

United States Senate

WASHINGTON, DC 20510

February 26, 2010

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

Dear Attorney General Holder:

On February 18, 2010, we received a response to our letter following up on conflicts of interest questions Senator Grassley raised at the November 18, 2009, Department of Justice Oversight hearing. Your response took three months and falls far short of providing the answers we sought. Further, it raises more questions than it answers about why the Department refuses to provide to Congress the names of political appointees at the Department who are working on detainee cases and policy and who previously represented detainees or advocated on behalf of detainees in policy matters.

The February 18 response does not provide complete answers and raises a host of new questions. Even the information that has a glimmer of being labeled responsive is full of caveats, exceptions, and qualifications, including the limiting phrases “to the best of our knowledge” and “as far as we are aware.” Further, the response indicates that instead of surveying the entire Department for political appointees with potential conflicts, the Department only surveyed a limited number of offices and excluded important offices at the Department including the Office of Legal Policy, the Office of Legislative Affairs, the Office of Public Affairs, the Civil Rights Division, the Executive Office for U.S. Attorneys, U.S. Attorneys, the U.S. Marshals Service, the Executive Office for Immigration Review, and the Bureau of Prisons.

The Department’s response is largely a recitation of public laws and model rules, and states the Department “does not maintain comprehensive records of [recusals] about individual Department employees.” In fact, the first attempt at a response to our questions appears on the third page of the letter. Perhaps the most disappointing part of the letter is that it indicates that at least ten political appointees at the Department have worked on detainee issues prior to their employment—by either directly representing detainees in court, contributing to detainee-related cases, or being involved in detainee advocacy—yet, they remain eligible to work on these issues and specific cases. The letter indicates that these same political appointees are only subject to selective recusals that are not public and not maintained in a centralized database at the Department. Further, the letter fails to provide the names of the political appointees, the cases or issues they worked on prior to joining the Department, and what issues or cases they are working on now in their respective capacities at the Department.

The letter adds that some political appointees have recused themselves from particular matters “regarding specific detainees in which their former firms represent the detainee or another party and from decisions relating specifically to the disposition of particular detainees.” Despite this assurance, the letter fails to identify these attorneys or the specific detainees or cases from which they are recused. The only two individuals who are directly identified in the letter are the two that we cited in our letter request based upon public media accounts of their prior representations.

Simply put, this letter is at best nonresponsive and, at worst, intentionally evasive. Further, we have a hard time reconciling this nonresponsive letter with commitments you made prior to your confirmation. For example, prior to your confirmation as Attorney General, you responded to questions for the record submitted by Senator Grassley stating that you, “fully respect the important role of Congress under the Constitution, and if confirmed...will work to ensure that the Department operates in a manner consistent with the legislative branch’s legitimate oversight functions.” In addition to these written responses, you gave assurances to Committee members in personal meetings that you would work to answer all questions posed in a timely and complete manner and work cooperatively with members of Congress in the oversight process.

Despite these assurances prior to confirmation, it appears the Department has chosen to go another direction and refuse to provide complete responses to our legitimate oversight inquiry. This development is troubling. Accordingly, we reiterate the initial requests from the November 24, 2009, letter and ask that you provide timely and complete responses to the following:

Original Requests:

- (1) The names of all political appointees in the Department who represented detainees, worked for organizations advocating on behalf of detainees, or worked for organizations advocating on terrorism or detainee policy;
- (2) The cases or projects that these appointees worked on with respect to detainees prior to joining the Justice Department;
- (3) The cases or projects relating to detainees that they have worked on since joining the Justice Department;
- (4) A list of all political appointees who have been instructed to, or have voluntarily recused themselves from working on specific detainee cases, projects, or matters pending before the courts or at the Justice Department;

Additional Requests Raised by February 18, 2010, Response:

- (5) The names and titles of the ten individuals mentioned in the February 18, 2010, response and the detainee-related cases and/or other advocacy for detainees these individuals worked on prior to their employment at the Department;
- (6) The names and titles of the ten individuals mentioned in the February 18, 2010, response and the detainee-related cases and/or policy issues they are working on at the Department currently;

- (7) The names and titles of the ten individuals mentioned in the February 18, 2010, response and a specific list of all detainee-related cases and/or policy issues they are specifically recused from;
- (8) An explanation for the reason the February 18, 2010, response failed to provide the names of the individual political appointees at the Department that are recused from specific cases or policy matters.
- (9) An explanation as to how and why only certain offices at the Department were selected for inclusion in the search for individuals with potential conflicts of interest;
- (10) An explanation as to why you did not canvass all offices at the Department, including: the Office of Legal Policy, the Office of Legislative Affairs, the Office of Public Affairs, the Civil Rights Division, the Executive Office for U.S. Attorneys, the U.S. Attorneys, the U.S. Marshals Service, the Executive Office for Immigration Review, and the Bureau of Prisons prior to providing the February 18, 2010, response;
- (11) The names of all political appointees in all offices at the Department, including: the Office of Legal Policy, the Office of Legislative Affairs, the Office of Public Affairs, the Civil Rights Division, the Executive Office for U.S. Attorneys, the U.S. Attorneys, the U.S. Marshals Service, the Executive Office for Immigration Review, and the Bureau of Prisons who represented detainees, worked for organizations advocating on behalf of detainees, or worked for organizations advocating on terrorism or detainee policy;
- (12) The cases or projects that the appointees in all offices at the Department, including: the Office of Legal Policy, the Office of Legislative Affairs, the Office of Public Affairs, the Civil Rights Division, the Executive Office for U.S. Attorneys, the U.S. Attorneys, the U.S. Marshals Service, the Executive Office for Immigration Review, and the Bureau of Prisons worked on with respect to detainees prior to joining the Justice Department;
- (13) The cases or projects relating to detainees that the appointees in all offices at the Department, including: the Office of Legal Policy, the Office of Legislative Affairs, the Office of Public Affairs, the Civil Rights Division, the Executive Office for U.S. Attorneys, the U.S. Attorneys, the U.S. Marshals Service, the Executive Office for Immigration Review, and the Bureau of Prisons have worked on since joining the Justice Department;
- (14) An explanation why the Department “does not maintain comprehensive records of [recusals] about individual Department employees.” This response should also answer the following:
 - a. How do Department employees know when an individual is recused from a specific case or policy matter?
 - b. What procedures and safeguards are in place to prevent potential conflicts of interest from becoming actual conflicts of interest?

These unanswered original questions and the new questions generated by the February 18, 2010, response raise serious concerns about who is providing advice on detainee matters. These requests are straightforward and are important components of the Judiciary Committee’s comprehensive oversight of the Department. We look forward to a complete and timely response to these questions no later than March 12, 2010.

Sincerely,

Chuck Grassley

Jon Kyl

John Cornyn

Orin G. Hatch

Jeff Sessions

Tom Coburn

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