



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

John F. Sopko
Special Inspector General

June 22, 2022

The Honorable Antony J. Blinken
Secretary of State

The Honorable Samantha Power
Administrator
U.S. Agency for International Development

Dear Secretary Blinken and Administrator Power:

As required by Section 1229(h)(5)(B) of the National Defense Authorization Act for FY 2008 and Section 6(c)(2) of the Inspector General Act of 1978, as amended, I am writing to report that State and USAID officials are unreasonably refusing to provide information and assistance requested by SIGAR. This information and assistance is needed for several audits and Congressionally mandated reviews pertaining to, among other things: (1) the collapse of the U.S.-backed government in Afghanistan; (2) State and USAID compliance with laws and regulations prohibiting the transfer of funds to the Taliban; and (3) ongoing humanitarian and development programs supporting the Afghan people.

Historically, State and USAID officials have supported SIGAR's mission and honored my office's requests. Where there has been confusion on the part of State and USAID concerning the extent of SIGAR's jurisdiction, forthright exchanges between our offices have consistently concluded with State and USAID correcting course and complying with SIGAR's requests. Inexplicably, this long track record of cooperation seems to have abruptly ended. Agency officials now appear to have adopted a premeditated position of obstruction.

I find this development particularly troubling in light of the clear legal prohibitions against State and USAID officials preventing SIGAR's oversight work,¹ as well as recent OMB guidance calling for cooperation with federal offices of inspectors general.² The President underscored the importance of such cooperation only a few weeks ago, when he stated unequivocally, "[I]n my administration, the watchdogs are back."³

¹ National Defense Authorization Act for Fiscal Year 2008 ("NDAA for FY2008"), Pub. L. No. 110-181, § 1229(e)(2); Inspector General Act of 1978, 5 U.S.C. app. § 3(a) ("Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation . . .").

² Memorandum from the Executive Office of the President, Office of Management and Budget, *Promoting Accountability through Cooperation among Agencies and Inspectors General* (December 3, 2021) at 1.

³ Remarks by President Biden with Inspectors General on Commitment to Oversight, Accountability, and Transparency (April 29, 2022).

As discussed below, the coordinated efforts by State and USAID officials to deny SIGAR access to information and assistance are unprecedented. However, the billions of U.S. taxpayer dollars that have been spent and continue to be spent in support of the Afghan government and the Afghan people warrant independent oversight, and the law requires it. Therefore, I respectfully request that you direct State and USAID officials to cease their illegal obstruction of SIGAR's oversight work and to provide the requested information and assistance without further delay.

Congress Has Directed SIGAR to Conduct Studies of the Collapse of the Afghan Military and the Afghan Government

The information and assistance requested by SIGAR is needed to carry out evaluations and reports required by Congress. Specifically, Congress has directed SIGAR to:

[C]onduct an evaluation of the performance of the ANDSF for the period between February 2020 and August 2021. The committee also directs the Special Inspector General for Afghanistan Reconstruction to submit a report to the Committees on Armed Services of the Senate and the House of Representatives and the Secretary of Defense by March 1, 2022, on the findings of such evaluation, including why the ANDSF proved unable to defend Afghanistan from the Taliban following the withdrawal of U.S. military personnel; the impact of the withdrawal of U.S. military personnel had on the performance of the ANDSF; elements of the U.S. military's efforts since 2001 to provide training, assistance, and advising to the ANDSF that impacted the ANDSF's performance following the U.S. military withdrawal; the current status of U.S.-provided equipment to the ANDSF; the current status of U.S.-trained ANDSF personnel; and any other matters the Special Inspector General for Afghanistan Reconstruction deems appropriate.⁴

Congress also directed SIGAR to examine:

[T]he underlying causes that may have contributed to the rapid collapse . . . of the government of Afghanistan and the Afghan National Defense and Security Forces (ANDSF), any potential loss or compromise of U.S. reconstruction assistance resulting from the Taliban's return to power, and the ramifications of the U.S. military and diplomatic withdrawal for U.S. national security and the people of Afghanistan.⁵

⁴ H. Rept. No. 117-118 at 251 (2021).

⁵ U.S. House of Representatives, Committee on Oversight and Reform and Subcommittee on National Security, Letter to John F. Sopko, Sep. 10, 2021. In response to this request, we initiated four evaluations to examine: (1) the circumstances surrounding the collapse of the Afghan government; (2) the continued risk to U.S.-funded reconstruction assistance in Afghanistan; (3) the Taliban's access to U.S.-provided funds and defense equipment; and (4) the risk to vulnerable Afghans resulting from the Taliban's return to power.⁶ NDAA for FY2008, § 1229(h)(5)(A).

Two SIGAR audits are also being hindered by a lack of cooperation from State and USAID. The first evaluates your agencies' compliance with the laws and regulations prohibiting transfers of funds to members of the Taliban and the Haqqani Network. The second concerns ongoing emergency food assistance to Afghanistan.

SIGAR was also informed by State that the Department would not cooperate with future financial audits conducted by SIGAR, but would from now on choose its own auditors. It should go without saying, but neither SIGAR's authorizing statute nor the Inspector General Act of 1978 contain a "choose your own auditor" provision.

State and USAID are Required by Law to Provide Information and Assistance to SIGAR Upon Request

SIGAR's authorizing statute provides that,

Upon request of the Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Inspector General, or an authorized designee.⁶

The Inspector General Act of 1978, as amended, contains a similar provision.⁷

The statute goes on to state that,

Whenever information or assistance is, in the judgment of the Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the Secretary of State or the Secretary of Defense, as appropriate, and to the appropriate congressional committees without delay.⁸

State and USAID's failure to provide information and assistance to SIGAR also violates the December 3, 2021, guidance from the Office of Management Budget regarding cooperation with federal inspectors general, which states that, "It is the President's expectation that executive departments and agencies will restore and respect the integrity and independence of their respective agency inspectors general (IGs) and work with the Congress to ensure that IG offices can exercise their vital oversight role."⁹ The OMB Guidance goes on to explain that "in

⁶ NDAA for FY2008, § 1229(h)(5)(A).

⁷ See Inspector General Act of 1978, 5 U.S.C. app. § 6(c)(1). Section 6(a)(1)(A) of the IG Act authorizes inspectors general "to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act."

⁸ NDAA for FY2008, § 1229(h)(5)(B).

⁹ Memorandum from the Executive Office of the President, Office of Management and Budget, *Promoting Accountability through Cooperation among Agencies and Inspectors General* (December 3, 2021) at 1.¹⁰ *Id.* at 3.¹¹ NDAA for FY2008, § 1229(e)(2).

recent years, there have been concerns that executive branch agencies have not consistently provided their IGs with the full cooperation and access to which they are entitled under the law." OMB then noted that the most effective agency leadership communications, "affirmed the duty of agency personnel to cooperate" and noted that the IG Act "requires IG's timely access to all agency records."¹⁰

State and USAID are Prohibited by Law from Preventing SIGAR from Carrying Out Its Duties

SIGAR's authorizing statute states that:

No officer of the Department of Defense, the Department of State, or the United States Agency for International Development shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation related to amounts appropriated or otherwise made available for the reconstruction of Afghanistan¹¹

The Inspector General Act of 1978, as amended, contains a similar provision.¹²

In addition, Section 7 of the Inspector General Act of 1978 authorizes SIGAR to interview government employees and prohibits the agency from retaliating against those employees:

The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.¹³

* * * *

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.¹⁴

A State official has informed SIGAR that department staff have received internal direction to not engage with or speak to SIGAR without prior clearance from State legal counsel. This

¹⁰ *Id.* at 3.¹¹ NDAA for FY2008, § 1229(e)(2).

¹¹ NDAA for FY2008, § 1229(e)(2).

¹² The Inspector General Act of 1978, 5 U.S.C. app. § 3(a) provides that "[n]either the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation"

¹³ Inspector General Act of 1978, 5 U.S.C. app. § 7(a).

¹⁴ *Id.* § 7(c).

direction is at odds with Section 7 of the Inspector General Act and other legal protections related to whistleblowers.¹⁵

State and USAID Officials Are Coordinating to Obstruct SIGAR Audits and Congressionally Mandated Reviews

As of the date of this letter, State and USAID have unreasonably failed to provide the majority of the information SIGAR requested in support of several audits and Congressionally-mandated reviews. State and USAID have, in some cases, simply ignored our communications, refused to make staff available for interviews, or refused to permit SIGAR to travel internationally to conduct research on the ground – all of which I have determined are unreasonable and in disregard of the responsibilities of my office. SIGAR's audit and evaluation teams have been completely flexible and provided many options to facilitate your department's cooperation with our mission, to little effect.

1. State and USAID Officials Were Given Several Months to Comply with SIGAR's Requests for Information

On October 1, 2021, SIGAR announced that it was beginning several evaluations pertaining to the collapse of the Afghan government. Beginning on October 26, 2021, my office sent requests for information ("RFIs") to multiple offices and bureaus involved in Afghanistan reconstruction, including the Bureau of South and Central Asian Affairs; the Bureau of International Narcotics and Law Enforcement Affairs; the Coordinator for Afghanistan Relocation Efforts; and the U.S. diplomatic interests section for Afghanistan in Qatar, among others. Over the succeeding months, we submitted more than 20 follow-up or supplemental requests.

Unfortunately, after giving your agencies several months to provide the requested information and assistance, it is now evident that offices and staff who have cooperated with similar requests in the past were being silenced or overruled by officials opposed to SIGAR's independent oversight. For example, State declined to make staff available for interviews regarding the settlement of Afghan refugees and the conditions those refugees faced when fleeing Afghanistan. Similarly, USAID's Bureau of Humanitarian Assistance ("BHA") declined to provide funding information regarding its ongoing programs in Afghanistan, citing ongoing consultation with its legal counsel.

Of greatest concern, however, has been State and USAID's refusal to provide basic information relevant to SIGAR's audit concerning efforts to ensure that ongoing programs supporting the people of Afghanistan do not result in the illegal transfer of U.S. taxpayer funds to the Taliban or the Haqqani Network. This audit is simply the latest in a number of audits that SIGAR has

¹⁵ Whistleblower Protection Act of 1989, Pub. L. No. 101-12, § 4 (codified at 5 U.S.C. § 2302(b)(8), as amended).¹⁶ See, e.g., SIGAR, *Contracting with the Enemy: State and USAID Need Stronger Authority to Terminate Contracts When Enemy Affiliations Are Identified*, SIGAR Audit 13-14 (July 2013).

undertaken over the past decade related to the U.S. government's efforts to prevent contracting with the enemy.¹⁶ The fact that State and USAID would obstruct such oversight work, particularly after the Taliban's seizure of governmental power in Afghanistan, is unprecedented. Given the express prohibition against State and USAID officials preventing SIGAR from conducting its oversight work, it is also illegal.¹⁷

2. State and USAID Legal Counsel Falsely Claim that SIGAR Lacks Jurisdiction Over Humanitarian and Development Programs In Afghanistan

In April 2022, following more than six months of delay, the State Department's Acting Legal Adviser and USAID's General Counsel sent a letter to SIGAR requesting "clarification" of SIGAR's jurisdiction to conduct the audits and Congressionally mandated reviews noted above. The letter asserted, without basis, that "activities involving humanitarian and development assistance remain outside SIGAR's current mandate."¹⁸

SIGAR's General Counsel promptly responded to the State and USAID legal counsels' letter, explaining the broad scope of SIGAR's existing jurisdiction as stated in both the plain text of SIGAR's authorizing statute and its legislative history.¹⁹ A copy of SIGAR's letter is attached. The bottom line is that SIGAR's authorizing statute provides that SIGAR has jurisdiction to audit, investigate, and report on projects and programs using:

"any . . . funding mechanism" that supports "any of the following purposes:

(A) To build or rebuild physical infrastructure of Afghanistan.

(B) To establish or reestablish a political or societal institution of Afghanistan.

[and]

(C) To provide products or services to the people of Afghanistan."²⁰

More than a month later, SIGAR's General Counsel still has not received a response to his letter. However, two weeks ago, a State Department audit liaison sent a terse email to SIGAR's auditors stating that "the Department's position has not changed" and State would not cooperate with SIGAR's requests for information.²¹

Consistent with the plain text of SIGAR's authorizing legislation, we have since 2008 reported on humanitarian and development assistance programs in Afghanistan. For example, SIGAR's very first Quarterly Report to Congress discusses humanitarian and development assistance

¹⁶ See, e.g., SIGAR, *Contracting with the Enemy: State and USAID Need Stronger Authority to Terminate Contracts When Enemy Affiliations Are Identified*, SIGAR Audit 13-14 (July 2013).

¹⁷ NDAA for FY2008, § 1229(e)(2).

¹⁸ Letter from Richard C. Visek, Acting Legal Adviser, Department of State, and Margaret L. Taylor, General Counsel, USAID, to John G. Arlington, General Counsel, SIGAR (April 25, 2022).

¹⁹ Letter from John G. Arlington, General Counsel, SIGAR, to Richard C. Visek, Acting Legal Adviser, Department of State, and Margaret L. Taylor, General Counsel, USAID (May 6, 2022).

²⁰ NDAA for FY2008, § 1229(i)(2).

²¹ E-mail from State Department Audit Liaison to SIGAR Auditor (May 31, 2022).

within the broader context of Afghanistan reconstruction.²² No federal agency has challenged SIGAR's authority to conduct oversight of such programs until now. State and USAID legal counsels' claim that SIGAR's jurisdiction does not include such matters is not only contrary to the law, but a gross deviation from over 14 years of precedent set by three prior administrations.

Conclusion

As the U.S. government continues adding to the billions of dollars that it has already spent on the Afghan government and people since 2002, U.S. taxpayers deserve objective information concerning where their money is going and to whom it is being given. It is my sincere hope that you will follow the example of your predecessors across administrations and affirm the duty of State and USAID officials to comply with SIGAR's requests for information and assistance.

I respectfully request that your office respond to this letter within 10 days and advise SIGAR of your agencies' plans to provide the requested information and assistance, and to accept our interview requests. In addition, I request that you take immediate action to rescind any written or oral direction prohibiting State or USAID staff from communicating with SIGAR.

Pursuant to my duty under Section 1229(h)(5)(B) of the National Defense Authorization Act for FY 2008, I am providing a copy of this letter to the appropriate Congressional committees.

Thank you for your assistance in this matter. Should you have any questions with regard to this letter, please contact me at 703-545-6000, or john.f.sopko3.civ@mail.mil, or your staff may contact Jaryd M. Bern, Chief of Staff, at 703-861-1269 or jaryd.m.bern.civ@mail.mil.

Sincerely,



John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

cc: The Honorable Ron Klain, Chief of Staff, Executive Office of the President
The Honorable Shalanda Young, Director, Office of Management and Budget

Attachment: As stated

²² SIGAR, Quarterly Report to the United States Congress, October 2008.