



## The Attorney General

Washington, D.C.

April 5, 2016

The Honorable Craig W. Richards  
Attorney General  
The State of Alaska  
1031 W. 4th Avenue, Suite 200  
Anchorage, AK 99501

Dear Attorney General Richards:

I have received a copy of your letter, dated February 5, 2016, requesting that the Department of Justice (the Department) cross-designate a member of your staff to “pursue prosecution of Bill Allen for alleged Mann Act violations.” As you are aware, in 2010, the Department’s Criminal Division declined prosecution of Mr. Allen for child exploitation offenses. In addition, the Department has twice denied similar requests from your office, in December 2010 and April 2012, to cross-designate your staff as federal prosecutors to pursue prosecution of Mr. Allen for these offenses. As you point out in your letter, those requests occurred before I became Attorney General and prior to the 2015 amendment to the Mann Act, which provides:

The Attorney General shall grant a request by a State attorney general that a State or local attorney be cross designated to prosecute a violation of this section unless the Attorney General determines that granting the request would undermine the administration of justice.

18 U.S.C. § 2421(b)(1).

I have considered your request to cross-designate prosecutors from your office to prosecute Mr. Allen for Mann Act violations and I have concluded that it would undermine the administration of justice to grant the request, because this case does not meet the standards of the Principles of Federal Prosecution (USAM § 9-27.001 *et seq.*). Under these principles, a federal prosecution may be brought only when the prosecutor “believes that the person’s conduct constitutes a Federal offense *and that the admissible evidence probably will be sufficient to obtain and sustain a conviction.*” USAM § 9-27.220 (emphasis added). The Department undertook a serious and extensive investigation into the allegations concerning Mr. Allen.<sup>1</sup> At

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<sup>1</sup> You undoubtedly are aware of the thoroughness of the investigation: in late 2010, the Department agreed to provide all relevant investigative documents in the Department’s possession to your office to assist you in your investigation of Mr. Allen. As a result, in 2011, the Child Exploitation and Obscenity Section (CEOS) provided your office with a substantial quantity of investigative material. In addition, CEOS arranged for your office to obtain Federal Bureau of Investigation documents through the FBI’s Chief Division Counsel in Anchorage. Moreover, in 2012, the Department took the initiative to obtain a court order to allow the disclosure of federal grand jury material to your office and subsequently sent the records to your office. The Department’s extensive disclosures of materials to your office are

the conclusion of the investigation, the Department declined to prosecute Mr. Allen after considering the factors that the Department always considers, as set forth in the Principles of Federal Prosecution. In this matter the relevant factors included, but were not limited to, the nature and strength of the evidence, the age of the alleged conduct, witness credibility issues, an assessment of possible pretrial motions that could be made, and whether the target was already serving a sentence, as well as the Department's *Brady* and *Giglio* obligations.

The Department's decision not to prosecute Mr. Allen for child exploitation offenses was not based on any non-prosecution promise or agreement between the government and Mr. Allen. Instead, the decision was based on the factors that the government always considers under the Principles of Federal Prosecution. It should go without saying that the Criminal Division would not direct the Child Exploitation and Obscenity Section (CEOS) to expend considerable resources during an almost two-year investigation had the Department been bound by any agreement not to prosecute him if we believed charges were appropriate.

Your question regarding the appropriateness of the Department's decision has previously been considered and investigated. Indeed, after the Department dismissed the criminal case against Senator Ted Stevens, the District Court appointed special prosecutor Henry Schuelke III, to investigate misconduct in the case in 2009. During that review, the Department informed Mr. Schuelke that the decision to decline to prosecute Mr. Allen was not based in any way on any agreement or promise not to do so.

Moreover, on November 23, 2011, Senator Lisa Murkowski asked the Department's Office of Professional Responsibility (OPR) to investigate the Department's prosecutorial decisions with respect to sexual abuse allegations against Mr. Allen. OPR examined materials related to the investigation of and the decision not to prosecute Mr. Allen (see attached letter). After a thorough review, OPR

found no evidence that the Criminal Division's decision to decline prosecution of Mr. Allen was predicated on corrupt, improper, or impermissible considerations. Indeed, the decision appears well within the legitimate exercise of prosecutorial discretion, and was based upon application of the Principles of Federal Prosecution, which includes an evaluation of witness credibility and due process considerations, especially *Brady* and *Giglio* information.

OPR also considered separately the Criminal Division's decision to deny your office's request for its attorneys to be cross-designated for the investigation of Mr. Allen. OPR found that this decision "was made after due consideration of relevant factors and after consultation with the Office of the Deputy Attorney General." OPR concluded that no further investigation of the matter was warranted concerning the Department's decision not to cross-designate state prosecutors as federal prosecutors to bring federal charges arising from the same set of facts that the Department had previously determined did not warrant federal prosecution in the first instance.

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summarized in the attached correspondence.

Even though the Department previously declined to prosecute Mr. Allen in 2010, and reviewed and denied your office's two subsequent requests to cross-designate your staff to investigate and prosecute Mr. Allen, we considered anew your third request in your February 2016 letter. A senior career prosecutor with the Criminal Division examined both the Department's previous decision to decline prosecution as well as your third request to cross-designate a member of your staff to prosecute Mr. Allen. Based on a thorough review of the matter, including discussions with your office, your current request to cross-designate state prosecutors to investigate potential Mann Act violations appears to be based on the same underlying facts and considerations that the Department previously took into account when declining prosecution in 2010.

The proper administration of justice requires consistent application of principles regarding the circumstances in which federal criminal prosecution is initiated. Abdication of these principles would be contrary to the due administration of justice. Because the Criminal Division decided not to prosecute Mr. Allen, after carefully weighing the Principles of Federal Prosecution and due process considerations as described above, we continue to conclude it would be inappropriate—and that it would undermine the administration of justice—to cross-designate state prosecutors as federal prosecutors to investigate and prosecute this matter after the Department has already determined it did not meet the Principles of Federal Prosecution.

I did not make this decision lightly, and I want to emphasize how seriously the Department takes its relationships with state and local partners. Nowhere is this more apparent than in the Criminal Division, which is deeply committed to working closely with state and local law enforcement counterparts in the investigation and prosecution of a broad range of offenses. This partnership has made our communities safer and has led to a more efficient use of resources.

In addition, I am particularly proud of the work the Department has undertaken to vigorously prosecute those who harm the most vulnerable among us. Since 2006, Project Safe Childhood has been a powerful, nationwide initiative to combat child sexual exploitation and abuse. Project Safe Childhood marshals federal, state, and local resources to better locate, apprehend, and prosecute individuals who exploit children via the Internet, as well as to identify and rescue victims. And our record speaks for itself: in fiscal year 2015, the Department obtained approximately 3,687 indictments, against 3,934 defendants, for offenses involving the sexual exploitation of a minor. Moreover, since fiscal year 2007, approximately 16,489 defendants have been convicted in federal courts of offenses related to the sexual exploitation of a minor. These crimes ranged from production of obscene visual depictions of minors engaged in sexually explicit conduct; to receipt, distribution, possession, and/or production of child pornography; to the direct physical, sexual abuse of a minor; to transportation of minors with the intent to engage in illicit sexual activity.

In Alaska, specifically, the Department has taken several steps that demonstrate its commitment to fighting child exploitation in your state. The United States Attorney's Office for the District of Alaska, in partnership with the Federal Bureau of Investigation, has worked closely with numerous other organizations in this effort, including the Alaska Network on Domestic Violence and Sexual Assault, the Bureau of Indian Affairs, the Governor's Task Force

on labor and sex trafficking, and many rural villages and Alaska Native Tribal Organizations. And the Department has dedicated significant financial resources to these efforts in Alaska. For example, the District of Alaska has a full-time Assistant United States Attorney dedicated to Project Safe Childhood investigations and prosecutions. Project Safe Childhood, as implemented through the Internet Crimes Against Children Task Force, gave the Anchorage Police Department over \$1.3 million over the past six years to help investigate and prosecute crimes against children.

I provide this information, not only because it is important, but also because it provides critical context about my decision not to grant your request.

I know that you and your office care deeply about this matter and are committed to investigating and prosecuting child exploitation offenses. We share your commitment to prosecuting these offenses, but after a review of this particular matter, I am confident that the Department has made the right decision to decline prosecution of Mr. Allen. As such, I am denying your request for cross-designation to pursue prosecution of Mr. Allen for Mann Act violations.

Should you wish to discuss the matter further, please contact Deputy Assistant Attorney General Paul M. O'Brien. As you are aware, Mr. O'Brien has been in contact with your office concerning this matter.

Sincerely,

  
Loretta E. Lynch

Enclosures