



**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

*Washington, D.C. 20530*

April 19, 2011

The Honorable Darrell Issa  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

We are advised that the Committee has issued a subpoena for documents and testimony at a public hearing to a cooperating witness in the trial currently scheduled for June 7, 2011, in United States v. Jaime Avila, Jr. et al., No. CR11-126 PHX JAT(LOA), an indicted federal case in Phoenix, Arizona charging twenty defendants with an array of firearms, drug, and money laundering offenses. Neither the individual's cooperation with our ongoing investigation nor his identity as a trial witness has been disclosed in the judicial proceedings to date. We were advised by his attorney that, prior to the issuance of the subpoena, your staff was informed that the individual is a cooperating witness in a pending federal criminal case and that he was concerned that his appearance at a public congressional hearing might jeopardize his physical safety. We understand that your staff indicated that he could submit to an interview rather than appear at a public hearing at this time.

Committee staff's plan to obtain testimony or information from a cooperating witness in an indicted federal criminal case awaiting trial, whether in a public hearing or a nonpublic interview, implicates the serious concerns that the Department has expressed to you in recent weeks. We have previously informed the Committee, in response to your requests for information about these ongoing criminal matters, that any disclosure of non-public information about the pending investigations at issue would present risks to specific law enforcement efforts and to cooperating witnesses. We stated in our letter dated April 13, 2011, that among those risks was the fact that the identification of cooperating witnesses "– even the knowledge that the information they provide may be disclosed – discourages cooperation by them and others whose assistance is important to the success of our law enforcement efforts."

We understand that the Committee wants to get to the bottom of the allegations that as part of the Fast and Furious investigation the ATF knowingly allowed guns to enter Mexico. The Department wants to find out what happened in this regard as well. That is why the Attorney General referred this matter to the Department's Office of the Inspector General, an independent and nonpartisan office that will examine the facts and report its findings. We are not ignoring the allegations that have been raised. Nor are we questioning the Committee's

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responsibility to conduct oversight of this matter. However, we are concerned about the timing of the Committee's oversight.

The Fast and Furious investigation has produced the indictment of 20 alleged gun traffickers. The Department believes that a successful prosecution is an important part of fighting the violence in Mexico and in the United States that emanates from the Mexican cartels. By conducting oversight of this matter now, rather than at the conclusion of the investigations and prosecutions, the Committee risks compromising this prosecution and ongoing investigations of other alleged firearms traffickers, drug dealers, and money launderers. In addition, congressional oversight relating to the investigation risks jeopardizing the physical safety of our witnesses and discouraging the cooperation of others whose assistance could be vital.

Therefore, we respectfully ask that the Committee refrain from contacting or subpoenaing the witnesses and cooperators involved in either the indicted criminal case or the continuing criminal investigations while these criminal matters remain pending.

The Department appreciates your interest in this matter and shares your desire to resolve these allegations. We will be happy to discuss this important matter with you or your staff further, so that we may explore ways to accomplish this goal without jeopardizing successful prosecutions and investigations in this important area.

Sincerely,

  
for Ronald Weich  
Assistant Attorney General

cc: The Honorable Elijah E. Cummings  
Ranking Minority Member