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UNITED STATES GENERAL ACCOUNTING OFFICE

Washington, D.C. 20548

[Appropriated Funds For Prosecution of Nazi War Criminals]

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STATEMENT OF
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GENERAL COUNSEL

Before The
SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW
Of The
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES



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Just

Madam Chairwoman and Members of the Subcommittee:

As you know, I earlier had planned to testify on the Comptroller General's position as to whether some \$2 million of funds appropriated to the Department of Justice were required to be made available exclusively for the prosecution of Nazi war criminals. At the time of my earlier scheduled testimony there appeared to exist a disagreement between GAO and the Department of Justice on the issue. The Department now agrees with the Comptroller General that at least \$2,052,000 of the funds appropriated for fiscal year 1979 must be committed for that purpose.

With your permission, I would like at this time to submit for the record copies of the statement filed with the Subcommittee as well as a copy of Deputy Comptroller General Keller's December 21, 1978, letter to Chairman Rodino on the appropriation issue.

We intend to monitor closely the Department's actions with regard to actual use of these funds. In light of recent developments we have reviewed departmental documents and discussed with Department officials their program plans. Our analysis leads us to conclude that the Department's delay in making the \$2 million available to the special litigation unit together with hiring and other program limitations will result in at least \$334,500 of annual budget authority

not being used during fiscal year 1979. We further conclude that pursuant to the Impoundment Control Act of 1974, the Department's actions constitute an unreported rescission of this amount which under current plans cannot be used.

Let me explain the basis for these conclusions.

We construe the Department's appropriation act together with the authorization act as effectively providing a line-item appropriation of \$2,052,000 for the special litigation unit to cover fiscal year 1979 operations. We do not believe it would be legally proper for the Department to reprogram any of this amount to any other activity.

Yet, despite the requirement to make available approximately \$2 million for the unit, Justice had, until recently, allocated only \$900,000 for this purpose for fiscal year 1979. The Department has stated its intention to upgrade the staffing complement and financial resources available to the special litigation unit. Specifically, we now understand that the Department has increased the unit's operating budget for fiscal year 1979 by \$817,500 for a total of \$1,717,500. It therefore appears that the full \$2,052,000 will not in fact have been made available for obligation as required by law. In this light we conclude that the difference--some \$334,500--is being withheld from obligation availability and should be proposed as a rescission of budget authority pursuant to the Impoundment Control Act of 1974.

We are also concerned about utilization of the \$817,500 increase just made in allocations to the special litigation unit. Since the current fiscal year is approximately one-half over, it is possible that the special unit will not be able to fully utilize these funds during the remainder of this fiscal year. Our doubts are underscored by the fact that for the first 5 months of this fiscal year actual obligations of the unit totaled \$241,143. On an annual basis this is a fiscal year rate of \$578,743. Thus, we question whether the unit will, in fact, be able to utilize fully the \$1,717,500. Because INS plans are unclear we intend to monitor the situation and take further action, as appropriate. Our concern is that the Executive branch either take such action as may be needed for the prudent use of the \$2 million or that any shortfall be reported pursuant to the Impoundment Control Act.

In sum, we conclude that of the total \$2,052,000 appropriated it appears that only \$1,717,500 at most will be used this fiscal year--the only year during which the funds are available for obligation. Consequently, we conclude that, under current plans, \$334,500 will lapse because of the Department's failure to allocate the funds.

Unless the situation changes, we plan to report the matter to the Congress pursuant to the Impoundment Control Act of 1974 as soon as our internal processing is completed.

It should be recognized, however, that we are dealing here with a salaries and expense appropriation for one fiscal year. Therefore, notwithstanding the impoundment involved, there is little likelihood, at this late date, that any action under the Impoundment Control Act will be possible to force expenditure of the full \$2 million.

I would be pleased to answer any questions that the Subcommittee might have at this time.