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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

December 13, 2012

BRUCE A. COHEN, *Chief Counsel and Staff Director*  
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

### Via Electronic Transmission

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

Dear Attorney General Holder:

I write today to express my continuing disappointment with the enforcement policies of the Department of Justice (Department). On December 12, 2012, the Department entered into a Deferred Prosecution Agreement (DPA) with HSBC, a global bank that has now admitted to violating federal laws designed to prevent drug lords and terrorists from laundering money in the United States. While the Department has publicly congratulated itself for this settlement, the truth is that the Department has refused to prosecute any individual employees or the bank responsible for these crimes. This troubling lack of real enforcement will have consequences for the health of our economy and the safety and prosperity of the American people.

HSBC's record on facilitating international money laundering—and therefore endangering America's economy and national security—is well documented. Last July, the Senate Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations published a report revealing that HSBC's failure to implement effective anti-money laundering (AML) controls has “exposed the U.S. financial system to a wide array of money laundering, drug trafficking, and terrorist financing risks.”<sup>1</sup> The Department's investigation determined that HSBC “severely understaffed” and “failed to implement” an adequate AML compliance program, resulting in over \$670 billion in wire transfers and over \$9.4 billion in physical money to enter the U.S. from Mexico unmonitored.<sup>2</sup> Indeed, as a result of the DPA, HSBC has now admitted to willfully violating federal AML laws.<sup>3</sup>

In spite of this egregious criminal conduct, the DPA fails in finding the proper punishment for the bank or its employees. Under its terms, the DPA obligates HSBC to pay \$1.92 billion to the federal government, improve its internal AML controls, and submit to the

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<sup>1</sup> *HSBC Exposed U.S. Financial System to Money Laundering, Drug, Terrorist Financing Risks*, SENATE COMMITTEE ON HOMELAND SECURITY & GOVERNMENTAL AFFAIRS PERMANENT SUBCOMMITTEE ON INVESTIGATIONS (July 16, 2012), <http://www.hsgac.senate.gov/subcommittees/investigations/media/hsbc-exposed-us-financial-system-to-money-laundering-drug-terrorist-financing-risks>.

<sup>2</sup> Press Release, U.S. Dep't of Justice, HSBC Holdings PLC. and HSBC Bank USA N.A. Admit To Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement (Dec. 11, 2012) (on file with author).

<sup>3</sup> *Id.*



oversight of an outside monitor for five years.<sup>4</sup> Despite the fact that this is a “record” settlement,<sup>5</sup> for a bank as gigantic as HSBC this is hardly even a slap on the wrist. It only amounts to between 9 and 11% of HSBC’s profits last year alone,<sup>6</sup> and is a bare fraction of the sums left unmonitored. Additionally, the DPA states that “at least \$881 million in drug proceeds” entered the U.S. financial system,<sup>7</sup> but how much more remains undiscovered? Did HSBC profit from the DPA because it actually made more than \$1.92 billion by providing services to drug kingpins and terrorists? The American people may never know, because you have declined to prosecute.

Even more concerning is the fact that the individuals responsible for these failures are not being held accountable. The Department has not prosecuted a single employee of HSBC—no executives, no directors, no AML compliance staff members, no one. By allowing these individuals to walk away without any real punishment, the Department is declaring that crime actually does pay. Functionally, HSBC has quite literally purchased a get-out-of-jail-free card for its employees for the price of \$1.92 billion dollars.

There is no doubt that the Department has “missed a rare chance to send an unmistakable signal about the threat posed by financial institutions willing to assist drug lords and terror groups in moving their money.”<sup>8</sup> One international banking expert went as far as to argue that, despite the “astonishing amount of criminal behavior” from HSBC employees, the DPA is no more than a “parking ticket.”<sup>9</sup> A former banking regulator added that it is “mind-boggling” how the Department believes that “you can have a financial system and allow this kind of impunity.”<sup>10</sup> Future bank employees with a choice between following the law or profiting from illegal activities will have been taught the lesson that they will never face prison time for their actions. Consequently, this DPA does little to discourage future lawbreakers, and leaves the U.S. financial system highly vulnerable to exploitation by drug cartels and terrorists.

The Department’s inexcusable reluctance to prosecute is the continuation of a failed policy allowing lawbreakers to escape justice. In a letter to the Department on March 9, 2012, I noted that the Department had “brought no criminal cases against any of the major Wall Street banks or executives who are responsible for the financial crisis.”<sup>11</sup> The Department’s response contained no such banks or their executives; rather, it simply confirmed my suspicion that the Department is not enforcing federal laws against corporate criminals with enough vigor. As others have repeatedly warned, failing to prosecute individuals or banks when they have

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<sup>4</sup> *Id.*

<sup>5</sup> Brian Ross, Matthew Mosk, & Carlos Boettcher, *HSBC: Too Big To Prosecute?*, ABCNEWS.COM, Dec. 11, 2012, <http://abcnews.go.com/Blotter/hsbc-pay-record-19-billion-settle-money-laundering/story?id=17934134>.

<sup>6</sup> *See id.* (9%); Andrew Tangel, *HSBC To Pay \$1.9 Billion To Settle U.S. Money-Laundering Case*, L.A. TIMES, Dec. 11, 2012, <http://www.latimes.com/business/la-fi-hsbc-fine-20121212,0,2422326.story> (11%).

<sup>7</sup> *See* Press Release, U.S. Dep’t of Justice, *supra* note 2.

<sup>8</sup> *See* Ross, Mosk, & Boettcher, *supra* note 5.

<sup>9</sup> *Id.*

<sup>10</sup> *See* Tangel, *supra* note 6.

<sup>11</sup> Letter from U.S. Senator Charles E. Grassley to U.S. Attorney General Eric H. Holder (March 9, 2012) (on file with author).



committed crimes will result in perverse incentives and ultimately undermine the integrity of the U.S. financial system and economy.<sup>12</sup>

The United States is already seeing the results of these failed policies. Past settlements with large banks prove that they do nothing to change what appears to be a culture of noncompliance for some businesses. In March 2010, the Department arranged a then-record \$160 million deferred prosecution agreement with Wachovia based on its laundering of more than \$110 million from Colombian and Mexican drug cartels.<sup>13</sup> Officials at the time stated that “blatant disregard for our banking laws gave international cocaine cartels a virtual carte blanche to finance their operations.”<sup>14</sup> In this case, a bank escaped with a record monetary settlement and a conspicuous absence of individuals behind bars. If the story sounds eerily similar, that’s because it is. It happened again with HSBC.

Make no mistake, the Department’s refusal to prosecute individuals or the bank directly threatens the safety of Americans. After evidence revealed Wachovia’s involvement with money-laundering, one whistleblower stated, “[i]t’s simple: if you don’t see the correlation between the money laundering by banks and the 30,000 people killed in Mexico, you’re missing the point.”<sup>15</sup> HSBC’s criminal actions have no doubt enabled similar violence in Mexico by supporting the very cartels now terrorizing Mexican civilians. This violence often spills over the border into American cities and is accompanied by drugs that harm our children and destabilize our society.

As the Ranking Member of the Senate Judiciary Committee, I have an obligation to ensure that the executive branch is fully, fairly, and effectively enforcing the law. But what I have seen from the Department is an inexplicable unwillingness to prosecute and convict those responsible for aiding and abetting drug lords and terrorists. I cannot help but agree with an editorial in the New York Times that “the government has bought into the notion that too big to fail is too big to jail.”<sup>16</sup>

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<sup>12</sup> See, e.g., *No Crime, No Punishment*, N.Y. TIMES, Aug. 25, 2012, <http://www.nytimes.com/2012/08/26/opinion/sunday/no-crime-no-punishment.html> (arguing that “what is needed are cases with convictions [of executive] and settlements severe enough to deter future bad behavior”); William K. Black, *Senator Grassley Calls Attorney General Holder’s Bluff*, NEW ECONOMIC PERSPECTIVES, March 14, 2012, <http://neweconomicperspectives.org/2012/03/senator-grassley-calls-attorney-general-holders-bluff.html> (describing the “failure to prosecute the elite fraudulent financial CEOs who drove the ongoing [financial] crisis” as one of the “big problems” in federal law enforcement).

<sup>13</sup> Pascal Fletcher, *Wachovia Pays \$160 Million To Settle Drug Money Probe*, REUTERS, March 17, 2010, <http://www.reuters.com/article/2010/03/17/us-wachovia-settlement-idUSTRE62G35720100317>.

<sup>14</sup> *Id.*

<sup>15</sup> Ed Vulliamy, *How A Big U.S. Bank Laundered Billions From Mexico’s Murderous Drug Gangs*, THE OBSERVER, Apr. 2, 2011, <http://www.guardian.co.uk/world/2011/apr/03/us-bank-mexico-drug-gangs>.

<sup>16</sup> *Too Big To Indict*, N.Y. TIMES, Dec. 11, 2012, [http://www.nytimes.com/2012/12/12/opinion/hsbc-too-big-to-indict.html?\\_r=0](http://www.nytimes.com/2012/12/12/opinion/hsbc-too-big-to-indict.html?_r=0).

To better understand the Department's decision making, I have requested a staff briefing on this settlement and encourage you to direct the relevant Department officials to fulfill this request as soon as possible. Notwithstanding this request, I strongly urge the Department to prosecute the responsible individuals and send a powerful message to the banks that laundering money for America's enemies will not be tolerated.

Sincerely,



Charles E. Grassley  
Ranking Member

Cc: The Honorable Patrick Leahy  
Chairman