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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

January 31, 2014

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Attorney General Holder:

I write today to follow up on my question concerning the President's use of Executive Orders that I posed to you during Wednesday's Department of Justice oversight hearing.

In his State of the Union address earlier this week, the President made plain his intention to implement his agenda through aggressive use of these orders – whether or not the Congress and the American people agree. I am gravely concerned that the system of checks and balances enshrined in the Constitution is threatened by the President's determination to take unilateral action if he cannot persuade Congress and the American people of the merits of his ideas. In short, while the President recently remarked that he has a pen and a phone, we have a Constitution that places limits on his use of them to issue Executive Orders.

My concern about the President's proposed use of these orders is heightened by the Administration's record of failing to discharge its constitutional duty to "take Care that the Laws be faithfully executed," either by declining to enforce laws with which it does not agree or delaying or waiving portions of other laws to suit its convenience.

However, the President's use of these orders is subject to review by the Department of Justice. Since the passage of the Judiciary Act of 1789, the Attorney General has been authorized to render opinions on questions of law when requested by the President and the heads of Executive Branch departments. Today, as you know, the Department of Justice's Office of Legal Counsel ("OLC") provides legal advice to the Executive Branch on constitutional questions. More specifically, OLC reviews all Executive Orders proposed to be issued by the President to determine whether they are constitutional and otherwise lawful. OLC's role in this process provides a valuable opportunity to increase transparency concerning the President's use of these orders.

Therefore, I reiterate my request that you direct OLC to publicly disclose its opinions, analyses and conclusions concerning the lawfulness of all Executive Orders proposed to be issued by the President. Moreover, I request that these disclosures be made contemporaneously with the issuing of any such order OLC deems to be lawful.

On numerous occasions, the President has claimed that he is committed to creating an unprecedented level of openness and transparency in government, but he has failed to do so. This specific measure of transparency will allow both Congress and the American people to know whether these orders are being subjected to a rigorous constitutional review at the Department of Justice, as well as to better understand – and if necessary to challenge – the legal basis upon which they are purportedly issued.

Given the urgency of this matter, I respectfully request a response by February 14th.

Sincerely,

A handwritten signature in dark ink, reading "Chuck Grassley". The signature is written in a cursive, flowing style with a large initial "C" and a long, sweeping underline.

Charles E. Grassley
Ranking Member