Congress of the United States
Washington, DC 20515

January 11, 2006

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

Dear Mr. Attorney General:

We are writing to reiterate our urgent request that you appoint an outside special counsel to investigate two instances of potential political manipulation by Justice Department officials in criminal and immigration matters concerning Guam and the U.S. Commonwealth of the Northern Mariana Islands and the indicted Washington lobbyist Jack Abramoff.

While we recognize that your Department is carrying out extensive investigations and prosecutions of cases involving Mr. Abramoff and his associates and his relations with the Congress, the specific matters we are raising here require an outside counsel, and not the attention of career prosecutors, because of the allegation of improper involvement by officials at the highest levels of the Department.

Our original request, made on October 6, 2005, is even more warranted today in light of information revealed since that time and in light of the Department's response to our request thus far.

In October, we wrote to request an outside counsel to investigate allegations that Acting U.S. Attorney for Guam and the Commonwealth of the Northern Mariana Islands (CNMI) Fred Black was replaced in November 2002 because he had secured a subpoena in a criminal investigation of Mr. Abramoff. We also requested an outside counsel because of allegations that Mr. Abramoff had influenced senior Department officials to suppress an immigration report on Northern Mariana Islands requested by Black in the wake of the 9/11 attacks on New York and Washington, D.C.

On November 14, the Department replied to our request by saying that the Department's Office of Inspector General was investigating the allegations and that if "the Inspector General

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determines that there is evidence of a criminal violation, he will bring that information to an appropriate prosecuting office with the Department of Justice for review."[1]

This response is entirely inadequate and ignores the serious conflicts of interest that these two matters present for Department investigators. It is neither appropriate nor feasible for the Department to fully and freely investigate itself in this serious matter. Given that the allegations involve the former Attorney General and his chief of staff, an investigation by outside counsel and not internal prosecutors is required.

In addition, given your own position at the time of the incidents described herein, as counsel to the White House, and the fact that the President is responsible for recommending all U.S. Attorney appointments, we believe it is further necessary and prudent to investigate this case through an independent outside counsel.

At the time U.S. Attorney Black was demoted, and replaced by Leonardo Rapadas, Mr. Black was reportedly directing a long-term investigation into allegations of public corruption within the Government of Guam. The demotion came just one day after a federal grand jury subpoena had been issued in a criminal investigation initiated by Mr. Black into Mr. Abramoff's lobbying activities for the Guam Superior Court.[2]

According to the *Los Angeles Times*, Mr. Rapadas had been "recommended by the Guam Republican Party." Specifically, it was reported that a Republican lobbyist said he carried that recommendation to Karl Rove, White House Deputy Chief of Staff, in early 2003.[3] Since taking office, U.S. Attorney Rapadas has excused himself from the ongoing public corruption case involving the Government of Guam due to a conflict of interest – namely that he is the cousin of a target of the public corruption investigation. Mr. Black, who now serves as an Assistant U.S. Attorney in Guam, has been reportedly barred from pursuing public corruption cases.[4]

An outside counsel is also needed to investigate allegations that Mr. Abramoff used his personal influence within the Department to gain knowledge of and attempt to prevent the release of a classified review of Guam and CNMI immigration laws. Mr. Black had ordered the

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[1] U.S. DoJ Letter to Hon. Madeleine Bordallo, et al, November 14, 2005

[2] Walter F. Roche, Jr., Inquiry Into Lobbyist Sputters After Demotion, *Los Angeles Times*, August 7, 2005.

[3] *Id.*

[4] Philip Shenon, Demotion of a Prosecutor is Investigated, *New York Times*, September 27, 2005.

review in the wake of the September 11th terrorist attacks to determine whether loopholes in these laws constituted a security risk for the United States.[5]

In an e-mail exchange dated October 1, 2001, Mr. Abramoff reportedly informed his client contact at the CNMI that "the bad guys at who still work there [at the Justice Department had] ... started a drum beat that the CNMI had to be taken over, because a loophole in the federal immigration network, and that, as such, was a threat on terrorism." Mr. Abramoff further explained that "we had the COS of the Justice Department in our box at today's Redskins game and it seems there might be a classified document floating in the department which deals with this matter."[6]

Mr. Abramoff assured his client that he was "supposed to see the Attorney General next week" and that another lobbyist in his group "was slated to play basketball with him before them" and that they will "both mention this to him." He noted that while the "AG will be fine" the "underlings are a worrisome matter."[7]

Since our original request, it has been reported that the immigration report was completed but never released or acted upon. According to a report by *Bloomberg News*, "The U.S. Justice Department never acted on a post-Sept. 11 proposal, contested by lobbyist Jack Abramoff, calling for increased federal control over immigration to the Mariana Islands. The agency reassigned the two officials who produced a 34-page report that contained the proposal, and House members of both parties who oversee the Homeland Security and Justice departments said they were never told about it. The 2002 report... warns that continued local control over the Marianas' borders will 'seriously jeopardize the national security'' of the U.S."[8]

As you are aware, under Department of Justice regulations, the Attorney General must appoint a special counsel when (1) a "criminal investigation of a person or matter is warranted," (2) the investigation "by a United States Attorney Office or litigating Division of the Department of Justice would present a conflict of interest for the Department," and (3) "it would be in the

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[5]Roche, *supra* note 1.

[6] Email from abramoffj@gtlaw.com to maya@saipan.com, October 1, 2001, on file with the United States House of Representatives, Committee on the Judiciary, Minority Office.

[7]*Id.*

[8] Jonathan Salant, Justice Department Didn't Act on Warning About Abramoff Client, *Bloomberg News*, Oct. 31, 2005,

public interest to appoint an outside Special Counsel to assume responsibility for the matter."[9] In the present case, all three requirements have been met.

There is little question that a criminal investigation is clearly warranted in the present case. As a matter of fact, with regard to the demotion of Mr. Black, a September 27, 2005, *New York Times* report indicates that the Federal Bureau of Investigation is looking into possible misconduct in connection with this demotion.[10] And Mr. Abramoff's alleged access to a classified Justice Department report might constitute several violations of the Espionage Act.[11] It is a crime for anyone who has lawful possession of classified information to communicate that information to any person that is not entitled to receive it. It is also a crime for any person who has unauthorized access to classified information to communicate that information to any person that is not entitled to receive it.

In addition, there is an obvious conflict of interest in the Department of Justice pursuing an investigation into possible misconduct by DOJ and Administration officials with regard to the demotion of Mr. Black and the possible dissemination of classified information by Department of Justice personnel. It is simply unacceptable for the Department to be investigating whether employees, including possibly high level employees, of the Department, or other senior officials within the Administration were responsible for demoting Mr. Black in order to limit a criminal investigation of a Washington lobbyist with strong ties to Republican leaders in Congress and the White House. Press accounts indicate that officials from the Republican Party of Guam and White House Deputy Chief of Staff Karl Rove played a key role in securing a replacement for U.S. Attorney Black, providing further evidence of a political conflict of interest.[12]

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[9]28 C.F.R. § 600.1 (2002).

[10]Shenon, *supra* note 3. The article also indicates that the Department of Justice Inspector General is looking into this matter. On August 23, 2005, Reps. John Conyers, Jr. and Madeleine Z. Bordallo asked the Inspector General to investigate the circumstances surrounding the demotion.

[11]18 U.S.C. § 793.

[12]Walter F. Roche, Jr., *supra* note 1. In 2000, Abramoff and his lobbying team logged nearly 200 contacts with the Administration. By mid-2003, he had raised at least $100,000 for President Bush's reelection campaign, making him one of the President's famed "pioneers." Donors on the Northern Mariana Islands, Abramoff's client, also contributed significant amounts to the reelection campaign. CBS News, Lobbyist Had Close W. House Ties, May 6, 2005, available at http://www.cbsnews.com/stories/2005/05/06/politics/printable693628.shtml.

Clearly, the public interest will be best served by the appointment of an independent outside counsel and a thorough investigation of these cases. Given the highly charged political nature of these matters, the public would clearly benefit from having a respected, non-political prosecutor reviewing the allegations of misconduct in the demotion of Mr. Black, the apparent diminishment or termination of the criminal investigation into Mr. Abramoff's activities in Guam and the CNMI, and the suppression of a classified immigration report concerning U.S. security threats.

In addition to the two matters raised above that we strongly believe compel you to appoint an outside counsel, there is one additional matter that we believe should be investigated by the same attorneys that are now investigating and prosecuting the Abramoff and Abramoff-related cases, and we are writing to ask that you ensure that this additional matter receive proper attention within the Department. To date, we have no way of knowing whether this case is under federal investigation.

As you may know, in July of last year, the Chairman and Ranking Member of the House Resources Committee referred to you for possible criminal investigation information regarding an effort to influence the election of the Speaker to the CNMI House of Representatives.[13] And you received additional material from a Member of Congress on this issue subsequent to that referral.[14] We wish to reiterate that the Department must fully investigate and determine the extent to which federal appropriations were traded to sway this election in favor of a candidate most likely to renew a contract with lobbyist Jack Abramoff. The case raises serious questions about the use of federal resources for political purposes and interference elections.

Newspaper reports have confirmed that in 1999 Mr. Benigno Fitial, then a candidate for Speaker of the CNMI's House of Representatives, met with Mr. Ed Buckham, Rep. Tom DeLay's former chief of staff and the founding partner of Alexander Strategies Group, and Mr. Michael Scanlon, who was at that time on Congressman Tom DeLay's payroll in an Appropriations Committee staff position. At the meeting, Mr. Fitial recommended that the two men meet with CNMI Rep. Mendiola and Rep. Palacios to encourage them to switch their votes for Speaker.[15] Mr. Fitial, as you may know, was installed as the Governor of the CNMI on January 9, 2006.

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[13] Reps. Pombo and Rahall to Attorney General Gonzalez. June 30, 2005

[14] Rep. Miller to Attorney General Gonzalez. July 18, 2005.

[15] Los Angeles Times, 5/6/05, Marianas Variety, 4/29/05.

When Mr. Scanlon and Mr. Buckham met with the two legislators, they reportedly promised to help secure money for local projects in exchange for their votes for Mr. Fitial. They were successful, and Mr. Fitial was elected Speaker. Mr. Abramoff's contract was subsequently renewed, and Congress eventually passed appropriations bills that included projects important to Mr. Palacios and Mr. Mendiola. Mr. DeLay was a member of the conference committee on the appropriations bill that included the former project, as well as a member of the subcommittee that approved the latter project.

We understand that the Department is involved in many public corruption cases related to Mr. Abramoff and Congress and we hope that you would agree that, at least in the two matters regarding Mr. Black, an outside counsel investigation is the only appropriate course of action at this time. And we hope that you will ensure that the potential electoral interference described above will be part of your Department's ongoing public corruption investigation.

We look forward to your response. Please reply through the House Judiciary Committee Minority Office, 2142 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6504; fax: 202-225-4423).

Sincerely,

Hon. John Conyers, M.C.
Senior Democrat
House Judiciary Committee

Hon. George Miller, M.C.
Senior Democrat, House Education
and the Workforce Committee

Hon. Nick Rahall, M.C.
Senior Democrat
House Resources Committee

Hon. Madeleine Bordallo, M.C.

Hon. William Delahunt, M.C.