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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

February 17, 2021

VIA ELECTRONIC TRANSMISSION

The Honorable Joseph R. Biden Jr.
President of the United States
The White House
1600 Pennsylvania Ave. NW
Washington, D.C. 20500

Dear President Biden:

Last week, I wrote you with concern over your decision to ask for the resignation of all remaining Senate-confirmed U.S. Attorneys, with only two exceptions for the most obviously politically sensitive cases. I noted that you were and are within your rights to do this, even though many of my Democratic colleagues have previously voiced objections to similar actions by then Attorney General Sessions because of the potential to damage the independence of prosecutors and to disrupt ongoing federal cases. As I told you last week, I share those concerns.

I do not think it is wise to demand resignations so early in a Presidential administration, and so long before replacements will be announced. It appears this demand for resignations even preceded conversations with home state senators. My colleagues, Senators Durbin and Duckworth, rightly pointed out their objections with the decision to terminate U.S. Attorney for the Northern District of Illinois John Lausch, who is supervising a sensitive political corruption investigation of Mike Madigan, an ally of former President Obama.

In my letter last week, I raised for your consideration that it would be best to go case-by-case through U.S. Attorneys to see if there were other instances, in addition to Mr. Lausch, where U.S. Attorneys should be kept in place. Sadly, I have reason to raise this concern with you again, in regard to Acting U.S. Attorneys. In bombshell reporting last week, we learned that Melissa DeRosa, a top aide to New York Governor Andrew Cuomo, admitted to New York state lawmakers that Governor Cuomo and members of his staff may have intentionally withheld information about the number of COVID-19 deaths which occurred in New York nursing homes due to missteps of the Cuomo administration. Ms. DeRosa stated: "Basically, we froze because then we were in a position where we weren't sure if what we were going to give to the Department of Justice, or what we give to you guys, and what we start saying, was going to be used against us and we weren't sure if there was going to be an investigation." Public reporting indicates that nursing home deaths may have been undercounted by as much as 50%.

Former Attorney General Barr launched investigations under the Civil Rights of Institutionalized Persons Act into how state actors, including New York, may have fueled the spread of COVID-19. If Ms. DeRosa's most recent comments are true, then it also seems likely that officials in New York may have violated federal law. In New York, an investigation into Ms. DeRosa's admissions likely cannot be handled by Acting Southern District of New York U.S. Attorney Audrey Strauss, who, as coincidence would have it, is Ms. DeRosa's mother in law. Luckily, the Acting U.S. Attorney for the Northern District of New York, Antoinette "Toni" Bacon, is a long-time career prosecutor in the Justice Department who most recently served as the Elder Justice Coordinator for the Department. She has jurisdiction over Albany and New York state public corruption investigations. She is the obvious choice to continue a fair and unbiased investigation into possible violations of civil liberties of the elderly and the public corruption which may have occurred in this case. Yet it may be your intention to require Ms. Bacon to leave as soon as the end of the month. Replacing Ms. Bacon at this time would send a terrible message about the independence of the Department of Justice. As the case of Ms. Strauss shows, you never know who will or who won't be entrenched in state politics. Ms. Bacon, however, is not. As with the investigation of Mr. Madigan by a professional such as Mr. Lausch, it is important that this investigation be allowed to proceed in a way that does not even provide the appearance of political interference from Washington.

Again, as I did in my letter last week, I must urge you not to simply fire all of President Trump's U.S. Attorneys except for the two most obviously sensitive. Nor do I think it would make sense to displace Acting U.S. Attorneys who are career officials, spearheading sensitive investigations, until the Senate can confirm competent leaders in their places. I ask you to review each district for critical or politically sensitive investigations, and to speak with home state senators. And I strongly urge you to allow Ms. Bacon to continue her work in the Northern District of New York until the Senate can confirm a replacement.

Please contact Erin Creegan of my committee staff with any questions at (202) 224-5225.

Sincerely,



Charles E. Grassley