United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

January 21, 2010

The Honorable Eric H. Holder, Jr.
Attorney General
United States Department of Justice
950 Constitution Ave, N.W.
Washington, D.C. 20530

Dear Attorney General Holder:

We are writing to ask who within the Department of Justice made the decision on Christmas day to treat Umar Farouk Abdulmutallab as a criminal suspect, entitled to *Miranda* warnings and the right to counsel, rather than as an unprivileged enemy belligerent subject to military detention and a full opportunity to gain intelligence. We would also like to know the basis for this decision, including whether the administration has a protocol or policy in place for handling al Qaeda terrorists captured in the United States.

At yesterday's hearing before the Senate Judiciary Committee, FBI Director Robert Mueller described how Joint Terrorism Task Force agents initially interrogated Mr. Abdulmutallab without *Miranda* warnings for the purpose of obtaining intelligence information. He stated that this short initial interrogation occurred before the terror suspect was taken into surgery and that the decision to provide *Miranda* warnings and pursue criminal charges was made shortly thereafter "in consultation with the Department of Justice and others in the administration prior to the agents going back in later that evening to interview him." Director Mueller declined to name the person within the Department who made the decision, stating that he would first have to get approval from the Department. Nonetheless, he made clear the decision was not made "at the local level."

The Department of Justice's decision to afford this terrorist *Miranda* warnings and a civilian prosecution appears to have been made without soliciting input from the Department's administration partners in the war on terrorism. According to testimony before both the Judiciary Committee and the Homeland Security and Governmental Affairs Committee, the Department officials who made this decision failed to consult key officials who also have a major role in counterterrorism and intelligence gathering. Dennis Blair, the Director of National Intelligence, testified that he was not consulted. Similar testimony was provided by Director Mueller, Homeland Security Secretary Janet Napolitano, and the Director of the National Counterterrorism Center, Michael Leiter. Furthermore, Director Mueller testified he did not know whether Defense Secretary Robert Gates was consulted on this decision, which is remarkable given that Mr. Abdulmutallab appears to fit cleanly within the Military Commissions Act definition of an "unprivileged enemy belligerent." *See* 10 U.S.C. § 948a(7).

We believe the Department's hasty decision to pursue criminal charges against Mr. Abdulmutallab deprived our intelligence agencies of a critical opportunity to interrogate an al Qaeda-trained terrorist who was fresh from training in Yemen. Had Mr. Abdulmutallab been transferred to military custody as an unlawful enemy belligerent, our government would have had more time to gain an understanding of the terrorist training and recruiting network on the Arabian Peninsula, as well as the activities of al Qaeda in Nigeria. More importantly, a thorough and unrushed interrogation might have revealed information to detect and disrupt the next terrorist attack. However, because Mr. Abdulmutallab was given *Miranda* rights and ceased cooperating, that information is now lost.

It is important that Congress fully understand the basis for the decision in this case and the process by which it was reached so that we can be assured that an appropriate process is in place to address the next terrorist who is captured and detained. To that end, please let us know who within the Department made the decision on Christmas day, as well as the basis and rationale behind the decision. Additionally, please let us know whether a protocol or policy is in place to guide the administration's action in the next terrorism case.

Very truly yours,

Jeff Sessions

Tom Coburn

Jon Kyl

John Cornyn

John G. Isakson

Chuck Grassley

Tom Ridge