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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

RICHARD J. KESSLER, STAFF DIRECTOR
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March 18, 2014

VIA U.S. MAIL & EMAIL (Faith.Burton@USDOJ.gov)

The Honorable James M. Cole
Deputy Attorney General
Office of the Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Room 4111
Washington, DC 20530-0001

Dear Deputy Attorney General Cole:

We are writing to urge a change in the current policy of the Department of Justice (DOJ) which, for more than five years, has not sought extradition from Switzerland of a single Swiss national charged with criminal conduct related to aiding and abetting U.S. tax evasion.

During the hearing held by the U.S. Senate Permanent Subcommittee on Investigations on February 26, 2014, you testified that DOJ has charged 35 bankers and 25 financial advisors with misconduct related to facilitating U.S. tax evasion. Of those, 6 have been convicted or pled guilty, and the majority of the rest apparently live openly in Switzerland, having avoided trial on their alleged crimes for years. Yet you also testified that DOJ has not asked Switzerland to extradite any of those defendants, because DOJ believes "the Swiss will not extradite its citizens."

The extradition treaty between the United States and Switzerland, however, does not bar the extradition of Swiss nationals who assisted U.S. nationals in the commission of criminal tax evasion, and it is time to test the Swiss government's professed willingness to cooperate with international tax enforcement efforts and put an end to its nationals participating in criminal tax offenses. While Article 3 of the U.S.-Swiss treaty provides some discretion to the Swiss government to deny U.S. extradition requests related to tax offenses, that discretion is limited. The treaty states that it can "not be used to shield from extradition underlying criminal conduct, such as fraud ...or falsification of public documents." At least some of the charges in the indictments filed against Swiss bankers and intermediaries appear to meet that standard. Additionally, Article 8, which provides an exception to extradition requests that name a treaty partner's nationals, is limited to circumstances where "[t]he Requested State [Switzerland] ... has jurisdiction to prosecute that person for the acts for which extradition is sought." Switzerland does not consider tax evasion a crime, and therefore cannot prosecute such cases, which means the Article 8 exception should not apply to U.S. extradition requests to Switzerland for cases related to tax evasion.

Given that the current treaty does not foreclose the cooperation of the Swiss government in extradition requests for tax cases, we urge DOJ to at least attempt to use the authorities laid out in that treaty. Even if a request is unsuccessful, it will inform both Switzerland and its citizens that the United States is ready to make full use of available legal tools to stop facilitation of U.S. tax evasion and hold alleged wrongdoers accountable.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "John McCain". The signature is fluid and cursive, with the first name "John" and last name "McCain" clearly distinguishable.

John McCain
Ranking Minority Member
Permanent Subcommittee on Investigations

A handwritten signature in blue ink that reads "Carl Levin". The signature is fluid and cursive, with the first name "Carl" and last name "Levin" clearly distinguishable.

Carl Levin
Chairman
Permanent Subcommittee on Investigations