Congress of the United States
Washington, DC 20515

July 24, 2006

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

Dear Mr. Attorney General:

We are writing to express our concern that U.S. Attorney offices across the nation are suffering from staffing shortages and lack of funds. The consequences appear to be severe. According to Assistant U.S. Attorneys, the lack of staff and resources force federal prosecutors to forego prosecutions in some important cases and to reach plea bargains in others. In some offices, there are shortages of even basic office supplies, like binder clips and envelopes.

Over the last month, our staffs have interviewed Assistant U.S. Attorneys in their individual capacities and gathered information about a dozen U.S. Attorney offices around the country. The picture that emerges is unsettling. U.S. Attorneys have the crucial responsibility of prosecuting federal crimes and pursuing civil enforcement actions. Yet it appears that their ability to meet this responsibility has been severely undermined.

Staff and Supply Shortages

U.S. Attorney offices across the nation are severely understaffed. Due to hiring freezes, experienced prosecutors who leave for the private sector are not being replaced. In several key offices, 20% or more of prosecutor positions remain unfilled.

In Los Angeles, there are 190 positions for Assistant U.S. Attorneys. Forty of these are vacant. The District of Columbia also has 40 Assistant U.S. Attorney positions unfilled, and Maryland has 30. In Chicago, there are 25 to 35 vacancies for 160 Assistant U.S. Attorney positions. Smaller offices are under-staffed in similar proportions. U.S. Attorney offices in Oregon and Arizona each have eight to ten vacancies among about 40 prosecutor positions.

In addition to the reduction in personnel, U.S. Attorney offices lack funding for essential items like office supplies. In Philadelphia, the U.S. Attorney's office adopted a new policy of charging indigent defendants for photocopies of Brady material, the potentially exculpatory evidence that the government is constitutionally required to provide to defendants, because the office could not afford paper for the copier. Forced to defend this policy in U.S. District Court, prosecutors explained that it was necessary because the "office has seen, in recent years, a reduction of about twenty percent in its allocation from Main Justice, with further reductions anticipated in the future."[1]

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[1] *U.S. v. Tyree*, 2006 WL 847404 (E.D. Pa. Mar. 29, 2006).

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The U.S. Attorney office in Virginia has adopted a similar policy of charging defendants for photocopying.

In the U.S. Attorney office in Los Angeles, basic items like binder clips are in short supply. In the U.S. Attorney office in Virginia, federal prosecutors delivering documents to judges' chambers in Virginia ask for envelopes to be returned so they can be reused. In the office in Chicago, Assistant U.S. Attorneys have been instructed to conserve accordion folders.

In one U.S. Attorney office, an electronic lock has been placed on the supply closet, so federal prosecutors must submit requisition forms to get supplies like paper clips.

One assistant U.S. Attorney contrasted the austerity in his office with the FBI hosting Chicago Bears football players to use FBI weapons and ammunition at a training range, stating: "Ammunition is expensive. Our office could never afford to waste money like that." Other assistant U.S. Attorneys expressed frustration that other law enforcement agencies are relatively well-funded, while prosecutors are subject to pay and hiring freezes.

Impact on Federal Prosecutions and Civil Actions

During our investigation, we heard numerous accounts of the impact of these staffing and supply shortages. According to one assistant U.S. Attorney, the office in San Diego has about ten vacancies and cannot prosecute all cases of smuggling immigrants into the United States across the border with Mexico.

According to several Assistant U.S. Attorneys, as vacancies have increased, the remaining prosecutors work in specialized units focusing on areas such as terrorism and drugs, leaving few prosecutors covering general crimes. As a result, lesser felonies such as fraud against the government are much less likely to be prosecuted than they were previously. Another assistant U.S. Attorney said that because of heavier workloads, prosecutors are tempted to compromise on plea bargains in cases that would be expensive and time-consuming to take to trial.

According to some officials, a perverse effect of the shortages has been to force U.S. Attorneys to shift resources away from civil enforcement and financial collection units that recover money owed to the federal government. This shift allows U.S. Attorney offices to maintain a focus on terrorism and other high-profile crimes. But it ultimately costs the government money because the amount collected by U.S. Attorneys far exceeds the personnel costs of the financial collection units. The fact that the amounts recovered by U.S. Attorneys go into the general U.S. Treasury, not to the budgets of the U.S. Attorneys offices, gives thinly staffed offices little incentive to fully fund and staff these collection units.

Compounding these impacts has been a decline in the experience level in some offices. Experienced front-line federal prosecutors have left government service for the private sector, frustrated by stagnant salaries and the lack of resources. One assistant U.S. Attorney stated that his office has become "incredibly junior," with 65% of prosecutors having less than four years of

experience. In the District of Columbia, many misdemeanor cases have been delegated to law student interns.

Other Accounts

As far as we are aware, there has been no national coverage of the problems afflicting U.S. Attorney offices. There have, however, been several articles in specialized publications that confirm the problems described to us by Assistant U.S. Attorneys.

The *Los Angeles Daily Journal*, which covers legal affairs in Los Angeles, reported budget cuts of 25% in the local U.S. Attorney office. According to this account, "dozens of open prosecutor slots will not be filled until 2008," "attorneys who leave the office before then will not be replaced," and morale is low because the budget cuts make it difficult to "have exhibits and discovery materials copied, order transcripts of proceedings, and travel."[2] One former federal prosecutor in Los Angeles said, "cuts of this magnitude are a scandal."[3]

Similarly, the *Legal Intelligencer* reports budget cuts of 20% in Philadelphia.[4]

According to *Federal Times*, Border Patrol agents who prepare cases against persons caught smuggling immigrants across the border are frustrated that U.S. Attorneys decline prosecution on the cases due to lack of resources.[5]

Questions

We have multiple questions about these reports of shortages in U.S. Attorney offices.

One basic question is where has the money gone. According to budget information from the Department of Justice, appropriations for the U.S. Attorneys account have increased from $1.349 billion in fiscal year 2001 to $1.588 billion in fiscal 2006.[6] This is an increase of 15%, representing an increase in real dollars even after inflation is taken into account.[7] The disparity between

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[2] *Budget Cuts Cripple Morale of Prosecutors*, Los Angeles Daily Journal (Apr. 24, 2006).

[3] *Id.*

[4] *What Price Justice? Try 10 Cents a Page*, Legal Intelligencer (Apr. 3, 2006).

[5] *When Alien Smugglers Go Free, Morale Suffers at Border Patrol*, Federal Times (June 5, 2006).

[6] Budget and Performance Summaries, 2007-2005, http://www.usdoj.gov/02organizations/02_3.html

[7] U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index Inflation Calculator at http://data.bls.gov/cgi-bin/cpicalc.pl

increased funding for U.S. Attorneys overall and drastic shortages in staff and supplies in individual offices raises questions about Justice Department management.

As ranking members of the Government Reform and Judiciary Committees, both of which are responsible for oversight of the Department of Justice, we ask that you provide the following information and documents by August 14, 2006:

1. The funding levels for each U.S. Attorney office for each year from FY 2001 through FY 2005;

2. For each U.S. Attorney office, the number of authorized Assistant U.S. Attorney positions and the number of positions currently unfilled;

3. A description of the process used for allocating the total appropriation for the "United States Attorneys" account among the 93 U.S. Attorneys' offices;

4. An identification of (a) any funds appropriated to the "United States Attorneys" account that were not allocated to a U.S. Attorney office and (b) any funds allocated to U.S. Attorney offices from sources other than the "United States Attorneys" account;

5. Copies of all directives and guidance issued by the Executive Office for U.S. Attorneys or the Criminal Division to U.S. Attorneys since January 2001 regarding budget cuts, hiring freezes, or cost-saving measures.

In addition, we ask that you make your staff available to brief Committee staff on these issues. Thank you for your prompt attention to this matter.

Sincerely,

Henry A. Waxman
Ranking Minority Member
Committee on Government Reform

John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary

cc: Chairman F. James Sensenbrenner Jr., Committee on the Judiciary
Chairman Tom Davis, Committee on Government Reform