

## United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

February 22, 2017

The Honorable Neil Gorsuch  
Byron White U.S. Courthouse  
1823 Stout Street  
Denver, CO 80257

Dear Judge Gorsuch,

I write to ask you to provide additional information regarding your tenure in a significant leadership position at the Department of Justice during President George W. Bush's Administration.

In your Senate Judiciary Questionnaire, you wrote that as Principal Deputy to the Associate Attorney General, you "assisted in managing the Department's civil litigating components (antitrust, civil, civil rights, environment, and tax)." You also acknowledged that "[m]ajor litigation decisions in certain cases—such as whether to file suit, what motions and defenses to bring, whether and how to settle significant cases on advantageous terms—are reviewed by the Office of the Associate Attorney General," and that you "spent a substantial amount of time reviewing and editing trial and appellate court legal briefs and developing case strategy." You also stated that you "acted as Associate Attorney General during periods when the Associate Attorney General was unavailable or recused and assisted in the development and implementation of a wide variety of policies and initiatives."

It appears that you were extensively involved in key decision-making at the Justice Department in relation to a number of important and controversial cases. I therefore ask you to provide additional information about the cases, policies, and initiatives in which you played a role.

### Cases

Significant briefs were filed in the following cases by lawyers at the Department of Justice—including lawyers from the Civil Division—during the time period you served as Principal Deputy to the Associate Attorney General, and were responsible for "assist[ing] in managing the Department's civil litigating components."

For each case listed below and any case consolidated with a case listed below, please specifically describe your role, and indicate whether you did any of the following: participated in making litigation decisions regarding the case; reviewed and edited briefs; or developed case strategy.

1. *Gonzales v. Carhart*, 550 U.S. 124 (2007).
2. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).
3. *Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007), *rev'd*, 553 U.S. 723 (2008).
4. *Omar v. Harvey*, 479 F.3d 1 (D.C. Cir. 2007), *vacated sub nom, Munaf v. Green*, 553 U.S. 674 (2008).
5. *Kiyemba v. Bush*, No. 1:05cv1509 (D.D.C. Sept. 13, 2005), *rev'd sub nom, Kiyemba v. Obama*, 561 F.3d 509 (D.C. Cir. 2009).
6. *American Civil Liberties Union v. Department of Defense*, 389 F.Supp.2d 547 (S.D.N.Y. Sept. 29, 2005), *aff'd*, 543 F.3d 59 (2d Cir. 2008), *vacated and remanded*, 558 U.S. 1042 (2009).
7. *Doe v. Gonzales*, 449 F.3d 415 (2d Cir. 2006).
8. *American Civil Liberties Union v. National Security Agency*, 438 F.Supp.2d 754 (E.D. Mich. Aug. 17, 2006); *rev'd*, 493 F.3d. 644 (6th Cir. 2007).
9. *Alabama Education Association v. Chao*, 455 F.3d 386 (D.C. Cir. 2006).
10. *Smelt v. County of Orange*, 447 F.3d 673 (9th Cir. 2006).

In addition to the cases listed above, please list all other significant cases in which you participated in making litigation decisions regarding the case; reviewed and edited briefs; or developed case strategy.

### **Policies and Initiatives**

11. Please list all policies and initiatives where you “assisted in the development and implementation” of the policy or initiative.

Sincerely,



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DIANNE FEINSTEIN  
United States Senator