

Congress of the United States
Washington, DC 20515

March 27, 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:

We are writing in response to the Department's March 23, 2012, letter refusing to provide a briefing on documents regarding Manuel Celis-Acosta (Acosta) that were recently disclosed by the private attorney for a Department employee. Acosta was the ring leader of the Fast and Furious gun trafficking network, which amassed approximately 2,000 firearms. The new documents indicate that law enforcement agents stopped Acosta twice – in April and May of 2010. On both occasions, agents let him go. The failure to arrest Acosta and put him out of the business of gun trafficking is highly embarrassing for the Department.

Your letter expressing serious concern about the “airing” of newly disclosed information relating to the prosecution of Acosta failed to note that it was the attorney for a Department employee who made the disclosures. It also failed to note that congressional staff consulted with the Department about its employee's disclosures. Yet, the letter states the Department is “deeply disturbed” that information relating to Acosta has “entered the public realm” without explaining that the source of the disclosures was its own employee's counsel.

As Committee staff communicated to Department representatives the day *before* the Department sent the letter, the information in question became public on March 14, 2012. On that date, Joshua Levy, counsel to David Voth, the ATF Group Supervisor who oversaw Fast and Furious, delivered a 27-page letter to us. We received press inquiries about his letter on that date. It is available in its entirety on the website *Townhall.com*. Levy also provided the Committee with hundreds of pages of documents, most of which were called for by the subpoena served on you on October 12, 2011. The Department still has not produced most of these documents, has provided no notice that it is withholding them, and has cited no valid legal privilege to authorize doing so. Failure to produce documents pursuant to the subpoena merely because they would prove embarrassing for the Department runs contrary to principles of transparency and the Department's obligation to cooperate with the congressional investigation in good faith.

The Department's concern rings particularly hollow in light of its attempts to generate publicity for its March 23, 2012, letter. Just hours after we received the letter, CNN ran a story

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about it online. Fox News Channel discussed it in a live broadcast shortly thereafter. If the Department were genuinely interested in avoiding attention for its failures to arrest Acosta as documented in ATF Reports of Investigation (ROI), then it would not have sought additional coverage of its letter from national news outlets. Any threat to the ongoing criminal prosecution of Acosta is a direct result of the actions of Department personnel. The suggestion that any actions by Congress are the cause is unfounded.

Congress treats disclosures of information to Congress, such as those provided by Joshua Levy, very seriously. Individuals with information on specific cases often wish to share the information with Congress or news organizations on a confidential basis to sound the alarm about a particular issue. The Department initially ignored the allegations of Fast and Furious whistleblowers, calling their allegations "false." Not until media outlets such as *CBS News*, *Fox News*, *CNN*, *Los Angeles Times*, *Wall Street Journal*, *Washington Post*, *National Public Radio*, *Daily Beast* and *Daily Caller*, among others, started reporting on these allegations were you forced to retreat from your initial stance. These media outlets have informed the public about the Fast and Furious investigation.

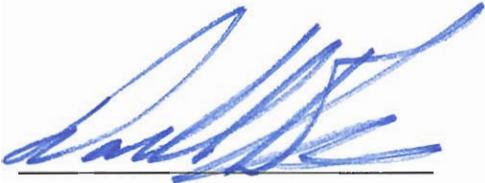
These recent disclosures of information raise serious questions regarding the Department's mishandling of the Acosta case and the Fast and Furious investigation. Instead of publicly chastising Congress for asking to be briefed on it, you should address these questions directly. We did not write to you until *after* the *Los Angeles Times* published a story on March 19, 2012, referencing a ROI describing law enforcement's failure to arrest Acosta. This ROI was among the documents disclosed by Voth's attorney. The Department's March 23, 2012, complaint about this information reaching the "public realm" is an issue that should be addressed internally.

The Department's professed outrage at the airing of this information is confusing. The ROIs in question regarding the failure to arrest Acosta were dated April and May 2010 – five months *after* DEA gave ATF enough information on Acosta to provide probable cause to arrest Acosta or at least disrupt his firearms trafficking network. In fact, former ATF Deputy Director Billy Hoover told our staff on October 5, 2011, that ATF had dropped the ball in December 2009 regarding the information DEA provided to ATF about Acosta. Hoover said that David Voth and the ATF Phoenix Field Division failed to use the information about Acosta's activities, which DEA provided on several occasions. ATF's failure to arrest or disrupt Acosta in December 2009 and again in April and May 2010 should be of far greater concern to the Department than the public airing of the two embarrassing ROIs.

According to the letter, the Department "ha[s] produced and will continue to produce information that relates to the Committees' legitimate oversight interest in the strategies and tactics of these operations, but only consistent with our law enforcement responsibilities." This position hamstrings our ability to conduct a proper investigation and is untenable. Since the Teapot Dome scandal in the early 1920s, the Supreme Court has consistently ruled that the Department must cooperate with congressional oversight – irrespective of the Department's views about its law enforcement responsibilities. It is not for you to determine our oversight

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interests – that is for Congress to decide. We are investigating mismanagement and potential wrongdoing at the highest levels of the Department during Fast and Furious, pursuant to our constitutionally mandated duty to do so.



Darrell Issa
Chairman
Committee on Oversight and
Government Reform
United States House of Representatives

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate