WASHINGTON, DC -- Congresswoman Linda Sánchez, Chairwoman of the House Judiciary Subcommittee on Commercial and Administrative Law (CAL), issued the following opening statement today at the CAL Subcommittee oversight hearing on “Deferred Prosecution: Should Corporate Settlements Be Without Guidelines?” Former Attorney General John Ashcroft, the recipient of a corporate monitoring contract, testified at the hearing.

“I have called today’s hearing to shed light on the use of pre-trial prosecution agreements in corporate crime cases -- a growing practice that has so far been operating mostly in the shadows, without guidelines, and without oversight. Today’s hearing is not being held with prejudice for or against deferred prosecution and non-prosecution agreements, but rather, with concern about the number of unanswered questions surrounding them.

“The concept of deferred prosecution originated as a rehabilitation option for non violent juvenile and drug offenders. After prosecutors file an indictment, the prosecution is put on hold in exchange for commitments by the offender to reform and provide restitution. If the offender meets the obligations in the agreement, prosecutors may ask a judge to dismiss the indictment.

“In the past six years, the Justice Department has increasingly relied upon a similar tool for white collar crimes, usually involving private corporations. In such cases, an independent corporate monitor is often hired to determine whether the target corporation has complied with the obligations in the deferred prosecution or non-prosecution agreement.

“Late last year, I was troubled to learn of what appeared to be a backroom, sweetheart deal where New Jersey U.S. Attorney Christopher Christie appointed John Ashcroft, the former Attorney General, to serve as an independent corporate monitor and collect fees between $28 and $52 million. I was also concerned to learn from press accounts that Mr. Ashcroft was selected with no public notice and no bidding and that he had to use considerable time to prepare for the assignment and learn more about the business that he was contracted to monitor.

“When I continue to investigate the issue of deferred prosecution agreements and the appointment of independent corporate monitors, I discovered that the parties to these agreements were operating in a “Wild West” environment with no laws and no Justice Department guidelines.

“Less than 24 hours before today’s hearing, the Department sent us a memo mapping out some guidance with regard to the selection and use of monitors. While this may be a good start, uncertainty still remains as to how monitors should be selected and how these agreements should be structured.

“The absence of standards governing how independent corporate monitors are selected has resulted in a hodgepodge of approaches across jurisdictions. For example, in several agreements, prosecutors selected the monitor, typically after consulting with the corporation. In others, the corporation selected the candidate. Additionally, a few agreements provide for collaboration among the corporation, regulators, and prosecutors in the selection. Finally, in at

least three agreements, a court played a significant role in the monitor selection process.

"Furthermore, the current system lacks guidelines to direct how independent corporate monitors conduct oversight of the corporation once they have been selected. Most monitors are granted broad powers to gather information, institute policies, and oversee compliance. For example, in one matter, the monitor had the power to "require any personnel action, including termination," regarding individuals "who were engaged in or were responsible for the illegal conduct described in the Information." In essence, the agreement allowed the monitor to act as the prosecutor, judge, and jury for these employees.

"While uncertainty is common in many aspects of deferred prosecution agreements, one thing remains certain: the government has tremendous leverage over a corporation entering into an agreement. Corporations facing criminal prosecution have an unfair choice. They can either risk a conviction and perhaps even dissolution after trial or be coerced into accepting the terms and the monitor that a prosecutor unilaterally believes are appropriate.

"Unfortunately, because of a lack of transparency in many aspects of deferred prosecution agreements, we still don't know the full scope of this issue. On January 10th, Chairman Conyers, Congressman Pascrell, and I sent a letter to the Justice Department requesting that the Department disclose all deferred prosecution agreements and the individuals selected as monitors. It has been two months since our request and we have yet to receive a response.

"While we patiently await the Department's disclosure of information, this hearing serves as a critical start to bringing deferred prosecution agreements and the appointment of monitors out from behind the shadows. Accordingly, I look forward to probing these issues further and considering whether legislation in this area is appropriate."