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June 19, 2013

Via Electronic Transmission

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

Dear Attorney General Holder:

I write today seeking clarification regarding your written responses to questions for the record submitted as part of the June 12, 2012, hearing before the Senate Committee on the Judiciary (Committee) titled, "Oversight of the Department of Justice." I seek this clarification based upon additional information provided to the Committee during today's oversight hearing with Federal Bureau of Investigation (FBI) Director Mueller that appears to have been erroneously excluded from your previous written responses provided to the Committee.

Question 39 (see attachment) that I submitted in writing following the June 12, 2012, hearing asked about the use of unmanned aircraft systems (UASs), commonly referred to as drones, by federal law enforcement agencies under the Department of Justice (Department). Specifically, I asked "Do any Justice Department entities use or plan to use drones for law enforcement purposes within the United States?"¹ In response, the Department indicated that "Law enforcement agencies within the Department are exploring the ways in which available new technologies, such as Unmanned Aircraft Systems (UASs), may increase the effectiveness of our nation's law enforcement and public safety initiatives."² The response added that "any DOJ law enforcement agencies that deploy UASs must comply with all applicable constitutional, statutory, privacy, and case-law requirements, as well as applicable Attorney General Guidelines."³

Additionally, the written response specifically provided details about the Drug Enforcement Administration (DEA) and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) use of drones. For example, it noted that DEA has acquired "two robotic miniature helicopters with video capabilities (DOD surplus). Neither unit is in use."⁴ Regarding the ATF, the response indicated, "ATF's inventory currently consists of six UASs" and that a certification was

¹ Letter from United States Dept. of Justice to Senator Patrick J. Leahy (May 7, 2013), at 41-42 (to be part of the record for *Oversight of the Federal Bureau of Investigation: Hearing before the S. Comm. on the Judiciary*, 113th Cong. (2013)).

² *Id.*

³ *Id.*

⁴ *Id.*

submitted to the Federal Aviation Administration as part of a collective effort of the Department regarding the use of drones.⁵ However, the only mention of the FBI's use of drones relates to limitations and compliance with the Attorney General guidelines stating, "FBI's use of UASs must comport with the Attorney General's Guidelines for Domestic FBI Activities and the FBI's own Domestic Investigations and Operations Guide (Section 4 "Privacy and Civil Liberties, and Least Intrusive Methods")."⁶ While this statement indicates that the FBI is at least contemplating the use of drones, it does not provide details regarding the FBI's use of drones as the response does for the DEA and ATF.

Based upon this cryptic response about the FBI's use of drones, I asked Director Mueller about this matter during today's FBI oversight hearing. I asked, "Does the FBI own or currently use drones? And if so, for what purpose?"⁷ Director Mueller responded, "Yes, and for surveillance."⁸ I also asked whether the FBI had policies and procedures in place regarding the use of drones to which Director Mueller responded, "We are in the initial stages of doing that. And, I will tell you that our footprint is very small. We have very few and have limited use, and we're exploring not only the use but also the necessary guidelines for that use."⁹ Finally, I asked if the FBI's use of drones was on U.S. soil and Director Mueller confirmed that the FBI does use drones on U.S. soil.

This exchange with Director Mueller raises some concerns about the completeness of the previous response you provided to my written question. Specifically, if the FBI is actively using drones on U.S. soil, why was that fact not included in a detailed format as was done with the DEA and ATF information? Accordingly, I ask that you fully respond to this question, as well as the following questions.

- (1) When did the FBI begin using drones?
- (2) Has the FBI sought certification and/or prior approval for use of drones on U.S. soil with the FAA? If so, when?
- (3) How many drones does the FBI currently possess? Please provide make and model information as well as the costs for these systems.
- (4) What are the approved uses of drones by FBI agents?
- (5) Who must sign off on the use of drones for surveillance on U.S. soil? What about instances where drones are used abroad?
- (6) When did the FBI first use a drone for domestic purposes?

⁵ *Id.*

⁶ *Id.*

⁷ Senator Charles E. Grassley and Director Robert Mueller, Hearing on FBI Oversight, Senate Judiciary Committee, June 19, 2013, available at, <http://cq.com/doc/congressionaltranscripts-4298935?print=true>.

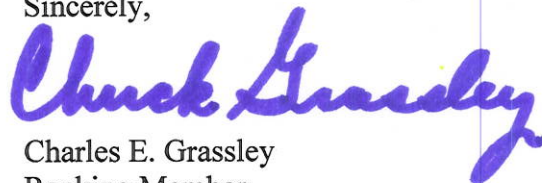
⁸ *Id.*

⁹ *Id.*

- (7) How many times has the FBI deployed drones on U.S. soil? Provide dates and locations where drones were utilized.
- (8) Does the FBI have agreements in place with the Department of Defense or Department of Homeland Security, or any other agency, to share drone airframes and/or information obtained based upon drone use?
- (9) What limitations are placed on the use of drones?
- (10) Does the FBI inform the Judicial Branch prior to deployment of drones? If not, why not?
- (11) Does the FBI obtain search warrants or other prior judicial approval before deploying drones on U.S. soil?
- (12) Are any of the drones utilized by the FBI armed or capable of being armed?
- (13) Are any of the drones utilized by the FBI carrying, or capable of carrying, non-lethal weapons?
- (14) Has the FBI coordinated drone use and tactics with DEA and ATF? If not, why not?
- (15) Who operates the FBI's drones? Is it a Special Agent trained in search and seizure law, FBI pilot, or another employee of the FBI?
- (16) Who at the Department or FBI authorized the use of drones by the FBI?

Thank you for your prompt attention to this important matter. I appreciate your response no later than June 28, 2013.

Sincerely,



Charles E. Grassley
Ranking Member

Attachment

Cc: The Honorable Patrick Leahy
Chairman

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation