



U.S. Department of Justice
Office of Legislative Affairs

*Early
Circulated*

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Darrell Issa
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Issa:

This responds to your letter, joined by thirteen other members of the House of Representatives, to the Attorney General regarding the prosecution of alien smugglers by the Department of Justice. An identical letter is being sent to all signatories. We apologize for any inconvenience our delay in responding may have caused you or your colleagues.

We appreciate your interest in the Department of Justice's prosecution of alien smuggling offenses, and share your concern about alien smugglers who place the safety and well-being of law enforcement and the public in jeopardy. Every year, nearly one million illegal aliens are apprehended along our nation's border with Mexico. The United States Attorneys' Offices along the Southwest Border (which includes the Districts of Southern Texas, Western Texas, New Mexico, Arizona, and Southern California) face an enormous challenge in trying to enforce our criminal immigration and narcotics laws along that border. Since the Border Patrol began Operation Gatekeeper ten years ago, those districts have encountered sudden explosions in the number of apprehensions and cases, as illegal immigrants and smugglers have probed the expansive border for more vulnerable points of entry. The District of Arizona, for example, saw apprehensions grow from approximately 100,000 a year to nearly 600,000 a year.

The United States Attorneys' Offices along the Southwest Border place the highest priority on prosecuting alien smuggling cases, focusing first and foremost on those cases that (a) present a potential threat to national security (e.g., the smuggling of aliens from countries with ties to terrorism); (b) present the greatest threat to the health and safety of the community (e.g., where the illegal aliens have prior records for murder, rape, and other violent crimes); and (c) demonstrate willful or reckless disregard for human life. These offices have also reviewed and revised their own office policies for prosecuting illegal aliens by, for example, ensuring that felony immigration charges are brought, instead of misdemeanors, against illegal aliens with serious criminal histories.

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These strategic approaches to prioritize cases and focus on the most serious offenders have yielded tangible results. For example, crime rates in many cities near the border have fallen during the past decade. The Southwest Border Districts have collectively experienced significant increases in the prosecution of alien smuggling offenses in the past three years. The projected number of alien smuggling offenses in violation of 8 U.S.C. § 1324 filed by the United States Attorneys' Offices in the Southwest Border Districts in fiscal year 2004 represents an approximate increase of 49 percent from the number of alien smuggling offenses filed in fiscal year 2001.

Although these increases are significant, the Department is committed to improving its law enforcement role along the border and we continue to develop additional policies and procedures to address the alien smuggling problem. [The Director of the Executive Office for United States Attorneys (EOUSA), has personally contacted the United States Attorneys in the Districts of Arizona, New Mexico, the Southern and Western Districts of Texas, and the Southern District of California to discuss these issues with them.] Despite the heavy caseload of immigration offenses confronting these United States Attorneys, they recognize the need to always challenge themselves to find better ways to keep this country safe, and they continue to reexamine their response to immigration violations. Toward this end, the Southwest Border United States Attorneys will be meeting in Arizona in January 2005 to discuss ways to better address the broad range of conduct that includes alien smuggling, as well as other offenses involving the circumvention of our immigration laws. Representatives from Immigration and Customs Enforcement will participate in the meeting, as well. The United States Attorneys are also committed to working jointly with the Civil Rights Division on immigration offenses which involve human trafficking. [The Director of EOUSA will continue to work with the United States Attorneys in these districts to ensure that the Department is working as efficiently and effectively as possible, and that these United States Attorneys have all of the support and resources we can provide to them to address the significant issues they face at the border.]

We hope this brief explanation of our efforts to maintain border security through criminal prosecutions, as well as the challenges we face in those efforts, is helpful to you as you continue your important work in Congress. We look forward to working with you and providing additional information to you that may be beneficial in addressing this complex problem. [The Department is aware of the request by the House Judiciary Committee for information relative to Antonio Amparo-Lopez, and will cooperate fully with the Committee in scheduling a briefing for staff.]

"will respond to inquiry"

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We appreciate your interest in this matter. Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

William E. Moschella
Assistant Attorney General

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U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Draft January 4, 2005

The Honorable Darrell Issa
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Issa:

This responds to your letter, dated July 30, 2004, regarding the prosecution of alien smugglers by the Department of Justice. We apologize for any inconvenience our delay in responding may have caused you or your colleagues, to whom we are sending identical responses.

We appreciate your interest in the Department's prosecution of alien smuggling offenses, and share your concern about alien smugglers who place the safety and well-being of law enforcement and the public in jeopardy. Every year, nearly one million illegal aliens are apprehended along our nation's border with Mexico. The United States Attorneys' Offices along the Southwest Border (which includes the Districts of Southern Texas, Western Texas, New Mexico, Arizona, and Southern California) face an enormous challenge in trying to enforce our criminal immigration and narcotics laws along that border. Since the Border Patrol began Operation Gatekeeper ten years ago, those districts have encountered sudden explosions in the number of apprehensions and cases, as illegal immigrants and smugglers have probed the expansive border for more vulnerable points of entry. The District of Arizona, for example, saw apprehensions grow from approximately 100,000 a year to nearly 600,000 a year.

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Although these increases are significant, the Department is committed to improving further its law enforcement role along the border and we continue to develop additional policies and procedures to address the alien smuggling problem. Despite the heavy caseload of immigration offenses confronting the Southwest Border United States Attorneys, they recognize the need to always find better ways to keep this country safe, and they continue to reexamine their responses to immigration violations. Toward this end, the Southwest Border United States Attorneys will be meeting in Arizona in January 2005 to discuss ways to better address the broad range of conduct that includes alien smuggling, as well as other offenses involving the circumvention of our immigration laws. Representatives from the Bureau of Immigration and Customs Enforcement will participate in the meeting, as well. The United States Attorneys are also committed to working jointly with the Civil Rights Division on immigration offenses which involve human trafficking.

We hope this information about our efforts to maintain border security through criminal prosecutions, as well as the challenges we face in those efforts, is helpful and we appreciate your interest in this matter. We will, of course, respond to the House Judiciary Committee inquiry regarding Mr. Amparo-Lopez. Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

William E. Moschella
Assistant Attorney General

The Honorable Darrell Issa
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From: leonardleo@ [

From: leonardleo@ [

Date: 3/7/2005 11:05:56 PM

To: Buchanan, MaryBeth

Subject: [] San Diego

You guys need a good candidate?

I'd strongly recommend the current GC of the Air Force, Mary Walker.

Sent via BlackBerry from T-Mobile.

]<[_____]>
:]<[]>

From: Sheorn, Douglas </O=USDOJ/OU=USAEOWSA/CN=RECIPIENTS/CN=MAILBOXES/CN=DSHEORN>

From: Sheorn, Douglas </O=USDOJ/OU=USAEOWSA/CN=RECIPIENTS/CN=MAILBOXES/CN=DSHEORN>

Date: 4/17/2005 8:13:20 PM

To: Battle, Michael

CC: Buchanan, MaryBeth; Goodling, Monica (EOUSA); Hardos, Debbie

Subject: FW: Resignation Guidance for United States Attorneys

Mike,

I just wanted to congratulate you on your upcoming appointment as Director of EOUSA. I have attached below USA resignation guidance that Mary Beth sent out recently. If you have any questions, please let me know.

Thanks and have a great time in Scottsdale!

Doug

> -----Original Message-----

> From: EOUSA, Office of the Director

> Sent: Tuesday, December 21, 2004 5:29 PM

> To: USA-fausa1; USA-fausa2; USA-fausa3; USA-fausa4; USA-usa1; USA-usa2; USA-usa3; USA-usa4; USA-ao1; USA-ao2; USA-ao3; USA-ao4

> Cc: USA-usasec1; USA-usasec2; USA-usasec3

> Subject: Resignation Guidance for United States Attorneys

>

>

>

> This is an unattended E-Mail account. Please do not reply to this address.

>

> TO: ALL UNITED STATES ATTORNEYS

> ALL FIRST ASSISTANT UNITED STATES ATTORNEYS

> ALL ADMINISTRATIVE OFFICERS

>

>

> FROM: Mary Beth Buchanan

> Director

>

> SUBJECT: Resignation Guidance for United States Attorneys

>

> ACTION REQUIRED: Information Only.

>

> CONTACT PERSON: Doug Sheorn

> Executive Resources Program Manager

> Telephone: (202) 353-8714

>

>

> Please see the attached memorandum regarding procedures for submitting resignations for United States Attorneys.

>

> To open attachment right click, select "open" select "open it", and select "ok".

>

>

> Attachment

>

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>cc: All United States Attorneys' Secretaries



U.S. Department of Justice

*Executive Office for United States Attorneys
Office of the Director*

Main Justice Building, Room 2261
950 Pennsylvania Avenue, NW
Washington, DC 20530

(202) 514-2121

MEMORANDUM - Sent via Electronic Mail

DATE: DEC 21 2004

TO: ALL UNITED STATES ATTORNEYS
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS
ALL ADMINISTRATIVE OFFICERS

FROM: 
Mary Beth Buchanan
Director

SUBJECT: Resignation Guidance for United States Attorneys

ACTION REQUIRED: Information Only.

CONTACT PERSON: Doug Sheorn
Executive Resources Program Manager
Telephone: (202) []
E-mail: Douglas.Sheorn@usdoj.gov

Within the last several months, we have had a few United States Attorneys make inquiries to the Executive Office for United States Attorneys (EOUSA) regarding the procedures for submitting their resignations. To assist you, I have attached answers to some of the most frequently asked questions regarding the resignation process, including guidance for resigning interim United States Attorneys who are returning to positions as Assistant United States Attorneys. If it is your intention to resign, please advise me at your earliest opportunity either by electronic mail or by calling (202) 514-2121. It is very important for us to provide the President and the Attorney General with as much advance notice as possible.

Letters of resignation addressed to the President and to the Attorney General should be sent to Doug Sheorn, EOUSA, by express mail. After a United States Attorney announces his or her resignation, please be aware that discretionary staff personal changes (e.g., appointments, promotions, and reassignments), at all grade levels, from all sources will be restricted. Please note that this affects actions which increase employment by adding a new employee to the

district's rolls and internal actions which involve a change in position, such as promotion or reassignment.

Offers of employment extended verbally or in writing before the United States Attorney announced his or her resignation, including offers that were contingent on clearances such as drug testing or background investigation, will be honored.

No new offers of employment in the district may be made after the United States Attorney announces his or her resignation. If the office is in the final interview stage with any candidate, the selecting official must inform the applicant that no offer can be extended until the new United States Attorney is appointed.

If you have any questions, please contact Doug Sheorn at (202) []

Attachments

cc: All United States Attorneys' Secretaries

RESIGNATION OF A UNITED STATES ATTORNEY

FREQUENTLY ASKED QUESTIONS

- **The district's United States Attorney has decided to resign his/her position. Who needs to be notified?**
 - The United States Attorney should draft letters of resignation to the President and the Attorney General stating the date and time of the proposed resignation. Generally, the letter to the President is brief, while the letter to the Attorney General is usually longer and more personal (See examples attached). These letters should be overnighted to **Doug Sheorn**, Executive Resources Program Manager, in the Executive Office for United States Attorneys (EOUSA), who will handle their delivery.
 - The United States Attorney should personally call the Attorney General to notify him/her of the resignation. The United States Attorney should also contact his/her United States Senators or other individuals involved with recommending a replacement, so that the process of selecting a successor can begin.
 - The United States Attorney also should call the Director of the Executive Office for United States Attorneys (202-514-2121) at his/her earliest opportunity to notify him/her of their plans to resign.
 - The United States Attorney should announce his/her resignation to the district. He/she may want to fax a memorandum announcing his/her departure to government agency heads and other interested parties.

- **Does a press release need to be prepared? And if so, what should it say?**

The United States Attorney's Office may want to send out a news release announcing the United States Attorney's resignation. The press release should include in general terms why he/she is leaving, his/her future plans, and any specific accomplishments (see example attached). The press release should not be used as an announcement of a political campaign or a new business. Copies of the press release should be forwarded to EOUSA and the Department of Justice, Office of Public Affairs.

- **Who handles paperwork for a United States Attorney's resignation, and what documents need to be prepared?**

- The EOUSA's Personnel Staff handles separation actions for all United States Attorneys, both Servicing Personnel Office districts (SPO) and non-SPO districts. EOUSA also processes all insurance forms and associated benefits for departing United States Attorneys.
- The district's Administrative Officer should complete an SF-52, Request for Personnel Action, for the United States Attorney's resignation. He/she then forwards this document, along with a copy of the United States Attorney's resignation letter, to EOUSA's Assistant Director, Personnel Staff, Linda Schwartz.

- **What happens to the United States Attorney's annual leave upon his/her resignation?**

Presidentially appointed United States Attorneys do not earn leave. If a United States Attorney was a federal employee earning leave prior to this appointment, however, his/her leave was frozen upon appointment. The United States Attorney generally will receive a lump sum leave payment upon resignation for any annual leave accrued prior to the appointment. The lump sum payment is calculated at the hourly rate the employee earned at the time his/her annual leave was frozen. If the United States Attorney accepts a position in the federal government after his/her resignation, e.g. appointment to a federal judgeship, leave may transfer to the new appointment. Lump sum leave payments are processed by EOUSA's Personnel Staff.

- **What other steps need to be taken before the United States Attorney actually separates from the office?**

The United States Attorney should ensure that the district's Administrative Officer has his/her correct home and work forwarding information. The United States Attorney should also work with the district's Administrative Officer to ensure that he/she has met obligations concerning: the return of government property, the removal or preservation of federal records, and post-employment restrictions.

- **Are there any restrictions on hiring and staffing changes within the office after the United States Attorney announces their resignation?**

Yes. After a United States Attorney announces his or her resignation, please be aware that discretionary staff personal changes (e.g., appointments, promotions, and reassignments), at all grade levels, from all sources will be restricted. Please note that this affects actions which increase employment by adding a new employee to the district's rolls and internal actions which involve a change in position, such as promotion or reassignment. Career ladder promotions for support employees are excepted because

they do not involve filling a different position and, of course, all non-discretionary personnel actions (e.g., within-grade increases and pay adjustments) are also excepted.

Offers of employment extended verbally or in writing before the United States Attorney announced his or her resignation, including offers that were contingent on clearances such as drug testing or background investigation, will be honored.

No new offers of employment in the district may be made after the United States Attorney announces his or her resignation. If the office is in the final interview stage with any candidate, the selecting official must inform the applicant that no offer can be extended until the new United States Attorney is appointed either by the President or as an interim.

- **What is the process for determining the new United States Attorney?**

When the vacancy of a Presidentially appointed United States Attorney occurs, the Attorney General has the authority to appoint an interim United States Attorney for a maximum period of 120 days. Upon the expiration of this period, and, in the absence of a Presidentially appointed candidate, the federal district court may appoint the interim United States Attorney whose term lasts until the confirmation of a Presidential appointment, or until a new court appointed interim United States Attorney is appointed. After the President nominates a candidate to the Senate, and before that candidate is confirmed, the Attorney General may want that candidate to serve as an interim United States Attorney pending confirmation. Presidentially appointed United States Attorneys serve for a four year term but may hold over after their term expires (and without formal reappointment), at the pleasure of the President.

- **An Interim United States Attorney has not yet been appointed. Who may act as the United States Attorney?**

In the absence of an interim United States Attorney appointed by the Attorney General, the Department of Justice's Office of Legal Counsel has determined that the First Assistant United States Attorney may act as the United States Attorney under the Vacancies Reform Act for no more than 210 days and should call him- or herself the Acting United States Attorney. No paperwork (SF-52, SF-61 Appointment Affidavit, etc.) is required for this change.

- **Where should recommendations for United States Attorney Appointments be sent?**

Recommendations for United States Attorneys should be forwarded to the Attorney General. Copies of recommendation letters should be sent to the Director, BOUSA.

- **Who can make recommendations for an interim United States Attorney?**

The departing United States Attorney may, if he/she so desires, make a recommendation

to the Director, EOUSA as to the appointment of an interim United States Attorney.

• **When serving as an interim United States Attorney, what title should be used?**

When serving under an Attorney General appointment, court appointment, or Presidential appointment, the title of "United States Attorney" should be used. "Interim United States Attorney" refers to the status not the title of the appointment. If the FAUSA is serving as the Acting United States Attorney under the Vacancies Reform Act, the title "Acting United States Attorney" should be used.



U.S. Department of Justice

*United States Attorney
Eastern District of the United States*

The President
The White House
Washington, DC 20500

Dear Mr. President:

I am hereby submitting my resignation as United States Attorney for the Eastern District of the United States, effective midnight March 30, 2004.

I deeply appreciate the opportunity to have served as United States Attorney. I wish you and your administration the best of luck and success.

Sincerely,

John A. Smith
United States Attorney

EOUSA000000204



U.S. Department of Justice

*United States Attorney
Eastern District of the United States*

The Attorney General
United States Department of Justice
Main Justice Building, Room 5111
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I am hereby submitting my resignation as United States Attorney for the Eastern District of the United States, effective midnight March 30, 2004. It has been a great honor and privilege to have served these past two years as a United States Attorney, initially by your appointment and thereafter by Presidential appointment.

Serving the United States as a United States Attorney has been the highest honor and most fulfilling duty of my public career. Thank you for your support and the support of the Department of Justice during my tenure.

I deeply appreciate the opportunity to have served as the United States Attorney for the Eastern District of the United States. I wish you the best of luck and success.

Sincerely,

John A. Smith
United States Attorney

EOUSA000000205

**UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF
THE UNITED STATES ANNOUNCES RESIGNATION**

Washington, DC . . . United States Attorney John A. Smith, 43, of Washington, DC, has announced his resignation effective midnight on March 30, 2004. After his resignation, he plans on joining a private law firm in the Washington, DC, area.

Smith, a graduate of American University and the University of Virginia Law School, had previously served as First Assistant United States Attorney and Chief Assistant United States Attorney for the Criminal Division. During his tenure as United States Attorney, he served on the Attorney General's Advisory Committee and was co-chair of the Civil Rights Subcommittee. Mr. Smith has also served as an Instructor at the Attorney General's Advocacy Institute and the National Institute of Trial Advocacy. He implemented the current Weed and Seed program, which helps local communities reduce crime by bringing in investment and opportunity.

As United States Attorney, Smith also successfully prosecuted many civil rights and hate crime cases. In *US v. Carter*, he sought the conviction in 1998 of Bob D. Carter for racially-biased assaults against African American citizens and police officers in the downtown Washington, DC, area. Mr. Smith also oversaw the prosecution of many individuals under the Deadbeat Parents Punishment Act, which charges parents who fail to pay court-ordered child support.

The Eastern District of the United States covers 13 states, and includes the cities of Washington, DC, New York City, Boston and Philadelphia. The United States Attorney's Office, with staffed offices in Washington, DC, and New York City, has 32 attorneys and is responsible for conducting all criminal and civil litigation in the district involving the United States government.

Departing United States Attorneys (USAs returning to positions as Assistant United States Attorneys (AUSA) or Supervisory AUSAs)

- The United States Attorney (USA) prepares a letter of resignation from the United States Attorney position. The letter should include wording such as:

I am resigning my position as United States Attorney for the ----- District of ----- to return to my former position as AUSA OR Supervisory AUSA (Criminal Chief, Civil Chief, First Assistant, etc.) OR Senior Litigation Counsel [whichever is appropriate] for the ----- District of ----- . This resignation is effective on ----- OR effective contemporaneously with the appointment of (Mr./Ms. Last Name of the Nominee).

I understand that I will not be separated from federal service but returned to my former position within the ----- District of -----.

- The letter should be addressed to Mary Beth Buchanan, Director, EOUSA

3. Please Fed Ex the letter to: Doug Sheorn
Executive Resources Program Manager
950 Pennsylvania Avenue, NW, Rm. 2513
Washington, DC 20530

- Personnel Staff, EOUSA, will process the appropriate personnel actions to return the employee to his/her former position within the district. The actions processed will be as follows:

Hiring Restrictions After an Interim United States Attorney Announces His or Her Intention to Resign

After an interim United States Attorney announces his or her resignation, please be aware that discretionary staff personal changes (e.g., appointments, promotions, and reassignments), at all grade levels, from all sources will be restricted. Please note that this affects actions which increase employment by adding a new employee to the district's rolls and internal actions which involve a change in position, such as promotion or reassignment. Career ladder promotions for support employees are excepted because they do not involve filling a different position and, of course, all non-discretionary personnel actions (e.g., within-grade increases and pay adjustments) are also excepted.

Offers of employment extended verbally or in writing before the interim United States Attorney announced his or her resignation, including offers that were contingent on clearances such as drug testing or background investigation, will be honored.

No new offers of employment in the district may be made after the interim United States Attorney announces his or her resignation. If the office is in the final interview stage with any

candidate, the selecting official must inform the applicant that no offer can be extended until the new United States Attorney is appointed either by the President or as an interim.

Employee Returning to an AUSA Position:

Conversion to Excepted Appointment effective the day after resignation from the USA position. Pay will be set in accordance with current AD pay guidelines.

Employee Returning to an AUSA Position and Immediately Being Temporarily Promoted to Former Supervisory AUSA/SLC Position: This scenario requires two personnel actions (only one SF-52 needs to be completed; both actions may appear on one SF-52).

Personnel Action 1: Conversion to Excepted Appointment effective the day after resignation from the USA position. Pay will be set in accordance with current AD pay guidelines.

Personnel Action 2: Temporary Promotion to Supervisory AUSA or SLC position. Pay will be set in accordance with current supervisory AD pay guidelines.

NOTE: The employee should experience no break in coverage of any federal life or health insurance coverage. Retirement coverage and Thrift Savings Plan contributions, as well as annual and sick leave accruals will continue uninterrupted (USAs continue to earn leave on Attorney-General and Court Appointments). The only thing the employee should notice has changed (in the case of those who elected to receive the USA salary during this interim period) is that their pay will decrease.

The Personnel Staff, EOUSA, will monitor the processing of all of the above actions to ensure a smooth transition for these employees returning to former AUSA, Supervisory AUSA, or SLC positions.