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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
MICHAEL O'NEILL, *Republican Chief Counsel and Staff Director*

October 31, 2007

The Honorable Peter D. Keisler
Acting Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Mr. Keisler:

We remain concerned about the extraordinary number of vacancies for United States Attorney positions. We understand that there are currently 23 districts out of 93 overall with acting or interim U.S. Attorneys instead of Senate-confirmed, Presidentially-appointed United States Attorneys. Twenty-one of those districts do not have a nominee. We write to inquire whether you and the Administration are working with the Senators whose States encompass each of those districts to identify and nominate strong and independent U.S. Attorneys.

In the course of the Committee's investigation into the unprecedented mass firings of U.S. Attorneys by those in the Administration that appointed them, we uncovered an effort by officials at the White House and the Justice Department to exploit an obscure provision enacted during the Patriot Act reauthorization to do an end-run around the Senate's constitutional authority to confirm U.S. Attorneys.

This loophole was closed on June 14, with the enactment of S.214, the "Preserving United States Attorney Independence Act of 2007." This law, which passed the Senate in March by an overwhelming vote of 97-0, restored the 120-day term limit for Interim U.S. Attorneys appointed by the Attorney General. Accordingly, the terms of nine interim United States Attorneys appointed during the time the loophole was in place expired on October 12. These include interim United States Attorneys in the District of Alaska, the District of Arizona, the Northern and Southern Districts of California, the District of Columbia, the Northern District of Iowa, the Western District of Michigan, the District of Puerto Rico, and the Southern District of West Virginia. The term of another interim appointment, in the Southern District of Illinois, is set to expire next week.

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Three of these interim appointees, for the Southern District of Illinois, the District of Puerto Rico and the Southern District of West Virginia, along with those in two other districts, were appointed to be interim United States Attorneys after serving a 210-day term as Acting United States Attorney under the Vacancies Act. Acting under the guidance of what we believe to be an erroneous opinion of the Justice Department's Office of Legal Counsel, the Administration has been employing this misguided approach to put somebody in place for 330 days without the advice and consent of the Senate. This approach runs afoul of Congressional intent and the law.

When it comes to the U.S. Attorneys in our home states, Senators have a stake in ensuring fairness and independence in order to insulate the federal law enforcement function from untoward political influence. The law and the practice have always been that these appointments require Senate confirmation. The advice and consent check on the appointment power for U.S. Attorneys is a critical function of the Senate.

Sincerely,



PATRICK LEAHY
Chairman



DIANNE FEINSTEIN
United States Senator