

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<http://oversight.house.gov>

May 30, 2017

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

Dear Mr. Attorney General:

On December 14, 2010, Customs and Border Protection Agent Brian Terry was murdered in a gunfight in Arizona near the Mexican border. Two assault rifles found at the crime scene were traced to purchases by one of the targets of a criminal investigation being conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

At the time the target purchased the weapons, the criminal investigation—known as Operation Fast and Furious—had already identified the target as a suspected straw purchaser who was providing weapons to firearms traffickers. ATF knew about hundreds of similar purchases over a year-long period, but interdicted only a small number of those firearms and delayed making arrests.

After more than a year of investigating this matter, my staff compiled a report describing the evidence the Committee obtained. The report explained that ATF's gunwalking operations allowed thousands of firearms to be released into communities and created an "obvious and inexcusable threat to public safety on both sides of the border."¹

The report explained how the "misguided gunwalking operations originated in 2006 as ATF's Phoenix Field Division devised a strategy to forego prosecutions against low-level straw purchasers while they attempted to build bigger charges against higher-level cartel members." Due to insufficient operational controls, ATF failed to stop those dangerous weapons before they made it into the hands of violent criminals, including Mexican drug cartels.

The Committee issued subpoenas to the Department of Justice for documents in March and October 2011. By June 2012, the Department had produced more than 7,600 pages of documents to the Committee relating to Fast and Furious. However, the Department declined to produce certain documents, including those relating to open criminal investigations and

¹ *Fatally Flawed: Five Years of Gunwalking in Arizona*, Report of the Democratic Staff, House Committee on Oversight and Government Reform (Jan. 30, 2012).

involving internal deliberations about the Department's response to the congressional investigation and press regarding Operation Fast and Furious. Ultimately, the President asserted Executive Privilege over some of these documents, Congress held the Attorney General in contempt for declining to produce the documents, and the documents became the subject of litigation between Congress and the Department.

On January 19, 2016, U.S. District Judge Amy Berman Jackson ordered that the Department produce to the Committee certain documents that "concern the Department of Justice's response to congressional and media inquiries into Operation Fast and Furious which were withheld on deliberative process privilege grounds" and "documents for which no justification for the invocation of privilege has been provided."² However, the court did not compel the production of other documents subject to the subpoena, leaving it to the parties to resolve their dispute over those documents through negotiation and accommodations.³ The Committee has appealed that decision.

On April 8, 2016, the Department produced 20,500 pages of documents to the Committee as ordered by the district court.⁴ On June 17, 2016, the Department produced an additional 6,333 pages of documents that it determined no longer required withholding as law-enforcement sensitive. The Department also made available to Committee staff previously withheld or redacted documents totaling approximately 33,000 pages for *in camera* review.

The Committee issued identical subpoenas to the Department of Justice renewing its demand for the same documents on January 5, 2015, and January 3, 2017.

You have been serving as Attorney General and the head of the Department of Justice since February 9, 2017. Because the Committee may hold a hearing on these issues on June 7, 2017, I am seeking your assistance in obtaining answers to the following questions with respect to the position of the Trump Administration regarding the documents previously sought by this Committee:

1. Are there any documents responsive to the Committee's January 3, 2017, subpoena that the Department of Justice is currently withholding? If so, please explain on what grounds.
2. Under your leadership, has the Department of Justice changed its position with respect to withholding documents responsive to the Committee's January 3, 2017, subpoena? If so, please provide an explanation of the change, when it was made, and which previous assertions are now being reversed. Please also provide any

² *Committee on Oversight and Government Reform v. Lynch*, 156 F.Supp.3d 101 (D.D.C. Jan. 19, 2016).

³ *Id.*

⁴ Letter from Peter J. Kadzik, Assistant Attorney General, Department of Justice, to Chairman Jason Chaffetz, House Committee on Oversight and Government Reform (Apr. 8, 2016).

responsive documents that you are no longer withholding, if any.

3. Does the Department of Justice intend to provide any additional documents responsive to the Committee's January 3, 2017, subpoena? If not, please explain the basis for withholding those documents.

In order to be most helpful for our hearing, I would appreciate if you would provide responses to these questions by June 5, 2017. I would also like to know by that date whether a Department official would be available to testify at the June 7 hearing regarding your responses. Thank you for your assistance with this request.

Sincerely,



Elijah E. Cummings
Ranking Member

cc. The Honorable Jason Chaffetz, Chairman
Committee on Oversight and Government Reform