



U.S. Department of Justice

Office of Legal Policy

Acting Assistant Attorney General

Washington, D.C. 20530

March 8, 2017

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Ranking Member Feinstein:

We are in receipt of your letter dated February 22, 2017, requesting additional information regarding Judge Gorsuch's tenure from 2005 to 2006 as Principal Deputy to the Associate Attorney General at the United States Department of Justice ("the Department"). Judge Gorsuch's Senate Judiciary Committee Questionnaire submitted on February 10, 2017 noted the following in response to Question 16(b):

In June 2005, I was appointed Principal Deputy to the Associate Attorney General. In that capacity I assisted in managing the Department's civil litigating components (antitrust, civil, civil rights, environment, and tax). Major 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. I also spent a substantial amount of time reviewing and editing trial and appellate court legal briefs and developing case strategy. Virtually all of these matters were civil, though there were occasional criminal matters. I also 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 initiatives and policies.

Since the arrival of your letter, searches were conducted to determine his participation, if any, in the cases listed in your letter. Based on those searches, which returned information beyond the scope of his recollection, we provide the following responses about cases in which he played a role while at the Department:

- *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006). Judge Gorsuch's role involved reviewing the D.C. Circuit and Supreme Court opinions; participating in discussing litigation options in the case in light of the Detainee Treatment Act; reviewing the pleadings; and participating in developing case strategy.
- *Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007), *rev'd*, 553 U.S. 723 (2008). Judge Gorsuch reviewed pleadings in preparation for an appellate court moot in which he participated.

- *Omar v. Harvey*, 479 F.3d 1 (D.C. Cir. 2007), *vacated sub nom.*, *Munaf v. Green*, 553 U.S. 674 (2008). Judge Gorsuch's role was limited, at the appellate court stage, to seeking a resolution of the case involving possible extradition of a detainee.
- *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). Judge Gorsuch's involvement in the case was limited to monitoring its developments in the district court and participating in seeking a possible resolution of the case.
- *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). Judge Gorsuch participated in discussing litigation options in the case, including release of materials to the public; reviewed and suggested edits to a declaration; and participated in developing case strategy.
- *Doe v. Gonzales*, 449 F.3d 415 (2d Cir. 2006). Judge Gorsuch participated in developing case strategy and reviewed briefs.
- *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). Judge Gorsuch's involvement in the case was limited to monitoring its developments.
- *Smelt v. County of Orange*, 447 F.3d 673 (9th Cir. 2006). Judge Gorsuch's involvement in the case was limited to monitoring its developments.

The searches conducted did not indicate that he played a role in the remaining two cases that you list in your letter (*Gonzales v. Carhart* and *Alabama Education Association v. Chao*), and he does not currently recall personal involvement in those cases.

Searches were also conducted to determine his participation, if any, in other significant cases. Based on those searches, which returned information beyond the scope of his recollection, we provide the following responses:

- *Cobell v. Norton*, No. 05-5068 (D.D.C.). Judge Gorsuch participated in discussing litigation and settlement options in this case, and he participated in developing case strategy.
- *El Masri v. Tenet*, 437 F.Supp.2d 530 (E.D. Va. 2006), *aff'd*, 479 F.3d 296 (4th Cir. 2007). Judge Gorsuch participated in discussing litigation options in this case.
- *Wen Ho Lee v. Department of Justice*, No. 99-3380 (D.D.C.). Judge Gorsuch participated in discussing mediation and settlement options in this case.

Finally, searches were conducted to determine policies and initiatives where he “assisted in the development and implementation” of the policy or initiative. Based on those searches, which returned information beyond the scope of his recollection, we provide the following responses:

- Intellectual Property Task Force
- Avian Flu Task Force
- Volunteer Liability Task Force
- Creation of DOJ Office on Privacy and Civil Liberty Issues
- Memorandum on Attorney-Client Privilege Waiver Policy
- Policy on Bullet-Proof Vests
- Taskforce on Immigration Courts and Board of Immigration Appeals / Approaches to Announcing Possible EOIR Review Recommendations
- Human Trafficking Task Force Initiative
- Law Enforcement / Public Safety Working Group Katrina Task Force
- Civil Rights Division, Housing and Civil Enforcement: Operation Home Sweet Home

We hope that this information is helpful. Please let us know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Newman", with a long horizontal stroke extending to the right.

Ryan Newman
Acting Assistant Attorney General

cc: The Honorable Charles E. Grassley
Chairman