

# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

January 21, 2015

## VIA ELECTRONIC TRANSMISSION

The Honorable Eric Holder  
Attorney General of the United States  
Department of Justice  
10<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20530

Dear Attorney General Holder:

I am writing to follow up on a letter I sent to your office on January 13, 2015, which expressed several constitutional concerns I have about the Department of Justice's collaboration with the consortium of public interest groups known as Clemency Project 2014. In addition to the important matters outlined in that letter, I am equally concerned that this effort is failing to comply with applicable federal laws that seek to ensure government openness and transparency relating to federal advisory committees.

The Federal Advisory Committee Act (FACA) was enacted to increase transparency and accountability related to entities that advise Executive Branch officers and agencies, as well as to facilitate congressional oversight. FACA commands that "Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees[.]"<sup>1</sup>

To accomplish that goal, FACA requires that an advisory committee's charter must be filed "with the head of the agency to whom [the] advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency."<sup>2</sup> The charter must contain detailed information about the committee's objectives, scope of activity, duties, operating costs, meetings, and timing.<sup>3</sup>

As you are aware, oversight of the Department of Justice falls squarely within the jurisdiction of the Senate Judiciary Committee. Yet to date, no advisory committee charter for Clemency Project 2014 has been filed with the Committee.

FACA defines an "advisory committee" as "any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof . . . established or utilized by the President . . . in the interest of obtaining advice or

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<sup>1</sup> 5 U.S.C. § 2(b)(5).

<sup>2</sup> 5 U.S.C. § 9(c). Alternatively, charters for Presidential advisory committees must be filed with the General Services Administration.

<sup>3</sup> See 5 U.S.C. 9(c)(2)(A)-(J).

recommendations for the President or one or more agencies or officers of the Federal Government[.]”<sup>4</sup>

According to news reports, Clemency Project 2014 directly assists Obama administration officials by screening and preparing clemency applications from federal prisoners. Moreover, reports have suggested that prisoners whose applications are prepared by the consortium may be fast-tracked for consideration by the President. Therefore, Clemency Project 2014 is at least arguably providing “advice or recommendations for the President or one or more agencies or officers of the Federal Government,” thereby rendering it a federal advisory committee under FACA.<sup>5</sup>

In addition to advice and recommendations concerning individual applications for clemency, consortium members may be providing related policy advice and recommendations to the administration as well. On April 23, 2014, a press release issued by the American Civil Liberties Union – a member of Clemency Project 2014 – praised the administration’s release of new criteria for use in considering clemency applications and reiterated that “[t]he groups [comprising Clemency Project 2014] will continue to urge the Department of Justice and President Obama to vastly expand use of the clemency power to correct widespread injustice. Similarly, each organization participating in the Project supports legislative action to curtail sentencing laws that continue to cause unjust sentences.”<sup>6</sup>

News reports suggest that lawyers at the Department of Justice have concluded that Clemency Project 2014 does not operate as an advisory committee as that term is defined in FACA. However, I am concerned that this is another example of the administration failing to live up to President Obama’s promise to be “the most transparent administration in history.” Moreover, given the track record of the Department of Justice in providing unbiased, thorough legal advice to the administration on other controversial matters recently, these reports are not reassuring.

Accordingly, I respectfully request that by February 15, 2015, the Department of Justice provide me with a written explanation for its apparent view that FACA does not apply to the work of Clemency Project 2014.

Sincerely,



Charles E. Grassley  
Chairman

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<sup>4</sup> 5 U.S.C. 3(2).

<sup>5</sup> *Id.*

<sup>6</sup> Press Release, American Civil Liberties Union, “Clemency Project 2014 Praises Justice Department for Breathing New Life Into Clemency Process” (Apr. 23, 2014) available at <https://www.aclu.org/criminal-law-reform/clemency-project-2014-praises-justice-department-breathing-new-life-clemency>.