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January 31, 2012

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

Dear Attorney General Holder:

On October 12, 2011, this Committee issued a subpoena to you for documents regarding Operation Fast and Furious. The subpoenaed documents are vital to help Congress fully understand the genesis, implementation, and oversight of Operation Fast and Furious within the Department of Justice. They are also critical in understanding how the Department mishandled its response to Congress and obstructed our investigative responsibilities.

Late on Friday, January 27, 2012 – a year into our investigation – the Department produced documents that provide startling new details about the involvement of senior Department officials in what appears to be the Fast and Furious cover-up. We now know that Assistant Attorney General Lanny Breuer, head of the Criminal Division, promoted the moving of guns to Mexico as a strategy worth pursuing. This dangerous strategy relied on Mexican law enforcement officials to capture the guns and the smugglers who trafficked them. One e-mail reads, **“Breuer suggested allowing straw purchasers cross into Mexico so SSP [Secretariat of Public Security] can arrest and PGR [Office of the General Prosecutor] can prosecute and convict. Such coordinated operations between the US and Mexico may send a strong message to arms traffickers.”**¹ These new documents show that Breuer made this statement on February 4, 2011, the same day Assistant Attorney General Ronald Weich wrote to Congress denying that the Department allowed guns to walk.

The fact that the Department just produced this document on Friday shows the lengths to which you are willing to go to obstruct our investigation and deceive the public. Just months ago, the prior administration faced severe criticism regarding the ATF Phoenix Field Division’s alleged use of similar tactics. Mr. Breuer advocated these same tactics. It is inconceivable that the Department just became aware of this highly damaging document. On October 31, 2011, Mr. Breuer apologized for failing to stop questionable tactics used in Fast and Furious in 2010. Yet, as late as February 2011, he was actively advocating gunwalking. This e-mail casts renewed doubt on the sincerity of Mr. Breuer’s apology and his ability to continue to serve in a leadership role at the Department.

¹ E-mail from Anthony P. Garcia to Adam Lurie, Bruce Swartz, Kenneth Blanco, Jason Weinstein, et al. (Feb. 4, 2011, 3:49 PM) [HOCR DOJ 005752-54].

During your testimony before the House Judiciary Committee on December 8, 2011, you stated that the Department of Justice will not produce any responsive documents created after February 4, 2011 regarding Operation Fast and Furious. Your testimony was the first assertion of this position to Congress. In no uncertain terms, you stated that:

[W]ith regard to the Justice Department as a whole – and I’m certainly a member of the Justice Department – we will not provide memos after February the 4th. . . e-mails, memos – consistent with the way in which the Department of Justice has always conducted itself in its interactions.²

You again impressed this point upon Committee Members later in the hearing:

Well, with the regard to provision of e-mails, I thought I’ve made it clear that after February the 4th it is not our intention to provide e-mail information consistent with the way in which the Justice Department has always conducted itself.³

Your testimony indicates that the Department has no intention of fully complying with the Committee’s subpoena. This position is entirely unacceptable. For three months after Senator Grassley’s initial letters, the Department was in denial that the congressional investigation had any merit. Not until a May 5, 2011, meeting with Committee staff did the Department finally admit that “there’s a there, there.” The actions of the Department following February 4 are crucial in determining whether it has concealed information from Congress – including subpoenaed information – and to what extent it has obstructed our work.

During a transcribed interview on December 14, 2011, your chief of staff, Gary Grindler, broadened the Department’s position with respect to sharing documents created after February 4, 2011. The Associate Deputy Attorney General serving as Department counsel refused to allow Mr. Grindler to answer any questions relating to conversations that he had with you or anyone else in the Department regarding Fast and Furious after February 4, 2011:

What I am saying is that the Attorney General made it clear at his testimony last week that we are not providing information to the committee subsequent to the February 4th letter.⁴

Department counsel expanded the position you articulated regarding documentary evidence at the Judiciary Committee hearing to include testimonial evidence as well.⁵ Given the initial response by the Department to the congressional inquiry earlier this year, the comments by the Associate Deputy Attorney General create a barrier preventing Congress from obtaining vital information about Fast and Furious.

The Department has also maintained this position during additional transcribed interviews. In an interview with Deputy Assistant Attorney General Jason Weinstein on January 10, 2012, in response to a question about Mr. Weinstein’s interactions with the Arizona U.S. Attorney’s Office, Department counsel

² *Oversight Hearing on the United States Department of Justice of the H. Comm. on the Judiciary*, 112th Cong. (Dec. 8, 2011) (testimony of Att’y Gen. Eric H. Holder, Jr.) [hereinafter Holder Testimony].

³ *Id.*

⁴ Transcribed Interview of Gary Grindler, Chief of Staff to the Att’y Gen. (Dec. 14, 2011) at 22.

⁵ *Id.*

prohibited an entire line of questioning by claiming it “implicates the post-February 4th period.”⁶ Department counsel cited a “constitutional privilege” in support of this position, without elaborating further.⁷ To date, the Department has not provided any further detail as to the scope of this position, which was at odds with Mr. Weinstein’s willingness to answer the Committee’s questions:

[A]s I said, I personally would be more than happy to answer questions about post-February 4th, but I am not authorized to do so.⁸

In fact, following the February 4, 2011, letter, Mr. Weinstein, at the behest of Mr. Breuer, prepared an analytical review of *Fast and Furious*.⁹ Mr. Weinstein interviewed Emory Hurley and Patrick Cunningham of the Arizona U.S. Attorney’s office in conducting this review.¹⁰ The document that resulted from Mr. Weinstein’s analysis specifically discussed issues relevant to the case. To date, the Department has not produced this document to the Committee, despite the fact that it is responsive to the subpoena.

At the December 8 hearing, you also stressed, on multiple occasions, that the Department’s decision to produce documents related to the February 4, 2011 letter to Senator Grassley was unprecedented, and reflected an effort to be transparent.¹¹ Such comments, however, completely belie the facts and are misleading. First and foremost, I cannot underemphasize that the Department’s February 4, 2011, letter to Congress contained false information. You decided to release materials related to the letter only after Committee staff informed Department lawyers that the Committee was considering a criminal referral. It is disingenuous to claim that this was a voluntary effort to be transparent. Unfortunately, the Department’s delays in document production reflect a recurring pattern throughout this investigation. To put it bluntly, the Department has been irresponsible in failing to take congressional oversight of *Fast and Furious* seriously.

The Committee issued its first subpoena for documents on March 31, 2011. In response, the Department produced zero pages of non-public documents until June 10, 2011, over two months later, and on the eve of the Committee’s first hearing into *Fast and Furious*. That hearing featured constitutional scholars who explained the Department’s clear obligations to comply with the subpoena and highlighted congressional mechanisms to compel production. Faced with the possibility of contempt proceedings, the Department began to produce documents.

Over the next five months, Senator Grassley and I repeatedly asked for information surrounding the creation of the Department’s February 4, 2011 letter. The Department flatly refused these requests. It was not until my November 9, 2011 letter to Assistant Attorney General Ronald Weich – which raised the possibility of criminal charges for the false statements made in the February 4 letter – that the Department finally saw fit to give Congress the materials we had been requesting for months. Contrary to statements you made during the December 8 hearing, you did not release these materials voluntarily. Instead, the Department provided them because it had no alternative.

As I stated in my November 9, 2011 letter to Assistant Attorney General Weich, understanding the Department’s actions after Congress began its investigation is crucial. Even after the Department

⁶ Transcribed Interview of Jason Weinstein, Deputy Assistant Att’y Gen. (Jan. 10, 2012) at 177.

⁷ *Id.* at 178.

⁸ *Id.* at 227.

⁹ Transcribed Interview of Dennis K. Burke at 158-60 (Dec. 13, 2011).

¹⁰ *Id.* at 158-59.

¹¹ Holder Testimony, *supra* note 2.

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began to recognize the full effect of the problems resulting from Fast and Furious, it still failed to come forward and share with Congress what it had learned.

Since the Department initially misrepresented the facts and misled Congress, it is necessary to investigate the Department's response to our investigation. Your actions lead us to conclude that the Department is actively engaged in a cover-up. It is essential for the Department's Office of Legislative Affairs to facilitate the production of documents we have requested so we can complete our investigation. The Department's persistent delay tactics make this task increasingly and unreasonably difficult.

In short, the Committee requires full compliance with all aspects of the subpoena, including complete production of documents created after the Department's February 4, 2011 letter. As such, provide all documents pursuant to the October 12, 2011 subpoena as soon as possible, but by no later than 5:00 p.m. on February 9, 2012. Should you choose to continue to withhold documents pursuant to the subpoena, you must create a detailed privilege log explaining why the Department is refusing to produce each document. If the Department continues to obstruct the congressional inquiry by not providing documents and information, this Committee will have no alternative but to move forward with proceedings to hold you in contempt of Congress.

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
U.S. Senate, Committee on the Judiciary