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# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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June 13, 2012

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Dear Mr. Attorney General:

I write to respond to the Deputy Attorney General letter from Monday, and to comments you made yesterday, expressing a desire to meet. As our staffs have discussed, the House Oversight and Government Reform Committee and the Department of Justice are at an impasse over documents the Department has refused to produce. Let me be clear – if the Department of Justice submits a serious proposal for how it intends to alter its refusal to produce critical documents subpoenaed by the Committee, I am ready and willing to meet to discuss your proposal.

As you may recall, a May 3, 2012, Committee memo identified three categories of documents necessary for Congress to complete its investigation into Operation Fast and Furious. On May 18, House leaders and I narrowed this request to two categories: (1) information showing the involvement of senior officials during Operation Fast and Furious, and (2) documents from after February 4, 2011, related to the Department's response to Congress and whistleblower allegations. In a June 5, 2012 letter, Deputy Attorney General James Cole described this narrowing as, "a helpful step toward reaching a resolution of the issues in dispute." The Department did not, however, indicate a willingness to comply or offer the committee *any* proposal for altering its objections to providing subpoenaed documents.

As a result of discoveries made by the Committee independent of the Justice Department's document production, on Monday, June 11, the Committee further narrowed the focus of what the Justice Department needed to produce to avoid contempt. This further accommodation, made in an effort to resolve this matter short of contempt, focused on the aforementioned relevant materials created after February 4, 2011 –after Operation Fast and Furious ended. This accommodation by the Committee effectively eliminated the dispute over information gathered during the criminal investigation of Operation Fast and Furious, prior to the announcement of indictments. Despite this proposed compromise by the Committee, the Department has not indicated a willingness to accept these terms nor has it responded with *any* offer to alter its objections to providing subpoenaed documents.

The remaining aspects of our dispute concern documents the Department refuses to produce on the grounds that they reflect internal Department deliberations. I remind you that

The Honorable Eric H. Holder, Jr.  
June 13, 2012  
Page 2

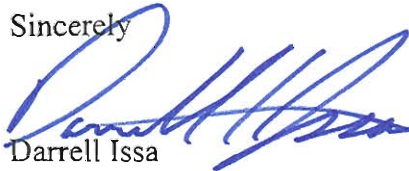
while courts have found that the President of the United States can exert executive privilege over materials and conversations that play a role in advising the President, Department officials – including the Attorney General – enjoy no such privilege. Putting this aside for the moment, the Department has already acknowledged that exceptions to protecting internal deliberations can be justified. The Department made such an exception when it chose to make materials available to Congress, related to the issuance of a false denial of reckless conduct in Operation Fast and Furious. During the previous Administration, the Department made similar materials available to Congress. These materials also reflected internal deliberations made available in response to a congressional investigation of the firing of several U.S. Attorneys. If the Department wishes to settle this dispute short of contempt, the Committee has offered it a clear path to do so without the need to disclose sensitive documents created during Operations Fast and Furious.

Many factors in this matter invoke not only a right, but an obligation, for Congress to do all that it can to examine the Department's mismanagement of its response to Operation Fast and Furious: the Department's false February 4 denial of improper conduct; the fact that an attorney assigned by the Justice Department to investigate whistleblower allegations has since asserted his Fifth Amendment privilege in refusing to speak with congressional investigators; the admission by former Arizona U.S. Attorney Dennis Burke that he leaked sensitive information portraying a whistleblower in a distorted and negative light; continued complaints by whistleblowers that they have faced retaliation since blowing the whistle on reckless conduct; allegations by the former Acting Director of the ATF that the Department is managing its response in a way intended to protect its political appointees; and the nine month delay before the Department formally withdrew its false February 4 denial to Congress.

In making repeated accommodations, the Committee has made a good faith effort to allow the Department to meet its obligations to comply with the Committee's subpoena. For the Department to argue otherwise without making a serious offer to alter its opposition to producing subpoenaed documents is highly disingenuous. If the Department is prepared to engage in discussions based upon a stated willingness to drop its opposition to providing material from after February 4, 2011, that may reflect internal deliberations, I ask that you indicate such intention. If the Department has another proposal for altering its objections to providing subpoenaed materials, I ask that you promptly submit that proposal for consideration as a basis for productive discussions.

Again, I appreciate your effort to resolve this dispute. I believe the interests of the Department, Congress, and those directly affected by reckless conduct in Operation Fast and Furious are best served by an agreement that renders the process of contempt unnecessary.

Sincerely



Darrell Issa  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member