



For Immediate Release
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**BAUCUS ASKS JUSTICE DEPARTMENT TO CLARIFY
POSITION ON JUDGES' AUTHORITY**

Department said court had no power to send prisoner witness to Finance Committee

Washington, DC – Senate Finance Committee Chairman Max Baucus (D-Mont.) has asked Attorney General Alberto Gonzales to explain his Department's views on whether judges have the power to send Federal prisoners to testify before Congress. Last month, the Justice Department filed an unsuccessful motion to quash the Finance Committee's summons for a witness convicted of identity theft and tax fraud, saying that the courts lacked authority to issue a writ requiring the Bureau of Prisons to produce Evangelos Dimitros Soukas for testimony. The Department's case flew in the face of decades of judicial approvals to produce Federal prisoners as hearing witnesses. Today Baucus asked Gonzales to recommit to cooperation with congressional committees' oversight efforts.

"I want to know whether the Justice Department's attempt to obstruct a congressional hearing was a one-shot mistake, or a standing rejection of judges' power to produce witnesses for congressional committees," said Baucus. **"Considering all the trouble that the Justice Department took to stop testimony for a hearing on tax filing season, it's important to know if Congress should expect this kind of opposition again."**

A copy of the Senator's letter is below. Visit the Finance Committee website at <http://finance.senate.gov/sitepages/baucus.htm> to view the Finance Committee's writ of habeas corpus for the witness to appear before the Committee, and the Justice Department's motion to quash.

May 15, 2007

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

I am writing to follow up on the recent attempt by the Department of Justice to frustrate a Senate hearing by challenging a Committee's right to obtain testimony from a Federal prisoner. Specifically, your Department challenged the well-established and time-honored right of a congressional committee to obtain a writ of habeas corpus ad testificandum from the District Court to permit a federal prisoner, Evangelos Dimitrios Soukas, to testify at a hearing of the Senate Committee on Finance on April 12, 2007.

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The Department's unprecedented and inexplicable position in this matter causes me grave concern about the Department's understanding of its commitment to fulfill its constitutional obligations to cooperate with, and not to obstruct, legitimate oversight inquiries of the Congress. I write to seek clarification of the Department's intent before this question next arises and to urge you to commit to abandoning the position taken by the United States Attorney in seeking to quash the writ to enable the Finance Committee to obtain Mr. Soukas' appearance.

By way of background, the Finance Committee had been coordinating with the Department's Office of Legislative Affairs and the Bureau of Prisons for most of the month of March to secure the attendance of an individual who had been convicted of identity theft and tax fraud and could testify about his conduct at the Committee's tax filing season hearing. At the Department's request, the Committee abandoned interest in another prisoner, for whom related criminal investigations continue, and identified Mr. Soukas as a potential witness. With the assistance of the Bureau of Prisons, Committee staff interviewed Mr. Soukas in prison and recommended him to the Committee as a suitable witness for its hearing.

As the attached table illustrates, Senate committees have obtained writs for prisoners to testify in committee proceedings in similar circumstances more than fifty times over the past half-century. Consistent with that history, on April 3, 2007, the Finance Committee filed an application in the District Court for the District of Columbia for a writ of habeas corpus to bring Mr. Soukas to Washington for a preparatory staff interview on April 11 and the Committee's hearing on April 12. Chief Judge Thomas F. Hogan issued the writ on April 4. On Friday, April 6, the Bureau of Prisons and your Office of Legislative Affairs contacted Committee staff for the first time to express concern about Mr. Soukas' testifying in open session. Although the basis for the concern was not entirely clear, it appeared to center on the notion – which might be true for any prisoner – that testifying at a televised congressional hearing could exalt a prisoner's ego and status, rendering management of the prisoner more difficult for the Bureau of Prisons. The Bureau of Prisons suggested that the Committee not call for Mr. Soukas' appearance at the hearing, but have him participate from prison through untelevised videoconferencing, an arrangement that would not have met the Committee's needs.

The Committee was unable to reach senior Justice Department officials over the weekend or on Monday, April 9, to discuss the Department's concerns. Instead, on April 9, an Assistant United States Attorney telephoned the Senate Legal Counsel to advise the Committee that the Bureau of Prisons would be filing with the Chief Judge a motion to quash the writ within the hour. The Bureau of Prisons court papers shed little additional light on the Bureau's objections or the source for the U.S. Attorney's position that the decades-old recognition of the Court's power to issue writs of habeas corpus ad testificandum in aid of congressional hearings is wrong.¹

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¹ The Bureau of Prisons did point out that the writ omitted a direction to the warden at the Federal institution in which Mr. Soukas was incarcerated. The Senate Legal Counsel submitted to the Court an amended writ including appropriate Bureau of Prisons officials. The Bureau, through the Assistant United States Attorney, declined to agree to the issuance of the amended writ to cure the technical deficiency. The Court, nevertheless, issued the amended writ.

Chief Judge Hogan rejected the Department's novel submission and held that the habeas statute, 28 U.S.C. § 2241(c)(1), (2), authorizes the Court's issuance of writs for prisoners' testimony at congressional hearings. The Court noted:

If that is not so, then for the last 200-plus years, every time the Senate and the House have requested a writ and it's been issued, it's been done so without authority, if the interpretation the government now asserts for the first time that we can find is correct. And that would mean that the Senate and the House have lacked, since the beginning of this country, the power to command witnesses to appear before it who are already in custody.

In re Evangelos Dimitrios Soukas, MC No. 07-0134, Transcript of Telephone Conference, Apr. 10, 2007, at 25 (D.D.C.). The Chief Judge continued:

Therefore, the legislative branch, if the government is correct in its application herein, would be powerless to subpoena needed witnesses who are in custody, if that is a correct interpretation that has not been discovered in the last 200 years as far as this Court is aware.

Id. at 25-26. The Court accordingly reaffirmed its power to issue writs for prisoners to testify at congressional hearings. The Bureau of Prisons ultimately did not pursue a threatened appeal of the Court's decision, and the Bureau of Prisons produced Mr. Soukas for the hearing on April 12 pursuant to the writ.

Unfortunately, because the Bureau of Prisons had taken it upon itself to interrupt the Marshal's transport of Mr. Soukas from California, pending the Court's disposition of its motion to quash the writ, Mr. Soukas was not brought to Washington, D.C. by the Marshals Service in time to be interviewed by Committee staff the day before the hearing, as required by the writ. Chief Judge Hogan said the following about the Government's action:

The Court will note it's somewhat taken aback that the Bureau of Prisons took it upon themselves, without authority from the Court, to block a court order.

...

But I am concerned about this. I'm concerned about the timing of it and the stopping of the prisoner in Oklahoma without a court order to do so.

...

I think they took a lot on themselves in ignoring a court order without authority to do so.

Id. at 3, 16, 17.

I share the Chief Judge's concern about the Bureau of Prisons ignoring a court order in apparent anticipation of success on a motion not yet ruled upon. The result of the Bureau's unilateral action was that the Marshals could not comply with the terms of the amended writ to bring Mr. Soukas to Washington in time to be interviewed the day before the hearing, thereby disrupting the Committee's schedule for preparation for the hearing.

Equally troubling, and more foreboding, is the U.S. Attorney's underlying assertion that, notwithstanding decades of consistent practice acquiesced in by all three branches of government, the courts lack any authority to issue writs sought by congressional committees to obtain the appearance of federal prisoners to testify at committee hearings. In order that we may intelligently consider what action by Congress may be required, I would appreciate your explanation of the Department's current and considered understanding of the scope of the courts' habeas authority. I strongly urge you to abandon the novel position taken by the Bureau of Prisons in this unfortunate instance and commit to returning to the Department's historic cooperation with congressional committees' efforts to obtain needed testimony from federal prisoners.

I look forward to your prompt response. I do not believe that it is in the interests of any of the branches to allow the ambiguity created by the Department in this instance to linger until the next time a committee of Congress seeks a writ of habeas corpus ad testificandum.

Sincerely yours,

Max Baucus
Chairman

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