

Congress of the United States
Washington, DC 20515

April 17, 2025

The Honorable Pamela J. Bondi
Attorney General of the United States
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Bondi:

We write with respect to pending litigation against the U.S. Government Accountability Office (GAO), an agency that supports Congress by providing objective, non-partisan analyses intended to save taxpayer dollars and enhance government efficiency and accountability.

Under well-settled law, GAO is “an independent agency within the Legislative Branch...[and] the Comptroller General, who leads the GAO, is ‘an Officer of the Legislative Branch.’”¹ The Trump Administration acknowledged GAO’s status as a Legislative Branch agency in a 2019 Office of Management and Budget (OMB) memorandum which reads, in relevant part:

OMB respects GAO’s opinions as those of an agency of a coequal branch of government. However, under the constitutional doctrine of separation of powers, a legal opinion by a Legislative Branch agency cannot bind the Executive Branch. . . .As the Department of Justice has directly affirmed: “[b]ecause GAO is part of the Legislative Branch, Executive Branch agencies are not bound by GAO’s legal advice.”²

On March 6, 2025, America First Legal Foundation (AFL) sued GAO under the Freedom of Information Act (FOIA).³ As you are undoubtedly aware, FOIA explicitly exempts Congress and Legislative Branch agencies from its scope.⁴ However, even though GAO is a Legislative Branch agency, the Department of Justice (DOJ) represents it in litigation:

¹ *Coll. Sports Council v. Gov’t Accountability Off.*, 421 F. Supp. 2d 59, 61 (D.D.C. 2006) (citing *Bowsher v. Synar*, 478 U.S. 714 [1986]). *See also* 5 U.S.C. 5531(4) (“**“agency in the legislative branch” means the Government Accountability Office, the Government Publishing Office, the Library of Congress, the Office of Technology Assessment, the Office of the Architect of the Capitol, the United States Botanic Garden, the Congressional Budget Office, and the United States Capitol Police;**”) (emphasis supplied); 31 U.S.C. 702(a) (“**“The Government Accountability Office’ is an instrumentality of the United States Government independent of the executive departments.”**”).

² Office of Mgmt. & Budget, Exec. Office of the President, OMB Memorandum for Agency General Counsels (2019).

³ *Am. First Legal Found. v. Gov’t Accountability Off.*, No. 1:25-cv-00662-SLS (D.D.C. 2025).

⁴ *See, e.g. Am. C.L. Union v. Cent. Intel. Agency*, 105 F. Supp. 3d 35, 44 (D.D.C. 2015), *aff’d sub nom. Am. C.L. Union v. C.I.A.*, 823 F.3d 655 (D.C. Cir. 2016). (“For purposes of FOIA, the definition of an “agency” specifically excludes Congress, legislative agencies, and other entities within the legislative branch.”).

Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice.⁵

Courts have repeatedly affirmed DOJ's authority and responsibility to represent GAO in court. As one court explained:

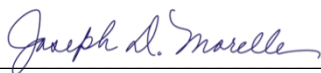
Defendant argues that the DOJ, as an executive branch agency, does not have standing to quash a subpoena directed at the GAO because it is a congressional office. This argument overlooks the fact that the DOJ is responsible for litigating cases on behalf of the entire federal government. . . Accordingly, unless otherwise provided for by law, the DOJ represents the U.S. government, including the GAO, in litigation.

In addition, case law clearly indicates that the DOJ represents the GAO and other nonexecutive branch agencies in litigation. *Int'l Fed'n of Prof'l & Technical Engineers v. United States*, 934 F.Supp.2d 816 (D.Md.2013) (DOJ representing GAO in suit by union); *Coll. Sports Council v. Gov't Accountability Office*, 421 F.Supp.2d 59, 61 (D.D.C.2006). In addition, the DOJ represents other congressional agencies such as the U.S. Capitol Police. *See Kroll v. U.S. Capitol Police*, 847 F.2d 899, 901 (D.C.Cir.1988).⁶

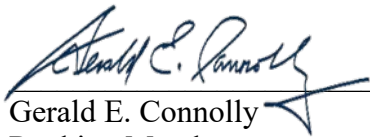
It is our expectation that DOJ will fulfil its statutory responsibilities and zealously defend GAO against this seemingly meritless action. To that end, please provide written confirmation no later than April 23, 2025, indicating DOJ's commitment to vigorously represent GAO for the duration of the above-referenced lawsuit, and to do so in accordance with applicable laws, regulations, ethical guidelines, and rules of professional conduct.

Thank you for your prompt attention to this matter.

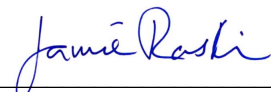
Sincerely,



Joseph D. Morelle
Ranking Member
Committee on House
Administration



Gerald E. Connolly
Ranking Member
Committee on Oversight and
Government Reform



Jamie Raskin
Ranking Member
Committee on the Judiciary

⁵ 28 U.S.C. 516.

⁶ *United States v. Avalos-Martinez*, 299 F.R.D. 539, 541 (W.D. Tex. 2014).