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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510–6275

May 10, 2012

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Leon Panetta
Secretary of Defense
Department of Defense
Pentagon
Washington, D.C. 20301

Dear Attorney General Holder and Secretary Panetta:

According to a report in the New York Times on May 7, 2012, an Iraqi court has ordered the release of Ali Musa Daqduq. Daqduq is a senior Hezbollah field commander who allegedly orchestrated a kidnapping that resulted in the deaths of five U. S. soldiers in Karbala, Iraq in 2007. He also has close ties with Iran's Qods Force, including training its fighters in the use of improvised explosive devices (IED) and other insurgent tactics employed against U.S. troops. Daqduq had been in U.S. military custody until the United States turned him over to Iraqi authorities upon exiting Iraq in December 2011.

According to another report in the New York Times earlier this year, Daqduq has been charged with war crimes, including murder, terrorism, and espionage, before a U.S. military commission. However, those charges were not made public until the New York Times obtained a copy of the charging document. In fact, it appears that the Administration knew it was going to pursue charges against Daqduq, waited until he was released to Iraq, and then filed the charges, but failed to keep Congress apprised of its plans.

We have expressed a keen interest in Daqduq and in the Administration's plans for him. In May 2011, Attorney General Holder appeared before the Senate Committee on the Judiciary (Committee) and was specifically asked about prosecution plans for Daqduq. We followed up with a letter to Attorney General Holder on May 16, 2011, again expressing concerns about, and interest in, how the Administration was going to prosecute Daqduq. On July 29, 2011, another letter was sent to Secretary Panetta, seeking information about issues relating to Daqduq held by the Department of Defense. Finally, on August 8, 2011, the Department of Justice responded through a letter from Ronald Weich that indicated the "ultimate disposition of this matter is under consideration by an interagency process that includes . . . the Department of Justice."

Subsequently, Administration officials briefed Congress about Daqduq's imminent release into Iraqi custody. Yet, they never mentioned that the Administration was considering charges, which were filed approximately two weeks later. Eight pages of charges, surely involving classified materials or evidence, would require more than two weeks to review, organize, and approve. This appears to indicate that either the Administration was purposefully withholding information from Congress or it had not done the due diligence required to file charges in a

serious case against a dangerous terrorist. Furthermore, in the future, when the Administration claims that it is aggressively pursuing Daqduq, it will sound disingenuous since we know that he was only charged after he was released to another country. If the Administration was serious in pursuing Daqduq, officials had many years when they could have brought charges against him, yet the Administration waited until he was not available to prosecute.

Now an Iraqi court has cleared Daqduq of any criminal charges under Iraqi law and, as we and many other observers had feared, may be set free without being held to account for his crimes against the United States and its soldiers. As it appears Daqduq is on the verge of escaping justice, we again ask for information about the Administration's plans for dealing with this situation.

Accordingly, provide the following information:

- A copy of the military commission charging document filed against Daqduq;
- A list of who was involved in this decision and who was the final decision-maker;
- An explanation of when, if at all, the families of his U.S. victims were consulted about his prosecution;
- An explanation of whether Daqduq has been notified of the U.S. charges against him;
- A description of which components in the Administration have been, currently are, or expect to be involved in the Daqduq matter;
- A description of efforts to have Daqduq transferred into U.S. custody after he was charged, including whether any formal extradition request was made to the Iraqi government;
- A description of any conditions (such as transfer to a civilian court) required by the Iraqi government for extraditing Daqduq and the U.S. response to those conditions;
- An explanation of where Daqduq is expected to be held, if he were transferred into U.S. custody;
- A description of charges against Daqduq from any other country of which the Administration is aware;
- A description of whether and how the Administration assisted in Daqduq's prosecution by the Iraqi government;
- An explanation of why briefers from the Administration failed to indicate that criminal charges were prepared but not presented to a military commission prior to turning Daqduq over to the Iraqi government.
- An assessment of why the Iraqi prosecution of Daqduq failed, including any problems with the Iraqi court's willingness or capability to consider valid evidence provided by the United States, such as forensic evidence and statements made while in U.S. custody;
- A description of options the Administration is considering for next steps in the handling of Daqduq's case; and,
- A description of Administration discussions with the Iraqi government about next steps in the handling of Daqduq's case.

Given the serious consequences that could result from Daqduq's release from Iraqi custody and the important issues raised regarding future decisions to turn over detainees to foreign governments, we appreciate your response no later than May 25, 2012.

Sincerely,

Chuck Grassley

Orrin Hatch

Tom Kyl

Jeff Sessions

Lisa Murkowski

John Cornyn

Michael B. Enzi

Tom Coburn