Congress of the United States
Washington, DC 20515

February 26, 2014

Eric H. Holder, Jr.
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Dear Attorney General Holder:

We are writing to join Senator Ted Cruz and others in calling for you to appoint a special prosecutor to investigate the IRS's illegal targeting of conservative groups.

On May 14, 2013, Treasury Inspector General for Tax Administration reported that the "IRS used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions instead of indications of potential political campaign intervention."[1] We further learned that IRS employees illegally released donor lists of other conservative organizations.[2]

Lois Lerner, then-Director of the IRS's Exempt Organizations Office, was aware of these findings before their release, and personally arranged for a question to be asked at the very end of a May 10, 2013 meeting of the American Bar Association Tax Section's Exempt Organizations Committee. The planted question asked whether there were any continuing concerns regarding the IRS's review of 501(c)(4) applications "from tea party organizations."[3]

Ms. Lerner admitted that "line people in Cincinnati who handled the applications" targeted groups that "used names like Tea Party or Patriots and they selected cases simply because the applications had those names in the title."[4] She further stated that these cases "sat around for a while," that the organizations were sent letters requesting information that was "far too broad, asking questions … that weren't really necessary" and that in some instances they were even "asked for contributor names."[5] Ms. Lerner further confessed that this action "was wrong," that it was "absolutely incorrect, insensitive, and inappropriate and that "we at the IRS should apologize for that."[6]

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[1] Treasury Inspector General for Tax Administration, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*, May 14, 2013.

[2] Michael Luo and Stephanie Strom, "Donor names remain secret as rules shift", The Baltimore Sun, September 20, 2010. *New York Times*. John Fritze, National Organization For Marriage Donor List Leaked By IRS, Claims 'Traditional' Marriage Org's Chairman, The Baltimore Sun, June 5, 2013.

[3] Rebekah Metzler, *Exclusive: Woman Who Asked IRS's Lois Lerner Scandal-Breaking Question Details Plant*, U.S. News and World Report, May 17, 2013. Eric Lach, *IRS Official's Admission Baffled Audience At Tax Panel*, Talking Points Memo, May 14, 2013.

[4] Zachary A. Goldfarb & Karen Tumulty, *IRS admits targeting conservatives for tax scrutiny in 2012 election*, Washington Post, May 10, 2013. Stephen Ohlemacher, *IRS apologizes for Targeting Tea Party Groups*, Associated Press, May 10, 2013. Rick Hasen, *Transcript of Lois Lerner's Remarks at Tax Meeting Sparking IRS Controversy*, Election Law Blog, May 11, 2013.

[5] *Transcript of Lois Lerner's Remarks at Tax Meeting Sparking IRS Controversy*, Election Law Blog, May 11, 2013.

[6] *Transcript of Lois Lerner's Remarks at Tax Meeting Sparking IRS Controversy*, Election Law Blog, May 11, 2013.

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On May 14th, the same day the Treasury Inspector General's report was released, you called this targeting "outrageous and unacceptable." You further declared your intention to conduct a criminal investigation into the IRS's inappropriate targeting of conservative organizations.[7]

President Obama rightly called the improper targeting of conservative groups "intolerable and inexcusable." He acknowledged that "Americans have a right to be angry about it," and affirmed that he, too, was "angry about it."[8] He then "directed [Treasury] Secretary Lew to hold those responsible for these failures accountable."[9] The following day, President Obama further pledged that his administration would "work with Congress as it performs its oversight role" and "make sure that we are working hand in hand with Congress to get this thing fixed."[10]

As of today, 289 days have passed since both you and President Obama professed outrage at the IRS's wrongful conduct. To date, not a single IRS employee has been indicted for this offense. Ms. Lerner, who resigned from her position with the IRS, invoked her Fifth Amendment right against self-incrimination before the House Oversight and Government Reform Committee and refused to answer questions.[11] The Wall Street Journal has further reported that the FBI does not plan to file any criminal charges.[12]

In the midst of this inaction, The Washington Post has reported that the investigation into this scandal is being led by Barbara Bosserman, a partisan Democrat who "donated a combined $6,750 to President Obama's elections and the Democratic National Committee between 2004 and 2012."[13] Furthermore, she does not serve in the Public Integrity Section that typically oversees these matters, but rather the Civil Rights Division, historically the most partisan office at the Department of Justice. It is therefore reasonable to believe that her inaction is the result of political concerns rather than the demands of justice.

The Department of Justice has long served as a bulwark for rule of law. History shows that Attorneys General from both parties have had the integrity to stand up to political pressure – even if it meant political trouble for the President who appointed them.

When President Nixon faced charges of abusing government power for partisan ends, Attorney General Elliot Richardson appointed Archibald Cox as Special Prosecutor to ensure impartiality in the investigation. In like manner, when President Clinton faced charges of ethical misconduct, Attorney General Janet Reno appointed Robert Fiske as Independent Counsel to guarantee that the investigation was isolated from any political pressure.

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[7] Brett Logiurato, *Attorney General Eric Holder Orders a Criminal Investigation Into The IRS Scandal*, Business Insider, May 14, 2013.

[8] The White House, *Statement by the President*, May 14, 2013.

[9] The White House, *Statement by the President*, May 14, 2013.

[10] Chelsea J. Carter, Drew Griffin & David Fitzpatrick, *'Angry' Obama announces IRS leader's ouster after conservatives targeted*, CNN.com, May 16, 2013.

[11] CQ Congressional Transcripts, *House Oversight and Government Reform Committee Holds Hearing on the IRS Investigation Concerning Tax-Exempt Organizations*, CQ, May 22, 2013; Lauren French & Kelsey Snell, *Lerner at IRS hearing: 'I have not done anything wrong'*, Politico, May 22, 2013.

[12] Devlin Barett, *Criminal Charges Not Expected in IRS Probe*, Wall St. Journal, Jan. 13, 2014.

[13] Josh Hick, *Obama donor leading Justice Department's IRS investigation*, Washington Post, Jan. 9, 2014.

You have failed to live up to this storied history. The appointment of Ms. Bosserman raises significant concerns regarding a conflict of interest. Indeed, it strains credulity that, of the more than 114,000 employees at the Department of Justice, the only possible choice to lead the investigation was a major political donor to President Obama.

In light of the above, an impartial observer could reasonably conclude that: (1) the "outrage" and "anger" expressed by both you and President Obama was less than sincere; (2) your investigation was intended to brush the matter under the carpet and avoid any disclosures that might implicate the White House; and (3) the Administration intends to continue using the federal agencies to target political opponents.

If this were not the case: Why has no one been indicted; Why are no indictments pending; Why has the Administration stonewalled Congress; Why has no effort been made to let the public learn the truth about "who knew what and when?" and lastly, Why is the investigation being led by an attorney hand-picked from a division without jurisdiction over the matter – who also happens to be a major donor to President Obama's and other Democrat's campaigns?

This is a sad state of affairs. The widespread perception of partisan bias and manifest conflict of interest besmirches the reputation of the Department of Justice – and undermines our confidence in equal protection under the law. You have served a substantial portion of your professional career at the Department of Justice. I therefore ask that you demonstrate the independence that so many of your predecessors have demonstrated, and take action consistent with the historic integrity of past Attorneys General.

An independent special prosecutor must therefore be appointed to oversee the IRS investigation. Such prosecutor must be given the independence to follow the facts wherever they may lead. He or she must both prosecute any and all criminal conduct and report to Congress and the American people what occurred, why it occurred, who knew about it, and what can be done to ensure it never happens again. Furthermore, this special prosecutor must be someone whose integrity is beyond reproach – and, at a minimum, he or she must not be a major financial donor to either Democratic or Republican Party campaigns. The IRS, or any other agency, must not be used for political purposes.

This special prosecutor must be someone whose integrity is beyond reproach – and, at a minimum, he or she must not be a major financial donor to any political campaign.

Sincerely,

Bill Posey

Blake Farenthold

Jeff Flake

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Cynthia M. Lummis

Kerry L. Bentivolio

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