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Congress of the United States
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COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
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January 14, 2014

The Honorable Thomas E. Perez
Secretary
United States Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Mr. Secretary:

The Committee on Oversight and Government Reform continues its oversight of the Department of Justice's investigation into the Internal Revenue Service's inappropriate treatment of tax-exempt applicants. The Committee has recently learned that the Department of Justice investigation is led by Barbara Bosserman, a trial attorney in the Department's Civil Rights Division and a significant contributor to President Obama and the Democratic National Committee.[1] As the Assistant Attorney General for the Civil Rights Division at the time of Ms. Bosserman's appointment to lead this investigation, you have information relevant to the Committee's inquiry. We request your assistance with our oversight efforts.

In the days immediately following Lois Lerner's revelation that the IRS had targeted conservative tax-exempt applications, the Administration pledged a thorough investigation into the wrongdoing. President Obama called the misconduct "inexcusable" and proclaimed that he would "not tolerate this kind of behavior in any agency, but especially in the IRS, given the power that it has and the reach that it has into all of our lives."[2] Attorney General Eric Holder likewise found the targeting "outrageous and unacceptable" and announced that DOJ would immediately investigate the matter in coordination with the Federal Bureau of Investigation.[3]

Since then, when we have attempted to obtain information about the Administration's investigation, senior law enforcement officials have been uninformed and uncooperative. In June 2013, then-FBI Director Robert Mueller was unable to answer basic questions about the status of the FBI's investigation.[4] In September 2013 and again in December 2013, we wrote to

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[1] *See* Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov't Reform, to Eric H. Holder, Jr., U.S. Dep't of Justice (Jan. 8, 2014).
[2] The White House, Statement by the President (May 15, 2013).
[3] Rachael Weiner, *Holder has ordered IRS investigation*, WASH. POST, May 14, 2013.
[4] *"Oversight Hearing of the Federal Bureau of Investigation": Hearing before the H. Comm. on the Judiciary*, 113th Cong. (2013) (question and answer with Rep. Jordan).

FBI Director James Comey seeking information about the FBI's investigation.[5] The FBI refused to provide the requested information and, after apparent intervention by the Department of Justice, rescinded an offer to brief Mr. Jordan on the investigation.[6] This refusal to cooperate directly affects the Committee's constitutional oversight obligations.

The Committee has recently learned that the Administration's investigation into the IRS's targeting of conservative tax-exempt applicants is being led by Ms. Bosserman.[7] Federal Election Commission records show that Ms. Bosserman has contributed almost $7,000 to President Obama's political campaigns and the Democratic National Committee in recent years.[8] The appointment of a significant donor to the President to lead an investigation into the targeting of groups opposed to the President's policies presents a troubling conflict of interest. Her involvement is highly inappropriate and compromises the integrity of the investigation.

The Committee's concerns have increased in light of a recent report that Ms. Bosserman attended a bill-signing event at the White House in October 2009 as the guest of President Obama.[9] According to the report, Ms. Bosserman's participation at this event was "extraordinary" for a career DOJ attorney and would have to have been approved by you and other senior DOJ leaders.[10] The report also states that you joined Ms. Bosserman in attendance at the White House.[11] Ms. Bosserman's attendance at this White House event furthers the appearance of a conflict of interest and undercuts the integrity of the Administration's IRS investigation.

The Attorney General announced the investigation on May 14, 2013.[12] You served as Assistant Attorney General for the Civil Rights Division until July 23, 2013.[13] For the first two months of DOJ's investigation, therefore, you led the Civil Rights Division and oversaw the Division's work. We would expect that, at a minimum, you would have been consulted about the Division's involvement in the IRS investigation and the appointment of Ms. Bosserman to lead the investigation. Presumably, with your own extensive experience as a line attorney and a supervisor in the Civil Rights Division,[14] you would have played a direct role in managing the work of your attorneys. Given the stated seriousness with which the Department of Justice was taking the IRS targeting allegations,[15] the involvement of the Division you led in the

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[5] Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov't Reform, to James Comey, Fed. Bureau of Investigation (Sept. 6, 2013); Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov't Reform, to James Comey, Fed. Bureau of Investigation (Dec. 2, 2013).
[6] *See* Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov't Reform, to Eric H. Holder, Jr., U.S. Dep't of Justice (Jan. 8, 2014).
[7] *Id.*
[8] *See id.*
[9] *Obama backer leading IRS probe visited White House in '09, records show*, FOX NEWS, Jan. 13, 2014.
[10] *Id.*
[11] *Id.*
[12] Rachael Weiner, *Holder has ordered IRS investigation*, WASH. POST, May 14, 2013.
[13] Dep't of Labor, DOL News Brief (July 25, 2013), *available at* http://www.dol.gov/_sec/newsletter/2013/20130725.pdf.
[14] *See* Transcribed interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. (Mar. 22, 2013).
[15] *See supra* note 3 and accompanying text (comments of Atty. Gen. Eric Holder).

investigation of the allegations, and your supervision of the attorney tasked with leading the investigation, it is likely that you would have been personally involved in the matter.

Your potential role in the Administration's IRS investigation is troubling in light of your pattern at DOJ of ignoring the rule of law for political benefit. Last year, in a joint staff report with the House Committee on the Judiciary and Senator Grassley, it was documented how you coerced the City of St. Paul, Minnesota, to agree to a *quid pro quo* as means of protecting disparate impact, a legally questionable doctrine favored by the Administration, from Supreme Court scrutiny.[16] Your *quid pro quo* manipulated the levers of justice and potentially cost American taxpayers $200 million.[17]

Similarly, the Committee's investigation found that you gave statements to Congress that were contradicted by documentary evidence. For example, you testified during a transcribed interview that you did not recall using your personal e-mail account to conduct official business to arrange the *quid pro quo*.[18] In fact, you had used your non-official e-mail account **almost 1,200 times** to conduct official DOJ business while you served as Assistant Attorney General.[19] This pervasive and habitual use of a non-official account amounted to roughly one e-mail per day during your tenure.[20] The Committee also found that you violated the Federal Records Act 35 separate times, including communications on your non-official e-mail account with reporters about sensitive and non-public DOJ information.[21]

Likewise, you flatly and repeatedly refused to respond to congressional inquiries about your use of a non-official e-mail account for official government business. On March 27, 2013, Chairman Issa joined Chairman Goodlatte and Senator Grassley in requesting that you produce all your non-official e-mails related to official business.[22] You did not respond. On April 4, 2013, Chairman Issa and Chairman Goodlatte again wrote to you requesting that you produce all your non-official e-mails related to official business.[23] You did not respond. Instead, DOJ official Peter Kadzik responded, attaching one responsive document.[24] Because you continued to refuse to comply with the request, Chairman Issa issued a subpoena to you on April 10, 2013, requiring that you produce all non-official e-mails related to official business.[25]

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[16] H. Comm. on Oversight & Gov't Reform, S. Comm. on the Judiciary, & H. Comm. on the Judiciary, *DOJ's Quid Pro Quo with St. Paul: How Assistant Attorney General Thomas Perez Manipulated Justice and Ignored the Rule of Law* (2013).
[17] *Id.*
[18] Transcribed interview of Thomas Edward Perez, U.S. Dep't of Justice, in Wash., D.C. (Mar. 22, 2013).
[19] Letter from Darrell Issa, H. Comm. on Oversight & Gov't Reform, to Thomas E. Perez, U.S. Dep't of Justice (Apr. 18, 2013).
[20] *Id.*
[21] *Id.*; Letter from Darrell Issa, H. Comm. on Oversight & Gov't Reform, to Thomas E. Perez, U.S. Dep't of Justice (May 6, 2013).
[22] Letter from Darrell Issa, H. Comm. on Oversight & Gov't Reform, Robert Goodlatte, H. Comm. on the Judiciary, & Charles Grassley, S. Comm. on the Judiciary, to Thomas E. Perez, U.S. Dep't of Justice (Mar. 27, 2013).
[23] Letter from Darrell Issa, H. Comm. on Oversight & Gov't Reform, & Robert Goodlatte, H. Comm. on the Judiciary, to Thomas E. Perez, U.S. Dep't of Justice (Apr. 4, 2013).
[24] Letter from Peter Kadzik, U.S. Dep't of Justice, to Bob Goodlatte, H. Comm. on the Judiciary, Darrell E. Issa, H. Comm. on Oversight & Gov't Reform, & Charles E. Grassley, S. Comm. on the Judiciary (Apr. 9, 2013).
[25] Subpoena to Thomas E. Perez, U.S. Dep't of Justice (Apr. 10, 2013).

You ignored the subpoena and continued to refuse to produce the requested material to the Committee. As an accommodation to you and without waiving its right to the possession of the subpoenaed documents, the Committee agreed to *in camera* reviews of the documents.[26] The documents made available during these reviews contained extensive redactions. In fact, for over 1,150 e-mails, you allowed Committee staff to review only the sender, recipient, and date fields of the correspondence.[27] You refused to allow the Committee staff to review the substance of the e-mail messages.

Despite several other requests from Chairman Issa that you produce all non-official e-mails related to official business as required by the subpoena, you still refused.[28] Even Ranking Member Cummings – whom you have known for "over 15 years"[29] – asked that you produce all non-official e-mails related to official business.[30] Yet, even with the Ranking Member's plea, you still have not produced the material. Your refusal to comply with a valid congressional subpoena is not only disappointing conduct for a senior government official, but it also directly limits the Committee's constitutional responsibility to conduct oversight of the Civil Rights Division.

With your history of manipulating justice to achieve your desired results, the Committee is very concerned about your potential role in the initial stages of the Administration's IRS investigation. When the Attorney General announced the Administration's IRS investigation in May 2013, your nomination to be Labor Secretary was stalled in the Senate. Your appointment was so controversial that, according to the Senate Historian, it was the first time a Cabinet-level nominee failed to receive bipartisan support.[31] At the time, your confirmation was no certainty.[32] There were serious questions raised about your actions in the *quid pro quo* and Senate proceedings on your nomination had been delayed twice.[33] Around the same time, the Department of Justice appointed an attorney with an extensive history of financial support of the President, his campaigns, and the Democratic Party as the lead investigator of the IRS's targeting of conservative tax-exempt applicants. We are struck by the appearance of these circumstances.

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[26] E-mail from Committee staff to Molly Gaston, U.S. Dep't of Justice (Apr. 17, 2013).
[27] Letter from Darrell Issa, H. Comm. on Oversight & Gov't Reform, to Thomas E. Perez, U.S. Dep't of Justice (April 18, 2013).
[28] Letter from Darrell Issa, H. Comm. on Oversight & Gov't Reform, to Thomas E. Perez, U.S. Dep't of Justice (Apr. 18, 2013); Letter from Darrell Issa, H. Comm. on Oversight & Gov't Reform, to Thomas E. Perez, U.S. Dep't of Justice (May 6, 2013); Letter from Darrell Issa, H. Comm. on Oversight & Gov't Reform, to Thomas E. Perez, U.S. Dep't of Justice (May 15, 2013); Letter from Darrell Issa, H. Comm. on Oversight & Gov't Reform, to Thomas E. Perez, U.S. Dep't of Justice (July 8, 2013).
[29] *"DOJ's Quid Pro Quo with St. Paul: A Whistleblower's Perspective:" J. Hearing before the Subcomm. on Economic Growth, Job Creation & Regulatory Affairs of the H. Comm. on Oversight & Gov't Reform & the Subcomm. on the Constitution & Civil Justice of the H. Comm. on the Judiciary*, 113th Cong. (2013).
[30] Letter from Darrell Issa & Elijah E. Cummings, H. Comm. on Oversight & Gov't Reform, to Thomas E. Perez, U.S. Dep't of Justice (May 8, 2013).
[31] *The historical oddity of Thomas Perez's confirmation*, MSNBC, July 18, 2013.
[32] *See, e.g.*, David Jackson, *Obama faces battle over Labor Secretary nominee*, USA TODAY, May 9, 2013.
[33] *See id.*; Josh Hicks, *Senate committee delays Perez confirmation hearing again*, WASH. POST, May 8, 2013.

The Committee seeks to understand the nature and extent of your involvement in the Administration's investigation into the IRS's targeting of conservative tax-exempt applications. Accordingly, we ask that you provide a full and complete explanation as to the circumstances, decision-making process, and reasons for Ms. Bosserman's appointment to lead the Administration's investigation into the IRS' inappropriate treatment of conservative tax-exempt applicants. Please provide this information as soon as possible, but no later than 5:00 p.m. on January 28, 2014.

We also reiterate the Committee's multiple requests that you comply with the Committee's subpoena for all non-official e-mails relating to official government business. Further, the Committee's limited *in camera* reviews demonstrate that you used your non-official e-mail account to correspond with other government employees about official business. We therefore ask that you produce all non-official e-mails referring or relating to official government business through the present, including not but limited to any correspondence about the appointment of Ms. Bosserman to lead the Administration's IRS investigation. Please produce all non-official e-mails used to conduct official business immediately.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. If you have any questions about these requests, please contact David Brewer or Tyler Grimm of the Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,

Darrell Issa
Chairman

Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Matthew A. Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs