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

Dear Secretary Kerry:

I am writing today to address several new concerns regarding the State Department's delayed designation of Boko Haram and Ansaru as Foreign Terrorist Organizations (FTO). While the State Department finally made this designation in December of 2013, it repeatedly stated in the years leading up to the designation that it did not have data available or the necessary understanding to make the determination. Recent evidence suggests Secretary Hillary Clinton and the State Department not only knew of the extent, but also deliberately attempted to obfuscate the issue in order to avoid having to make the designation of Boko Haram as a FTO, including downplaying the State Department's own Country Reports on Terrorism (CRT).

Inaccuracies within official documents make it clear that the State Department misled Congress and the American people. Evidence¹ suggests that there was an internal decision by the Office of Coordinator for Counterterrorism to downplay official, legally required, intelligence data in order to purposefully avoid making the determination. Specifically, I am seeking answers to why the State Department Coordinator for Counterterrorism ignored data² and misrepresented its legal requirements to Congress.

As part of its annual assessments on foreign country terrorism, the State Department is required to include statistical information supported by data. However, a review of the information from that time presents different facts. In its capacity as the U.S. government's authoritative, central, and shared knowledge bank on international terrorism the National Counterterrorism Center (NCTC)³ provided the State Department with the statistical information⁴ necessary to determine that Boko Haram was engaged in terrorist activity. However, in completing the official annual CRT provided to Congress⁵ the State Department chose not to include this information.

¹ Review of the annual Country Reports on Terrorism.

² Statistical data and intelligence provided by the National Counterterrorism Center, and National Consortium for the Study of Terrorism and Responses to Terrorism (START Consortium).

³ The NCTC was created in 2004 to ensure, in part, that U.S. government agencies have appropriate access to and receive the intelligence necessary to accomplish their assigned missions. NCTC is the U.S. government's authoritative, central and shared knowledge bank on international terrorism and, in this capacity, NCTC provides the Department of State with statistical information to assist it in completing the annual Country Reports on Terrorism. <http://www.nctc.gov/whoweare.html> See also: *Developing Statistical Information*, Country Reports on Terrorism 2011, July 31, 2012 <http://www.state.gov/j/ct/rls/crt/2011/195555.htm>

⁴ *Country Reports on Terrorism 2011: National Counterterrorism Center: Annex of Statistical Information*, Office of the Director of National Intelligence, March 12, 2012. Pg. 9, 12, 25. Link: <http://www.fas.org/irp/threat/nctc2011.pdf>

⁵ *2011 Country Reports on Terrorism*, United States Department of State Publication, Bureau of Counterterrorism, Released July 31, 2012. <http://www.state.gov/j/ct/rls/crt/2011/195541.htm>

The Secretary of State is required to include within its CRT to Congress, “which acts of international terrorism occurred which were, in the opinion of the Secretary, of major significance.”⁶ However, in multiple cases,⁷ where the NCTC clearly labeled and claimed that Boko Haram was engaged in terrorist activity against foreign nations, Secretary Clinton’s office in their own report minimized the attacks and separated the issue from Boko Haram. The *NCTC 2012 Annex of Statistical Information*, stated that Africa “experienced 978 attacks in 2011, an 11.5 percent increase over 2010, and attributable that in large part to the more aggressive attack tempo of the Nigeria-based **terrorist group Boko Haram**” (emphasis added).⁸ This document adds further citations that Boko Haram conducted an attack against Western targets in “**the largest terrorist attack in the country to date.**”⁹ However, the State Department Coordinator for Counterterrorism’s report covering that same year (2011) only chose to include loose evidence stating, “[The] conflict in Nigeria continued throughout the northern part of the country with hundreds of casualties as indigenous terrorist attacks increased. The Nigerian extremist group, Boko Haram, claimed responsibility for some of these attacks.”¹⁰ It appears that this variation in wording fails to meet the legal requirements¹¹ based on information it received, and inserts a higher degree of doubt about whether Boko Haram is directly engaged in terrorist activity. The modification clearly downplays “978 attacks” and ignores the NCTC labeling Boko Haram as a “terrorist group,” instead suggesting that there may be a loose connection.

These facts are troubling considering multiple official reports between 2010 and 2012,¹² including the Global Terrorism Database,¹³ concluded that Boko Haram was improving their capability to coordinate on an operational level with Al-Qa’ida affiliates, including Al-Qa’ida in the Islamic Maghreb (AQIM) and al-Shabaab. In 2010, Boko Haram conducted multiple coordinated bombings; in 2011, Boko Haram detonated a car-bomb at United Nations headquarters in Abuja, killing 23 people and injuring 81 others; in January 2012, Boko Haram in

⁶ As part of its annual assessments on foreign country terrorism, the Department of State is required by Title 22, Section 2656f of the United States Code (U.S.C.) to include in its annual country reports on terrorism, information supported by authoritative data provided by the National Counterterrorism Center. Link: <http://www.law.cornell.edu/uscode/text/22/2656f>

⁷ Country Reports on Terrorism 2011: Counterterrorism Center: Annex of Statistical Information, Office of the Coordinator for Counterterrorism Report, July 31, 2012. Pg. 9, 12, 25. Link: <http://www.fas.org/irp/threat/nctc2011.pdf>

⁸ 2011 National Counterterrorism Center, Country Reports on Terrorism: Annex of Statistical Information, Office of the Director of National Intelligence. March 12, 2012, Pg. 9. Link: <http://www.fas.org/irp/threat/nctc2011.pdf>

⁹ Ibid, Pg. 12.

¹⁰ Department of State, Country Reports on Terrorism 2011: United States Department of State Publication Bureau of Counterterrorism, Released April 2012. Pg. 8. Link: <http://www.state.gov/documents/organization/195768.pdf>

¹¹ Country Reports on Terrorism are submitted in compliance with Title 22 of the United States Code, Section 2656f (the “Act”), which requires the Department of State to provide Congress a full and complete annual report on terrorism for those countries and groups meeting the criteria of the Act. Statutory excerpts relating to the terms used are available within Section 2656f(a) of Title 22 of the United States Code, as amended.

¹² In 2012, U.S. military officials identified Boko Haram as a “threat to Western interests” in the region for several years, referencing indications in 2013 that it and AQIM were “likely sharing funds, training, and explosive materials,” and suggesting that “there are elements of Boko Haram that aspire to a broader regional level of attacks, to include not just in Africa, but Europe and aspirationally to the United States.” *Remarks by Gen. Carter Ham, Africa Center for Strategic Studies Senior Leaders Seminar, June 25, 2012. Testimony of Gen. Carter Ham, Senate Armed Services Committee, Proposed FY2013 Defense Authorization as it Relates to the U.S. European and Africa Commands, March 1, 2012. Also House Armed Services Committee, Proposed Fiscal 2014 Defense Authorization as it Relates to the U.S. European and Africa Commands, March 15, 2013.*

¹³ The Global Terrorism Database (GTD) is an open-source database including information on terrorist events around the world from 1970 through 2012. In June 2012, the National Consortium for the Study of Terrorism and Responses to Terrorism (START) contracted with the US Department of State to collect a Statistical Annex data set and provide a report to include in the State Department’s annual Country Reports on Terrorism 2012. From 2004 to 2011, the data for the Annex of Statistical Information were collected by the National Counterterrorism Center, part of the Office of the Director of National Intelligence, through the Worldwide Incidents Tracking System (WITS).

a single day killed an estimated 185 people.¹⁴ Additionally, the State Department's own reports demonstrate that between 2009 and 2013, Boko Haram steadily increased in deadliness and its connectivity to terrorist organizations. According to the National Consortium for the Study of Terrorism and Responses to Terrorism, moving up from its 2012 designation of 4th "most active perpetrator groups of terrorist attacks in 2011,"¹⁵ Boko Haram was ranked the third most lethal perpetrator group,¹⁶ higher than Al-Shabaab and Al-Qa'ida in the Arabian Peninsula, based on their activity between 2009-2013, killing over 3666 people.¹⁷

During the years in question, the NCTC Annex of Statistical Information repeatedly referred to Boko Haram as "the Nigeria-based terrorist group." Additional documents between 2010 and 2012 make multiple references to Boko Haram in conjunction to Al-Qa'ida in the Islamic Maghreb (AQIM), as well as highlight increases in the group's terrorist attacks. Meanwhile the CRT goes out of its way to downplay the effectiveness or lethality of the group. One such example is clearly visible following the attacks against the United Nations, which the NCTC labeled "the largest terrorist attack in the country to date."¹⁸ However, when the office of Coordinator for Counterterrorism discussed the time period in question in their report to Congress, it largely dismissed the events and the data claiming that, "No terrorist attacks occurred in the southern states of Nigeria. Nigerian-U.S. counterterrorism cooperation continued in 2011 ..."¹⁹

The State Department continued to waffle on the designation by adding, "while not a formal al-Qa'ida affiliate, elements of the group known as Boko Haram launched widespread attacks across Nigeria, including one in August against the United Nations headquarters in Abuja, which signaled their ambition and capability to attack non-Nigerian targets."²⁰ The State Department's documents may have failed to explicitly label Boko Haram as a terrorist organization, in almost complete disregard of specific NCTC data, but my concern goes deeper to address the internal decision to manipulate words and mislead Congress.

This evidence suggests that the office of the Coordinator for Counterterrorism may have intentionally exploited the statistical information provided to them by law in an attempt to neglect Boko Haram's terrorist activity. Given the ample evidence available that shows that the State Department did indeed have access to and an understanding of Boko Haram as a terrorist

¹⁴ *Boko Haram Recent Attacks*. National Consortium for the Study of Terrorism and Responses to Terrorism (START). Link: http://www.start.umd.edu/pubs/STARTBackgroundReport_BokoHaramRecentAttacks_May2014_0.pdf

¹⁵ *Top 20 most active groups in 2011*. Global Terrorism Database (GTD), October 16, 2012. Link: <http://www.start.umd.edu/gtd/search/Results.aspx?perpetrator=30101>

¹⁶ *Most Lethal Perpetrator Groups (2009-2012)*. National Consortium for the Study of Terrorism and Responses to Terrorism (START Consortium). Nov. 13, 2013. Pg. 4. Link: http://www.start.umd.edu/sites/default/files/files/publications/br/STARTBackgroundReport_BokoHaram_Nov2013.pdf

¹⁷ *Boko Haram in Context*, National Consortium for the Study of Terrorism and Responses to Terrorism (START Consortium). May 2014. Pg 4. Link:

http://www.start.umd.edu/sites/default/files/files/STARTBackgroundReport_BokoHaramRecentAttacks_May2014_0.pdf

¹⁸ *2011 National Counterterrorism Center, Country Reports on Terrorism: Annex of Statistical Information*. Office of the Director of National Intelligence. March 12, 2012, Pg. 12. Link: <http://www.fas.org/irp/threat/nctc2011.pdf>

¹⁹ *Chapter 2. Country Reports: Africa Overview, Country Reports on Terrorism 2011*. United States Department of State Office of the Coordinator for Counterterrorism, Bureau of Counterterrorism, July 31, 2012. Ch.2, Nigeria Overview. Link: <http://www.state.gov/j/ct/rls/crt/2011/195541.htm>

²⁰ *Strategic Assessment, Country Reports on Terrorism 2011*. United States Department of State Office of the Coordinator for Counterterrorism, Bureau of Counterterrorism, July 31, 2012. Ch. 1. Link: <http://www.state.gov/j/ct/rls/crt/2011/195540.htm>

organization in 2011 and 2012, including information within in their annex's, and State Department's designation of certain members of Boko Haram as Specially Designated Global Terrorists²¹. I am requesting that you answer the following with clear detail.

Questions:

1. *Could you please provide a reasonable explanation of how the "largest terrorist attack in the country to date," according to the NCTC, does not qualify as a terrorist attack to the State Department? Why did the State Department Coordinator for Counterterrorism office deliberately obscure the context of material to change the meaning of the information?*
2. *Why did Secretary Clinton and the Office of Coordinator for Counterterrorism decide in 2011 and 2012 not to designate Boko Haram as a terrorist organization, despite having the legally required data and information reports stating multiple times that the group was engaged in terrorist related activity? Why was this aspect kept from Congress in the State Department official report to Congress?*
3. *Please provide evidence documenting how the State Department was lacking in understanding regarding Boko Haram between 2011 and 2012.*
4. *Why does the data reflected in the State Department's annual assessment not match or adequately reflect the information as presented in the annual NCTC CRT and Annex of Statistical Information? Specifically, please address why the term "terrorist" was removed from the formal assessment when directly referring to the acts.*
5. *Does the State Department agree with the National Consortium for the Study of Terrorism and Responses to Terrorism and the NCTC assessment that between 2010 and 2013, Boko Haram's alliances with al-Qa'ida-linked groups have strengthened? Would the State Department agree with the assessment that Boko Haram's ability to conduct violent jihad has improved in the timeframe in question, including the targeting of areas and activity beyond the borders of Nigeria?*
6. *Within a year of the Coordinator for Counterterrorism being replaced, Boko Haram was designated onto the FTO list. Please provide written reasons behind the resignation of vice Ambassador Daniel Benjamin, who resigned as State Department, Coordinator for Counterterrorism in January 2013.*
7. *What role did the Global Counterterrorism Forum play in the State Department's decision to not designate Boko Haram as a terrorist organization?*
8. *Evidence presented to the State Department for their official reports highlights the formal view that Boko Haram was clearly an active terrorist group. Why was the designation not*

²¹ In 2012 the DoS designated three Nigerians to the Specially Designated Global Terrorists. While Secretary Clinton acknowledged these individuals as parties to terrorist activity, she refused to designate Boko Haram as a Foreign Terrorist Organization (FTO), or to allow her reports to acknowledge relevant data. Under Executive Order 13224, "those foreign persons that support or otherwise associate with...foreign terrorists" are subject to SDGT listing. Terrorism means an activity that involves a violent act or an act dangerous to human life, property, or infrastructure and appears to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking. See U.S. Department of the Treasury, "Executive Order 13224—Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," Link: <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/terror.pdf>

officially made following this information? Was there official internal guidance issued regarding the designation of Boko Haram?

9. *According to official records there is no difference between the NCTC 22 U.S.C. § 2656f(d) definition of the "terrorism" and the State Department definition of "terrorism." In fact, as stated on the CRT²², "For the purposes of this report, the term "international terrorism," "terrorism," and "terrorist group" have the definitions assigned to them in 22 U.S.C. § 2656f(d)." Moreover, the State Department's FTO list of legal criteria for designation specifically labels, "22 U.S.C. § 2656f(d)(2), ** or retain the capability and intent to engage in terrorist activity or terrorism" as its primary criteria. Please address why a different version of the law appears to have been used by Secretary Clinton and Ambassador Benjamin?*

I respectfully request that you address this issue immediately and provide me with written response before July 10, 2014. Thank you for your attention to this important matter.

Sincerely,



David Vitter
United States Senate

²² Department of State, Country Reports on Terrorism 2013: United States Department of State Publication Bureau of Counterterrorism, Released April 2014. Link: <http://www.state.gov/documents/organization/225050.pdf>