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July 25, 2011

Mr. William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE
Washington, D.C. 20226

Dear Deputy Director Hoover:

On the afternoon of Friday July 22, 2011, a witness scheduled to testify before this Committee at a hearing tomorrow, July 26, 2011, received an intimidating letter from Barry Orlow, Associate Chief Counsel for Field Operations and Information at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) seeking to set certain conditions on the witness's testimony. The letter suggests to the witness the possibility of criminal prosecution for participating in our hearing. It has thus had a chilling effect on the individual's desire to provide complete and candid recollections to Members of this Committee. Fearing reprisals, that witness is now reluctant to testify and has requested that the Committee relieve him of his obligation to appear under subpoena.

The timing and content of this letter strongly suggest that ATF is obstructing and interfering with the congressional investigation into Operation Fast and Furious. Unfortunately, this problem is not new. In April, Senator Grassley expressed his unwillingness to tolerate such behavior in no uncertain terms:

[A]ttempts to prevent direct communications with Congress are not a lawfully authorized activity of any officer or employee of the United States whose salary is paid with appropriated funds. Specifically, no officer or employee may attempt to prohibit or prevent "any other officer or employee of the Federal Government from having direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress" about a matter related to his employment or the agency "in any way, irrespective of whether such communication or contact is at the initiative" of the employee or Congress.¹

¹ Letter from Sen. Charles E. Grassley, Ranking Member, Senate Judiciary Committee, to Kenneth E. Melson, Acting Director, ATF (Apr. 8, 2011) (citations omitted).

Mr. William J. Hoover
July 25, 2011
Page 2

In response to inquiries about retaliation at the Committee's June 15, 2011, hearing, Assistant Attorney General Ronald Weich said, "The Department of Justice will not, would never, retaliate against whistleblowers."² In addition, I sent you a letter following that hearing, noting that "no other ATF employees who cooperate with Congress should face retaliation either."³ In your response, you assured me that "ATF will not engage in any reprisal against any ATF employee because of his or her having testified before the Committee on Oversight and Government Reform, and will in all respects act towards such employees exactly as they would have had such employee not so testified."⁴ Your letter reflected the same promise you made in person to my staff on May 5, 2011, and again at your transcribed interview on July 21, 2011.

ATF's July 22, 2011, letter appears to be an inappropriate effort to intimidate ATF personnel and discourage them from testifying before Congress. Any such action could be construed an unlawful attempt to interfere with a Congressional inquiry.⁵ As such, ATF's letter may provide guidance that is contrary to law.

I expect you to abide by your unequivocal promises. Please assure all witnesses personally that they will face no retaliation of any kind for participating in the hearing or for testifying truthfully and completely to the best of their abilities. Anything short of complete cooperation is simply unacceptable.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

The Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary, U.S. Senate

² *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes: Hearing before the House Committee on Oversight & Government Reform*, 112th Cong. 153 (testimony of Hon. Ronald Weich).

³ Letter from Rep. Darrell E. Issa, Chairman, House Committee on Oversight & Government Reform, to William J. Hoover, Deputy Director, ATF (June 21, 2011).

⁴ Letter from William J. Hoover to Chairman Darrell E. Issa (June 28, 2011).

⁵ See 18 U.S.C. § 1505.