broader than the Select Committee on Benghazi. The public has a right to access public records. The public has a right to certainty that no classified or sensitive information was placed at risk of compromise. The public has a right to know who was advising the Secretary of State about official matters. The public has a right to a full, comprehensive and thorough accounting of Secretary Clinton's tenure. Moreover, there are other committees in both the House and Senate that have equities with respect to matters arising during Secretary Clinton's service to our country. Finally, the media, as a conduit between government and the public, has a right to inspect documents in the public domain. All of these entities have the right to be assured the record is complete as well as to avoid burdensome and costly work and litigation to reconstruct public records.

The Need for a Neutral, Detached, and Independent Third-Party Review

From Secretary Clinton's public comments, the Committee understands she maintained a private email system, including a server, wholly separate and apart from State Department servers. It is our understanding she used at least one private email account with which to

⁵ Amy Chozick and Michael Schmidt, *Hillary Clinton Tries to Quell Controversy Over Private Email*, N.Y. TIMES (Mar. 11, 2015) at A1.

communicate about official business.⁶ In using the private email server, Secretary Clinton was thus able to capture and retain all her emails, both official and personal, during her tenure as Secretary of State. Secretary Clinton, however, did not use an official email account for any of her own official email correspondence, purportedly relying instead on individuals to capture these emails on a “.gov” account.⁷ Secretary Clinton has said the “vast majority” of those emails were captured by the State Department’s own records system.⁸ However, public reporting now suggests the Department of State did not begin “regular archiving of the work email in-boxes of senior officials besides the secretary . . . until ‘February of this year.’”⁹ This underscores the only way to ensure the universe of all official emails related to her role as Secretary of State, including Benghazi, is complete, is through a review of her server for both relevant records and related technical information.

In addition, several other State Department officials—as well as other non-State Department officials on whom Secretary Clinton frequently relied on for advice and guidance in furtherance of her official duties—used private email accounts with which to communicate with Secretary Clinton about official business.¹⁰ Since the Secretary used exclusively personal email, and several State Department officials also used personal email, there can be no assurance any and all of her relevant emails conducted between two private accounts would have been captured in Secretary Clinton’s review of documents.

According to Secretary Clinton, after the State Department asked her to provide “copies of work related emails from [her] personal account[],” she “went through a thorough process to identify all of [her] work-related emails and deliver them to the State Department.”¹¹ She explained that her instructions were “to direct, you know, my counsel to conduct a thorough investigation and to err on the side of providing anything that could be connected to work.”¹² Her counsel would review all email communications and separate the official emails, which would be public records, from the purely personal emails which she said involved, among other things, “emails about planning Chelsea’s wedding or my mother’s funeral arrangements, condolence notes to friends as well as yoga routines, family vacations, the other things you typically find in inboxes.”¹³ In addition, Secretary Clinton said these purely personal emails contained communications between President Clinton and Secretary Clinton.

Although a nine-page document was provided to the press by the Office of Hillary Rodham Clinton answering some basic questions regarding her private emails, questions still

⁶ Zeke Miller, *Transcript: Everything Hillary Clinton Said on the Email Controversy*, TIME (Mar. 10, 2015), available at: <http://time.com/3739541/transcript-hillary-clinton-email-press-conference/> [hereinafter Time Transcript].

⁷ *Id.*

⁸ *Id.*

⁹ Josh Gerstein, *Hillary Clinton email flap exposes gaps in State Department records*, POLITICO (Mar. 13, 2015), available at: <http://www.politico.com/story/2015/03/hillary-clinton-email-state-department-archiving-emails-116062.html>.

¹⁰ See, e.g. STATE-SCB0045179, STATE-SCB0045227, STATE-SCB0045558, and STATE-SCB0045728.

¹¹ Time Transcript, *supra* note 6.

¹² *Id.*

¹³ *Id.*

remain as to the method by which the Secretary, through her counsel, conducted the review of her emails. Some emails may have been a mixture of both official and personal records and it is unclear how those emails would have been reconciled with her responsibility to provide all records to the State Department. Further, the extent to which the Secretary or her counsel relied on search terms to identify documents versus personal inspection, or both, remains unclear. In short, there is no assurance the public record regarding the Secretary's emails is complete.

The Path Forward

As you know, the Select Committee on Benghazi has been tasked to write the final, definitive report on what happened before, during, and after the attacks that killed four brave Americans in Benghazi, Libya on September 11-12, 2012. The resolutions authorizing this Committee are clear—the Committee is directed to review all policies, activities, and decisions before, during and after the attacks that are reasonably related to the attacks.¹⁴ These resolutions authorize the Committee to examine “executive branch activities and efforts to comply with Congressional inquiries” into the attacks.¹⁵ The Committee can only meet its mandate by a thorough review of a complete record.

Toward this end, I am asking Secretary Clinton to relinquish her server to a neutral, detached, and independent third-party, such as the Inspector General for the State Department, for review and an independent accounting of any records contained on the server, including a determination of which documents in the Secretary's possession belong to the State Department and which are private. The House of Representatives should not make this determination. The House of Representatives should not ever access documents or emails that are purely personal in nature. Correspondingly, the Secretary of State herself should not be the sole arbiter of what is public and what is private, or how to reconcile mixed-use emails, or how to certify that all responsive documents have been preserved and none deleted, including her emails related to official business conducted between two private accounts. Therefore, given the unique arrangement Secretary Clinton created as it relates to her emails, allowing a fair-minded, neutral arbiter to ensure public access to public documents seems eminently reasonable.

As I have said publicly on many occasions, the Committee has no interest, and no jurisdiction, to review any document in Secretary Clinton's possession that would reasonably be characterized as private. Let me be crystal clear—the Committee has not sought, is not seeking, and will not seek to possess, review, inspect or retain any document or email that is purely personal in nature. It is, quite frankly, none of the Committee's business, and would not assist the Committee in discharging its responsibilities. The Committee is, however, interested in accessing all documents and emails that are responsive to our requests and related to the matters set forth in the House Resolutions authorizing the Committee.

A neutral arbiter to review the server will ensure public confidence that all of the Secretary's public records were in fact retained, recovered and returned to the State Department.

¹⁴ H. Res. 567, 113th Cong. (2014); H. Res. 5, 114th Cong. (2015).

¹⁵ *Id.*

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The vast majority of these records would be unrelated to the work of our Committee and hence our Committee would never seek nor inspect these documents. They would, however, be available for the public as well as other congressional committees with equities or interests in the subject matter.

I respectfully ask that you discuss with Secretary Clinton the request to allow the Inspector General for the State Department to do the very job President Obama nominated, and the whole Senate confirmed, him to do: zealously safeguard the public interest as it relates to official work. Please respond by April 3, 2015, as to whether Secretary Clinton agrees to provide the server to the Inspector General, or whether she wishes to discuss another neutral, detached, and independent arbiter. However, should Secretary Clinton continue to maintain that the server and its contents are hers alone, I will inform the Speaker of the House of Representatives so that he can use the full powers of the House to take the necessary steps to protect the best interests of the American people.

Sincerely,



Trey Gowdy
Chairman

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