

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Tenth Congress

April 10, 2007

The Honorable Alberto R. Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Mr. Attorney General:

Attached is a subpoena for documents and electronic information that we previously requested from the Department in connection with its investigation into the circumstances surrounding the recent termination of several United States Attorneys and related matters, which the Department has furnished to us thus far only in redacted form, or has told the Subcommittee it was withholding. The subpoena is being issued pursuant to authority granted by the House Judiciary Subcommittee on Commercial and Administrative Law on March 21, 2007.

I appreciate your cooperation in voluntarily supplying a number of documents in response to the Subcommittee's request. As we have written and told you and your staff on a number of occasions, however, and reiterated most recently in our letters of March 22, March 28, and April 2, 2007, the incomplete response we have received thus far falls far short of what is needed for the Subcommittee and Committee to effectively exercise their oversight responsibilities in ascertaining the truth behind the very serious concerns that have been raised regarding this matter.

Our staffs have spent much time discussing our respective positions, without success. Since our initial request on March 8, we have been patient in allowing the Department to work through its concerns regarding the sensitive nature of some of these materials, and as more specifically set forth in our prior correspondence to you, we have sought to accommodate those concerns where it was possible to do so. In this regard, you will note that certain items about which you have raised specific concerns are explicitly excepted from the subpoena. Unfortunately, the Department has not indicated any meaningful willingness to find a way to meet our legitimate needs, and at this point further delay in receiving these materials will not serve any constructive purpose.

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The Department is currently withholding significant information concerning U.S. Attorneys who were considered for termination but were ultimately retained, and concerning individuals considered as replacement candidates. This information is clearly relevant to our inquiry into indications that U.S. Attorneys and candidates may have been evaluated based on improper considerations, including their willingness to make decisions as to prosecution of public corruption cases based on whether it helped, or hurt, partisan political objectives.

The Department has indicated that it is also withholding altogether an unspecified number of documents "generated for the purpose of responding to the congressional (and media) inquiries" concerning the U.S. Attorney terminations, while providing some such information. This information also falls within the scope of our oversight authority and, among other things, could shed light on whether Department officials may have attempted to obstruct our primary investigation or misled Congress.

In order to better ensure that we can conduct a thorough and fair review, I am asking, as I did in my most recent letter to Assistant Attorney General Hertling, for complete electronic information, including embedded data and metadata, responsive to our previous requests. This will include all document and data file productions, whether from word processing, spreadsheet, e-mail, or instant messaging applications, or from other electronic data repositories, all in native file format so that the metadata accompanies each electronic document or data file. This will give the Subcommittee access to any information that may be obscured in the printed documents previously provided to us.

Recent developments, including the apparent inconsistencies between your statements and the testimony of your former chief of staff, Kyle Sampson, declarations that your former senior counsel and White House liaison, Monica Goodling, intends to invoke her Fifth Amendment privilege against self-incrimination rather than answer the Subcommittee's questions, and a series of recent resignations by senior officials at the Department, including Mr. Sampson and Ms. Goodling, have only increased my conviction that the Subcommittee must have all potentially relevant information that it has requested without further delay.

Under these circumstances, you must understand why we cannot accept the Department's unilateral judgment as to how much of this information it needs to disclose, or its unilateral judgment as to whether limited viewing of certain information, on Department premises and under Department supervision, and with no copying or note-taking permitted, is sufficient to permit effective and efficient review.

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I look forward to your timely compliance so that we can proceed with getting to the truth regarding these matters, as a necessary step toward restoring public trust in the integrity of federal law enforcement.

Sincerely,

A handwritten signature in cursive script that reads "John Conyers, Jr." with a period at the end. The signature is written in black ink and is positioned above the printed name.

John Conyers, Jr.
Chairman

cc: The Honorable Lamar S. Smith
The Honorable Linda T. Sánchez
The Honorable Christopher B. Cannon

SUBPOENA

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE
CONGRESS OF THE UNITED STATES OF AMERICA**

To The Honorable Alberto R. Gonzales, United States Attorney General

You are hereby commanded to be and appear before the Committee on the Judiciary
Subcommittee on Commercial and Administrative Law
of the House of Representatives of the United States at the place, date and time specified below.

to testify touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____	
Date: _____	Time: _____

to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: <u>2138 Rayburn House Office Building, Washington, D.C. 20515</u>	
Date: <u>April 16, 2007</u>	Time: <u>2:00 p.m.</u>

To Any authorized staff member of the House Committee on the Judiciary

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States,
at the city of Washington, this 10th day of April, 2007.

Attest:

Clerk

Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for The Honorable Alberto R. Gonzales, United States Attorney General

Address Main Justice Building, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530

before the Committee on the Judiciary

Subcommittee on Commercial and Administrative Law

*U.S. House of Representatives
110th Congress*

Served by (print name) Elliot M. Minberg

Title Chief Counsel, Oversight and Investigations, House Committee on the Judiciary

Manner of service personal delivery to Faith Burton, Office of Legislative Affairs, as authorized

agent for the Honorable Alberto R. Gonzales (by agreement)

Date April 10, 2007

Signature of Server _____

Address 2138 Rayburn House Office Building, Washington, D.C. 20515

**SCHEDULE OF
DOCUMENT REQUESTS
SUBPOENA TO THE ATTORNEY GENERAL
APRIL 10, 2007**

Documents requested

1. Complete and unredacted versions, including complete paper and electronic versions, of any and all documents created by or sent to anyone at the Department, referring or otherwise relating in any way to the termination of former U.S. Attorneys David Iglesias, H.E. Cummins, John McKay, Carol Lam, Daniel Bogden, Paul Charlton, Kevin Ryan, or Margaret Chiara (hereinafter “the terminated U.S. Attorneys”), or any of them, or to the consideration or selection of their possible replacements, or any of them.
2. Complete and unredacted versions, including complete paper and electronic versions, of any and all documents referring to or otherwise relating in any way to a communication between anyone at the Department and any Member of Congress concerning any of the terminated U.S. Attorneys occurring in advance of the termination involved.
3. Complete and unredacted versions, including complete paper and electronic versions, of any and all documents that anyone at the Department submitted to, or that refer or otherwise relate in any way to a communication that anyone at the Department had with, any of the terminated U.S. Attorneys during his or her tenure in office concerning any failure in performance, including any failure to comply with Department priorities and directives.
4. Complete and unredacted versions, including complete paper and electronic versions, of any and all documents previously requested in writing by the Subcommittee that the Department has withheld, in whole or in part, from production on any basis or for any reason, including, but not limited to, those documents “generated within the Executive Branch for the purpose of responding to the congressional (and media) inquiries about the resignations.” as described in the Department’s March 19, 2007 letter.
5. Excluded from paragraphs 1-4 is the paper version of any document previously provided in complete, unredacted paper form by the Department to the Subcommittee on March 13, 19, 20, 23, or 28, 2007.

6. Also excluded from paragraphs 1-4 is any information redacted from a document by the Department when provided to the Subcommittee on March 13, 19, 20, 23, or 28, 2007, to the extent that:
 - a. it is non-public information that pertains solely to an open criminal investigation;
 - b. it consists solely of social security numbers, bank account numbers, medical records, and similar personal information regarding an individual United States Attorney or candidate, to the extent that such information is unrelated to any criterion used in connection with the person's consideration for appointment or termination;
 - c. it relates solely to the Office of Professional Responsibility investigation concerning the Western District of Michigan, referred to in the Department's March 19 letter;
 - d. it consists solely of the death penalty recommendation memoranda referred to in the Department's March 19 letter.

**INSTRUCTIONS, DEFINITIONS, AND RULES OF CONSTRUCTION
FOR SCHEDULE OF DOCUMENT REQUESTS
SUBPOENA TO THE ATTORNEY GENERAL
APRIL 10, 2007**

Instructions

1. In complying with this Subpoena, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agent, employee, or representative acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data, or information called for by this request shall be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Subcommittee.
2. For any of the documents described in paragraphs 1-4 of the attached schedule, the documents produced should include, without redaction, all information regarding any U.S. Attorney who was considered for termination, any person who was considered for possible appointment as a U.S. Attorney, or the process for considering U.S. Attorneys for termination or for considering persons for possible appointment as U.S. Attorneys.
3. Production with respect to each document shall include all electronic versions and data files from word processing, spreadsheet, email or instant messaging applications, and other electronic data repositories, and shall be provided to the Subcommittee in its native file format and shall include all original metadata for each electronic document or data file. Productions shall be provided on CD, DVD or USB external hard drive.
4. Any draft, preliminary version, modification, revision, or amendment of a document, and any version that otherwise differs in any respect, such as having marginalia, markings, other notations or attachments, or otherwise, shall be considered a separate document and shall also be furnished as responsive.
5. In the event that any entity, organization or individual denoted in this subpoena has been, or is also known by any other name than that herein denoted, the subpoena shall be read also to include them under that alternative identification.
6. Each form in which a document is produced shall be capable of being copied in that

form.

7. Documents shall be produced as they are kept in the usual course of your business, including with any file labels, dividers, or other identifying markers with which they were associated when this subpoena was served. Also identify to which paragraph from the subpoena such documents are responsive.
8. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same document.
9. If compliance with the subpoena cannot be made in full, compliance shall be made to the fullest extent possible and shall include an explanation of how the compliance is less than full and why fuller compliance is not possible.
10. In the event that any document which you have reason to believe the Subcommittee might regard as responsive is being withheld for any reason, provide the following information concerning such document:
 - a. the nature, source, and date of the document;
 - b. a description of the document's subject matter;
 - c. the name and address of each recipient of the original or a copy of the document, together with the date or approximate date when each recipient received the document;
 - d. the name and address of any other person to whom any of the contents of the document have been disclosed, the date such disclosure took place, and the means of such disclosure; and
 - e. the basis for withholding the document from the Subcommittee, including the nature of any privilege or rule of law relied upon, the identity of the person or persons asserting any such privilege or rule, and the legal basis for asserting the privilege or rule.
11. In the event that any document which you have reason to believe the Subcommittee might regard as responsive is claimed to have been destroyed or to otherwise be no longer within your possession, custody, or control, provide the following information concerning such document:
 - a. the nature, source, and date of the document;

- b. a description of the document's subject matter;
 - c. the name and address of each recipient of the original or a copy of the document, together with the date or approximate date when each recipient received the document;
 - d. the name and address of any other person to whom any of the contents of the document have been disclosed, the date such disclosure took place, and the means of such disclosure;
 - e. the date the document was destroyed, or ceased to be within your possession, custody, or control;
 - f. the person who ordered or authorized such destruction or removal from your possession, custody, or control;
 - g. the reason for the document's destruction or removal from your possession, custody, or control, and the policy and authority on which such destruction or removal was based; and
 - h. the custodian of the document on the date of such destruction or removal.
12. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
13. All documents shall be bates-stamped sequentially and produced sequentially, with an indication as to which paragraph of the schedule it is responsive.
14. This request is continuing in nature and applies to any newly-discovered information. Any document not produced because it has not been located or discovered by the return date shall be produced immediately upon location or discovery subsequent thereto.
15. Two identical sets of responsive documents shall be delivered contemporaneously, one to the Majority Staff and one to the Minority Staff. Production sets shall be delivered to the Majority Staff in Room 2138, Rayburn House Office Building, and to the Minority Staff in Room 2142, Rayburn House Office Building.

Definitions and Rules of Construction

As used anywhere in this subpoena or in the schedule, instructions, definitions, or rules of construction thereto—

1. The term “document” is meant to carry, without limitation, the full breadth of that term as it is used in the Federal Rules of Civil Procedure. It includes, as applicable, any memorialization, whether typed, written, recorded, printed or otherwise produced by hand, or produced by any electronic or digital process or otherwise. It includes, without limitation, agreements, contracts, letters or other correspondence, facsimile or email transmissions, telephone messages, logs or records, memoranda, notes, diaries, graphs, formulas, models, bulletins, computer printouts, transcripts, analyses, returns, summaries, accounts, estimates, projections, comparisons, messages, press releases, circulars, reviews, opinions, offers, studies, photographs, investigations, questionnaires, surveys, work sheets, statistical data, reports, notebooks, manuals, charts or other graphic matter, plans, journals, ledgers, bank records, financial statements, summaries, analyses, commentary, expense reports, books, instructions, financial reports, working papers, records notes, notices, confirmations, telegrams, teletypes, interoffice or intra office communications, cables, and minutes or notations or other records of any type of any conversation, interview, telephone call, meeting, conference, discussion, or other communication. It includes any transmittal slip, attachment, appendix, or other document referenced therein. It includes, without limitation, any information contained on audiotape, videotape, microfilm, or microfiche, as well as any electronically stored information that has been created using, or is otherwise maintained on, digital repositories or other electronic media including, but not limited to, personal computers, office workstations, laptops, hard drives, handheld devices (such as Palm, Trio or Blackberry), phones (office, mobile and/or home), removable electronic storage devices (such as CDs, DVDs and USB or thumb drives), shared network drives and servers (including email and/or file servers) and back-up tapes (or other disaster recovery/archiving media).
2. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa, so that neither shall be construed as a limitation. The masculine, feminine, and neuter genders each include the others.
3. The terms “person”, “persons”, and “anyone” includes, without limitation, natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or

government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

4. The terms “referring” and “relating,” with respect to any given subject, shall be construed broadly to mean anything that constitutes, contains, embodies, reflects, identifies, concerns, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.
5. The terms “including” and “includes,” with respect to any given subject, shall be construed broadly so that specification of any particular matter shall not be construed to exclude any documents that you have reason to believe the Subcommittee might regard as responsive.
6. The terms “Department of Justice” and “Department” include, without limitation, anyone presently or formerly employed there, suspended from employment there, or on administrative leave from employment there.
7. The terms “you” and “your” include you individually, in your capacity as Attorney General, as well as the Department of Justice and, without limitation, anyone presently or formerly employed there, suspended from employment there, or on administrative leave from employment there.