

Congress of the United States
House of Representatives
Washington, DC 20515

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The Honorable Robert Gates
Secretary of Defense
1300 Defense Pentagon
Washington, DC 20301

The Honorable Hillary Rodham Clinton
Secretary of State
2201 C Street, NW
Washington, DC 20520

Dear Secretary Gates and Secretary Clinton:

I am writing to you on behalf of a constituent, Mr. Bruce Birchfield, whose son, Marine Lance Corporal Joshua H. Birchfield, was killed on February 19, 2010, while supporting combat operations in Farah Province, Afghanistan. Lcpl. Birchfield was shot by a local national (LN) security contractor who spotted Birchfield's unit on patrol. While every American casualty is a heart-breaking measure of our sons' and daughters' courage and the highest act of selfless devotion to the United States of America, Lcpl. Birchfield's loss is an especially painful one given the circumstances of his death. I believe it is your, and my, responsibility to see that the U.S. Government does everything it reasonably can to prevent such incidents and ensure that contracted security personnel working with our forces, with the national or local governments in Afghanistan, and for local private companies are held accountable for their actions.

According to a partially redacted set of documents provided to Mr. Birchfield on November 15, 2010, by the U.S. Naval Criminal Investigative Service (NCIS) in response to his Freedom of Information Act (FOIA) request, on the morning of February 19, 2010, Lcpl. Birchfield's unit had initiated a foot patrol in the vicinity of Patrol Base (PB) Barrows. While stopped in a wadi and with the sun rising, the Marines noticed a LN security contractor several hundred meters away on the roof of a mud hut used by the security contractors as a check point for a local highway. The shooter opened fire, and Marines recall hearing multiple rounds fired by an AK-47. The Marines responded by yelling "U.S. Marines!" and fired identifying signal flares. During the shooting, Lcpl. Birchfield was shot in the head and would later die in the field before a medevac helicopter arrived.

Seven LN contractors were subsequently detained, and some amounts of opium were seized. An NCIS Reporting Agent who interviewed the contractors a few days later stated that several of them claimed they had not even filled out any paperwork when they were hired by their employer, had little to no weapons training, and were poorly educated. An NCIS Reporting Agent also interviewed the owner of a construction company who admitted to hiring the contractors and providing them weapons. This individual also admitted that the security contractors in his employ were not licensed and stated that there was no government entity providing such licensing authority in Farah province. During deposition by Farah Province prosecutors, the suspected shooter admitted shooting Lcpl. Birchfield but denied being under the

influence of narcotics. An Associated Press story dated December 31, 2010, claimed that in response to a FOIA request, NCIS stated that saliva and hair samples were taken from the suspect but they were not tested for narcotics. On July 14, 2010, the suspect was found guilty by the Farah Primary Court and sentenced to fifteen years imprisonment.

It appears clear to me that at least some, and possibly all, of the contractors manning that checkpoint should not have been there in the first place and that the processes for hiring and supervising local security contractors clearly failed with fatal results. I want to know who is responsible for that failure. Nothing can make up for the death of Lcpl. Birchfield. But in his loss, we must redouble our efforts to reduce the likelihood that this kind of incident is repeated.

Numerous news reports in recent years have identified myriad problems with security contractors in Afghanistan, particularly a lack of reliability and integrity on the part of Afghan personnel and security companies directly responsible for security and also insufficient oversight by U.S. or Afghan officials. I understand that ensuring security for American forces, reconstruction projects and critical infrastructure in a place like Afghanistan can be a daunting task. However, these difficulties cannot excuse us from putting forth constant effort and vigilance to improve the policies and strategies used by our country and the Afghan national and local governments to see that those hired to provide security meet strict standards, are subject to regular and rigorous oversight, and are professional, reliable and safe.

In support of this effort, and in an attempt to help my constituent Mr. Birchfield, below are two sets of questions I would like you to answer. The first are questions directly pertaining to the death of Lcpl. Birchfield and I presume the Department of Defense is better suited to answer. The second are questions I have about security contracting in Afghanistan and efforts by our government to improve this process.

Questions pertaining to the death of Lcpl. Birchfield:

- 1) Were the seven LN security contractors or the local construction company owner who apparently employed them paid by the U.S. government, ISAF, or a U.S.-based NGO either directly or indirectly as a subcontractor?
- 2) Has the local construction company ever held a contract or subcontract for work funded by U.S. Government funds?
- 3) Which official, entity or entities had licensing, supervision or oversight responsibility for the hiring of security contractors in this instance?
- 4) To what degree did U.S. forces in the area coordinate with or supervise those seven contractors manning the check point? Did the seven contractors also provide any security service in support of U.S. operations in the area?
- 5) In the NCIS documentation, a U.S. officer at Patrol Base Barrows stated that two of the contractors taken into custody would later show withdrawal symptoms associated with opium use. The AP story dated December 31, 2010, reports that there were samples taken but drug analysis was not conducted. If this is true, why was this evidence not analyzed or used in the legal proceedings?

- 6) During the U.S. and Afghan investigations of this incident, was it determined whether the shooter acted because of an association with the Taliban, Al Qaeda, or other criminal or hostile elements in Afghanistan?
- 7) The NCIS documents included a statement by a U.S. interviewer stating the suspect confessed to shooting the Marines, but would later modify his statement to say he thought he was shooting at ducks. During the investigation and trial of the shooter, was it determined if he acted deliberately with the intent of killing American forces?
- 8) Are there any other pending investigations or charges connected to this incident?
- 9) The shooter was convicted on July 14 and sentenced to 15 years in prison. What was the charge or charges he was convicted of?

Questions about security contracting in Afghanistan:

- 1) How many U.S. service members and citizens have been killed by Afghan security contractors since 2001? How does our country track or report these types of incidences?
- 2) What are the processes that the United States and Afghanistan use to ensure that local security contractors operating in Afghanistan are held accountable and that those hired to provide security are qualified, trustworthy, properly trained and subject to sufficient oversight?
- 3) What are some of the main problems your agencies have identified with security contracting in Afghanistan and how have you responded?
- 4) What are the biggest obstacles to improving oversight and regulation of Afghan security contractors hired by the U.S. Government, Afghan Government and local Afghan companies or individuals? Have your departments identified any need for changes to U.S. or Afghan laws or policies that would result in improvements?
- 5) If the security contractors involved in the death of Lcpl. Birchfield and their employer were not funded in any way by the U.S. Government, then how do you think the Afghans can improve their internal polices and processes to improve reliability and accountability of local security contractors?

I trust that you are concerned by the many problems presented by security contracting in Afghanistan and are fully committed to improving this important component of our efforts in that country. I respectfully request that you provide me timely and thorough responses to my questions. Thank you for your careful consideration of my request.

Sincerely,


Joe Donnelly
Member of Congress

cc: Mr. Herbert Richardson, Acting Special Inspector General for Afghanistan Reconstruction