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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*

January 27, 2015

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Attorney General Holder:

On January 20, 2015, the Department of Justice announced that two members of al-Qaeda from Yemen, Sadiq Al-Abbadi, also known as "Sufiyan al Yemeni" and Ali Alvi, also known as "Issa al Yemeni," had been brought to the United States from Saudi Arabia for prosecution in an Article III civilian court. According to the complaint filed in the Eastern District of New York in April 2009, the two Yemenis are charged with conspiring to kill U.S. soldiers who were fighting in Afghanistan and Iraq and providing material support to al-Qaeda.

According to press reports and the complaint, Al-Abbadi was in direct contact with al-Qaeda's most senior leaders, served as senior logistical and facilitation officer for al-Qaeda's Shadow Army, and maintained close contact with al-Qaeda cells all over the world. He was also involved in the recruitment into al-Qaeda of a United States citizen, and both Yemenis frequented al-Qaeda safe-houses throughout the Middle East, and have contacts with al-Qaeda and its affiliates in Iraq, Yemen, Pakistan, Afghanistan, Iran, and Chechnya. Based on this information, it is clear to us that Al-Abbadi and Alvi were treasure troves of intelligence.

Nevertheless, and even though it is reported that Al-Abbadi was taken into custody in Pakistan in May 2009 with the assistance of the U.S. government and after the federal complaint had been issued, the U.S. government apparently did not seek to take custody, detain him under the law of armed conflict, and permit the U.S. government to interrogate him directly for any and all intelligence information. This had been the practice in the prior Administration and resulted in the detention and interrogation of senior al-Qaeda operatives like Khalid Sheikh Mohammed and Faraj al-Libi, who are both presently detained at Guantanamo.

Instead, it appears in this case that the U.S. government relied on foreign governments to detain and interrogate the Yemenis and share that information with the United States. In the case of Al-Abbadi, it took almost five years after his initial capture for this Administration to take him into custody. And when it did, the Administration decided to pursue an Article III prosecution, transfer him to New York, read him his Miranda rights, and give him an attorney. This is no way to fight a war.

While we want nothing more than to see terrorists brought to justice, we have numerous concerns about this Administration's policies on the detention, interrogation, and prosecution of



terrorists. First, we fear the potential loss of intelligence when the Administration elects to outsource the detention and interrogation of terrorists to foreign governments, perhaps due to a political aversion to the U.S. detaining them at Guantanamo. We are also concerned when terrorists are transferred directly to Department of Justice control and prosecuted in Article III courts immediately after they are taken into U.S. custody. Finally, we continue to have concerns with this Administration's reluctance to use military commissions to prosecute foreign terrorists who were involved in attacks against U.S. military forces in Afghanistan and Iraq.

We have the utmost confidence in, and respect for, our federal law enforcement investigators and prosecutors, but their mission is different from that of our Armed Forces. Accordingly, the Department of Justice has a different set of tools at its disposal, and is seeking a different, albeit complimentary, outcome. Rushing to prosecute al-Qaeda terrorists picked up on foreign battlefields or in foreign countries unnecessarily limits the life-saving intelligence that could be collected by our military. Unfortunately, this is a recurring theme under the current Administration.

The United States cannot criminalize the war for ideological purposes. We must use every tool at our disposal to defeat our radical enemy. Therefore, we would like to know: (1) why did the U.S. government not seek to detain and interrogate these individuals immediately following their capture by a foreign government; (2) why were these individuals transferred to the custody of the Department of Justice for prosecution instead of to the custody of the Department of Defense for military detention and interrogation; and (3) why did this transfer to U.S. custody take so long?

In addition, the Department of Justice announced that on January 24, 2015, another alleged terrorist, Faruq Khalil Muhammed 'Isa, charged in a 2011 complaint with the murder of five American soldiers in Iraq, was extradited from Canada to the United States for an Article III trial. Therefore, to better understand these decisions and to ensure that the Congress provides adequate oversight over the Administration's decisions going forward, we request that the Department of Justice identify all non-U.S. citizens affiliated with al-Qaeda and who were involved, in any way, in attacks on U.S. troops and who have been brought (or are in the process of being brought) into the United States to face charges in an Article III court. We also request copies of all charging documents to include indictments and/or federal criminal complaints, and arrest warrants, in each identified case.

In light of the importance of this issue and the upcoming hearing on the President's nominee for Attorney General, we respectfully request that you provide us this information no later than 10:00am on Wednesday, January 28, 2015. We look forward to your response.

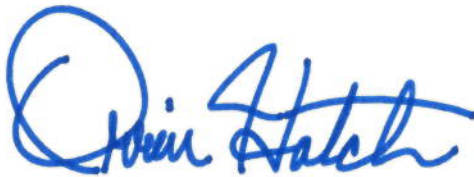
Sincerely,



Lindsey O. Graham  
United States Senator



Charles E. Grassley  
United States Senator



Orrin G. Hatch  
United States Senator



Jeff Sessions  
United States Senator



John Cornyn  
United States Senator



Michael S. Lee  
United States Senator



Ted Cruz  
United States Senator



David Vitter  
United States Senator



David Perdue  
United States Senator



Thom Tillis  
United States Senator

Cc: Loretta Lynch, United States Attorney for the Eastern District of New York