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January 24, 2012

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I was disappointed to learn last week that Patrick J. Cunningham, Chief of the Criminal Division in the U.S. Attorney's Office for the District of Arizona, plans not to answer any questions regarding Fast and Furious at his deposition scheduled for today, Tuesday, January 24, 2012. Specifically, Mr. Cunningham pledged to "assert his constitutional privilege not to be compelled to be a witness against himself."¹ Because he refused to appear voluntarily, I authorized a subpoena for his testimony.

My staff was advised Mr. Cunningham's decision to invoke his Fifth Amendment rights was not simply limited to the facts associated with the Department's interactions with Congress during the pendency of our investigation, but was far broader. Mr. Cunningham, we have been told, will refuse to answer any questions beyond his name and position. This is extraordinary in that the only valid reason to assert Fifth Amendment rights is fear of criminal prosecution.

Mr. Cunningham's broad assertion of the privilege is a startling development in the Committee's Fast and Furious investigation. The implication that Mr. Cunningham may have engaged in criminal conduct with respect to Fast and Furious is a major escalation of the Department's culpability. The significance of these developments cannot be overstated, and this assertion raises many questions about ongoing criminal cases currently pending in federal court in Arizona – including prosecutions relating to Fast and Furious.

For the past year, the Department has denied any wrongdoing in Fast and Furious and its response to the congressional investigation. Yet, a senior Department official recently indicated that Mr. Cunningham misrepresented the facts of Fast and Furious as the Department prepared its initial response to the congressional inquiry. Senior Justice Department officials point to Cunningham as having significant responsibility for providing this false information, in addition

¹ Letter from Tobin J. Romero, Esq., Williams & Connolly LLP, to Rep. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Jan. 19, 2012).

The Honorable Eric H. Holder, Jr.
January 24, 2012
Page 2

to approving the reckless tactics used in Fast and Furious. Mr. Cunningham's lawyer disputes these allegations.

Without Mr. Cunningham's testimony, it will be difficult to gauge the veracity of some of the Department's claims. Main Justice has chosen to blame the U.S. Attorney's Office in Arizona, and senior officials in the U.S. Attorney's Office have rejected this accusation. This tension renews doubts about the Department's management of the Fast and Furious scandal. Additionally, Mr. Cunningham's broad assertion of his Fifth Amendment privilege raises the specter that the Department has allowed him to continue in his position as Chief of the Criminal Division knowing that he might have criminal culpability himself.

The former Acting ATF Director has testified that the Department is managing its response to the congressional inquiry to protect its political appointees. Deflecting blame deprives the American public of confidence that the Department of Justice is being fully truthful. The possibility that senior Justice Department officials were either engaging in a cover-up or were so negligently unaware that a key employee feared criminal prosecution underscores deep concerns about your management of the Department of Justice both during the implementation of Fast and Furious and the subsequent congressional investigation.

Although I was willing to excuse Mr. Cunningham from today's deposition, I have reserved the right to authorize another subpoena for his testimony at a future date. Due to Mr. Cunningham's recent actions, the Committee will be making further document requests of the Department. I expect nothing less than the Department's full and complete compliance with these requests.

The Committee is also reiterating its demand for subpoenaed documents created after February 4, 2011 – an arbitrary deadline you created to minimize the public fallout over the Department's cover-up. Further, it is now necessary to interview several of Mr. Cunningham's associates in the U.S. Attorney's Office regarding the details of Fast and Furious. As the Members of the Committee look forward to your February 2, 2012, testimony, it is now incumbent on you to finally take responsibility for this Justice Department scandal and the clear management failures that occurred on your watch.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member