

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

February 2, 2006

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Gonzales:

Last week we wrote to you and asked that you provide relevant information in advance of the Judiciary Committee hearing on Monday, February 6, 2006, in connection with the legal justifications of the recently revealed NSA surveillance programs. It is disconcerting that you have not responded but, instead, have refused to provide the information that we need to conduct the congressional oversight that is long overdue.

As Bruce Fein, a former Reagan Administration official, observed in his January 31, 2006, column: "The president's startling new interpretation of the [Authorization for the Use of Military Force] ...enjoys little legal standing. The Supreme Court has repeatedly instructed that contemporaneous interpretations defeat the belated variety, where, as here, they smack of expediency." That is why we asked you to provide to us, in advance of next week's hearing, the contemporaneous communications the Administration had with Congress about the Authorization for the Use of Military Force (AUMF) and those contemporaneous internal statements detailing the Administration's understanding of the meaning of the language of the AUMF. You have failed to provide the legal opinions rendered by the Department of Justice relevant to these matters. You have failed even to provide us with an answer to the question of what specific language in the AUMF you contend grants authority to the President to conduct domestic surveillance without seeking warrants from the Foreign Intelligence Surveillance Court or the authorizations that the President has signed in connection with these matters.

Your lack of cooperation is at odds with your testimony at your confirmation hearing in January 2005, when you indicated that you would respond to our letters and that you "respect" and "understand" the oversight responsibilities of the Judiciary Committee. You have not appeared before the Committee since April 2005. The Chairman has been very solicitous of your schedule in the timing of next week's hearing. You have had time to make numerous television appearances and speeches on this subject. It would have

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been more helpful if you would have complied with our request for information in a timely fashion. Please respond to our January 27 letter with the requested documents prior to your appearance before the Judiciary Committee on February 6, 2006.

Sincerely,

Patrick Leahy

Ed Murray

Russell D. Feingold

Herb Kohl

Chuck Schumer

Dick Durbin

Joe Biden

Jeanne Schiavoni