

Congress of the United States
Washington, DC 20515

January 14, 2013

Hon. Eric Holder
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

We are writing you in support of the concerns expressed in the attached letter sent to you on December 13th by Senator Jeff Merkley regarding the deferred prosecution agreement with HSBC. We are committed to achieving needed accountability in the financial sector, particularly for large financial institutions that played a significant role in bringing about the 2008 financial crisis that has caused great pain and suffering over the last several years.

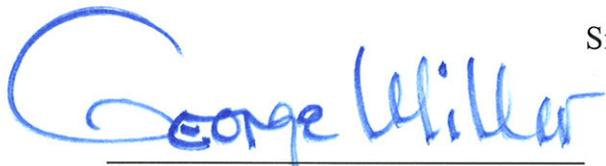
As you know, the case against HSBC details a number of serious offenses involving clear and blatant violations of anti-money laundering statutes, which facilitated the activities of drug traffickers, banks doing business in sanctioned countries such as Iran, and others. It is inconceivable to us that indictments would not be brought against those HSBC officers and employees that were responsible for these laundering violations. Money laundering was carried out on behalf of the Mexican drug cartels that are responsible for significant crime, violence and death in the communities that we represent.

Money laundering was also conducted on behalf of governments that are supporting terrorist organizations that are attacking and killing American troops and citizens around the world. All of us have had the heartbreaking experience of attending the funerals of our fallen heroes. It is unacceptable to us that indictments have not been pursued against those who have engaged in offenses that have supported the criminal drug activities on our streets and terrorist activities against our country, our military and our citizens.

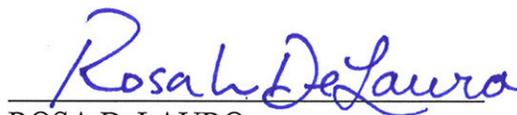
We believe that the Department of Justice owes a greater duty of diligence to the American people in prosecuting the responsible HSBC officials to the fullest extent of the law for their criminal activities. We are particularly shocked by recent reports that Colombian drug traffickers who utilized HSBC's lax regulations on money laundering have in fact been charged in U.S. courts and face over a decade in prison, yet the HSBC employees who made such laundering possible have not faced criminal prosecution. Violations of anti-money laundering statutes in support of drug traffickers and America's enemies are beyond the pale and must consistently be prosecuted to the fullest extent of the law, and even banks that are very large and systemically important cannot be too big to jail.

We join Sen. Merkley in urging your immediate attention to this issue and look forward to your response to his inquiry. Thank you in advance for your consideration of our concerns.

Sincerely,



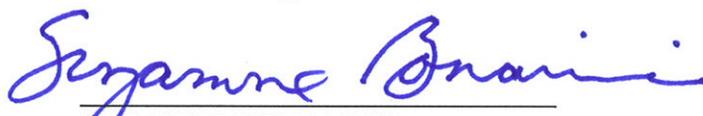
GEORGE MILLER
Member of Congress



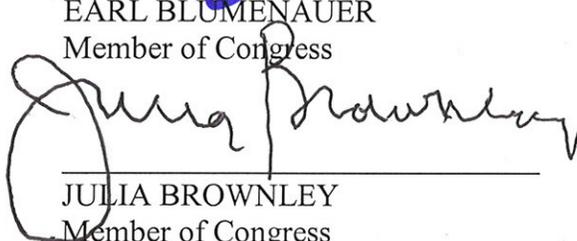
ROSA DeLAURO
Member of Congress



EARL BLUMENAUER
Member of Congress



SUZANNE BONAMICI
Member of Congress



JULIA BROWNLEY
Member of Congress



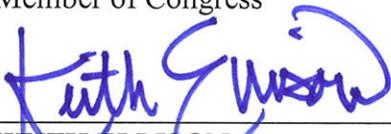
ANDRÉ CARSON
Member of Congress



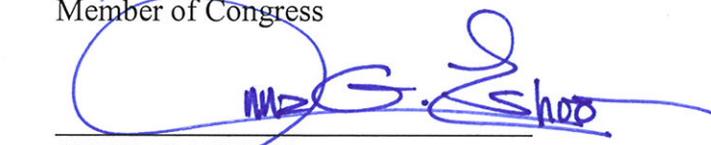
DAVID CICILLINE
Member of Congress



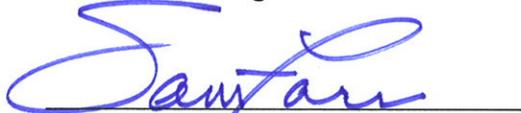
STEVE COHEN
Member of Congress



KEITH ELLISON
Member of Congress



ANNA G. ESHOO
Member of Congress



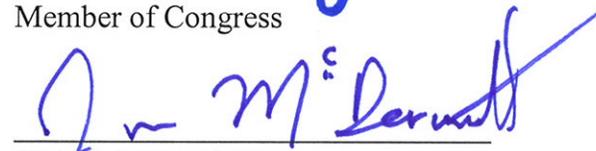
SAM FARR
Member of Congress



HANK JOHNSON
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JIM McGOVERN
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CHELLIE PINGREE
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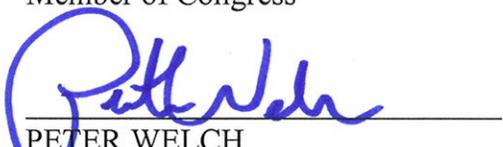

JAN SCHAKOWSKY
Member of Congress

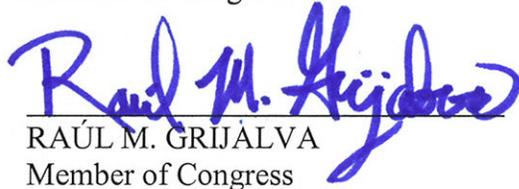

JACKIE SPEIER
Member of Congress


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NIKI TSONGAS
Member of Congress


PETER WELCH
Member of Congress


RAÚL M. GRIJALVA
Member of Congress


MICHAEL H. MICHAUD
Member of Congress

United States Senate

WASHINGTON, DC 20510

December 13, 2012

COMMITTEES:
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AND URBAN AFFAIRS
BUDGET

Hon. Eric Holder
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

On Tuesday, the Justice Department entered into a deferred prosecution agreement with HSBC related to more than \$800 million in illicit narcotics proceeds that drug traffickers laundered through the bank's Mexican and American affiliates, as well as over \$600 million in transactions that violated U.S. sanctions against Cuba, Iran, Libya, Sudan, and Burma.¹ Assistant Attorney General Lanny Breuer highlighted just how brazen the violations were, with traffickers depositing "hundreds of thousands of dollars in cash, in a single day, into a single account, using boxes designed to fit the precise dimensions of the teller window."² Sanctions violations were equally deliberate, with the bank intentionally stripping information from transactions to avoid detection. Yet despite these clear and blatant violations, the Department of Justice refused to bring criminal charges against the bank, relevant employees, or senior management.

Indeed, Mr. Breuer stated yesterday that in deciding not to prosecute, the Department considered the "collateral consequences" of its decision on the financial system. Mr. Breuer stated "If you prosecute one of the largest banks in the world, do you risk that people will lose jobs, other financial institutions and other parties will leave the bank, and there will be some kind of event in the world economy?"³ The HSBC decision comes on the back of deferred prosecution agreements with Standard Charter Bank and ING Group related to similar charges.

¹ Department of Justice, Office of Public Affairs, *HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement*, Dec. 11, 2012, <http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html>.

² Peter Finn, Sari Horwitz, *Justice Department outlines HSBC transactions with drug traffickers*, THE WASHINGTON POST, Dec. 11, 2012, http://www.washingtonpost.com/world/national-security/justice-department-outlines-hsbc-transactions-with-drug-traffickers/2012/12/11/1b8130c4-43bf-11e2-8061-253bccfc7532_story.html (quoting Mr. Breuer).

³ *Id.*

I do not take a position on the merits of this or any other individual case, but I am deeply concerned that four years after the financial crisis, the Department appears to have firmly set the precedent that no bank, bank employee, or bank executive can be prosecuted even for serious criminal actions if that bank is a large, systemically important financial institution. This “too big to jail” approach to law enforcement, which deeply offends the public’s sense of justice, effectively vitiates the law as written by Congress. Had Congress wished to declare that violations of money laundering, terrorist financing, fraud, and a number of other illicit financial actions would *only* constitute civil violations, it could have done so. It did not.

Instead, Congress placed these financial crimes squarely in the federal criminal code precisely because the consequences are so severe. Drug trafficking between the U.S. and Mexico continues to wreak extraordinary violence across North America, leading to 15,000 deaths in Mexico in 2010 alone and continued gang violence and deaths in the U.S.⁴ Drug cartels are also increasingly connected to terrorism. According to the Drug Enforcement Administration, 39 percent of State Department-designated foreign terrorist organizations (FTOs) have “confirmed links” to the drug trade, as of November 2011.⁵ The consequences to U.S. national security for violations involving terrorism financing and Iran sanctions violations are obvious and severe. Congress deemed criminal law the appropriate tool for punishing and deterring actions that have such serious and damaging public consequences.

Refusing to prosecute on the grounds of financial stability is also troubling from the perspective of ending “too big to fail.” The Dodd-Frank Wall Street Reform and Consumer Protection Act, which declared some institutions to be systemically important financial institutions subject to tougher regulation, did *not* declare that those institutions would be exempt from criminal prosecution. Indeed, the Dodd-Frank Act explicitly created new authority to permit a failed institution to be wound down safely, without impacting financial stability. If a financial institution, because of its criminal actions, ultimately fails, that may indeed be precisely the consequence that justice and accountability demand, and which is so necessary to deterring future illegal behavior. I am deeply concerned that the Department’s continuing application of deferred prosecution agreements on the grounds of financial stability runs contrary to the intent of Congress and undermines the accountability to the rule of law that is so fundamental to a healthy, functioning free market economy.

⁴ Sara Miller Llana, *Mexico drug war death toll up 60 percent in 2010. Why?*, CHRISTIAN SCIENCE MONITOR, Jan. 13, 2011, <http://www.csmonitor.com/World/Americas/2011/0113/Mexico-drug-war-death-toll-up-60-percent-in-2010.-Why>.

⁵ Prepared testimony of U.S. Drug Enforcement Administration Special Operations Division Special Agent in Charge Derek S. Maltz, in U.S. Congress, House Comm. on Foreign Affairs, Subc. on Terrorism, Nonproliferation, and Trade, *Narcoterrorism and the Long Reach of U.S. Law Enforcement, Part II*, 112th Cong., Nov. 17, 2011.

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According to the U.S. Sentencing Commission, jail time is served by over 96 percent of persons that plead or are found guilty of drug trafficking, 80 percent of those that plead or are found guilty of money laundering, and 63 percent of those caught in possession of drugs.⁶ As the deferred prosecution agreement appears now to be the corporate equivalent of acknowledging guilt, the best way for a guilty party to avoid jail time may be to ensure that the party is or is employed by a globally significant bank. The Department's deferred prosecution agreements may offer something in the way of promises of future compliance, but they look sorely lacking in justice and accountability.

I ask for your immediate response and explanation.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey A. Merkley". The signature is stylized with a large initial "J" and "M".

Jeffrey A. Merkley
United States Senator

cc: Hon. Timothy Geithner, Secretary of the Treasury
Hon. Ben Bernanke, Chairman, Federal Reserve Board
Hon. Tom Curry, Comptroller of the Currency
Hon. Martin Gruenberg, Chairman, Federal Deposit Insurance Commission

⁶ U.S. Sentencing Commission, *2011 Sourcebook of Federal Sentencing Statistics*, Table 12, (2011)
http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2011/Table12.pdf.