

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Hearing on Operation Fast and Furious: Obstruction of
Congress by the Department of Justice
June 7, 2017**

Chairman Chaffetz, Ranking Member Cummings, Members of the House Committee on Oversight and Government Reform, and members of the Terry family,

Thank you for giving me the chance to testify about an important Congressional investigation that the Justice Department has stonewalled for far too long: Operation Fast and Furious.

This investigation began six years ago.

The fact that it is still tied up in the courts is proof positive that our system of checks and balances is broken.

Congress needs to reform its process for enforcing compliance with subpoenas.

It all started when courageous agents blew the whistle on gunwalking to the Senate Judiciary Committee.

We learned that the Bureau of Alcohol, Tobacco, Firearms, and Explosives sanctioned the sale of hundreds of assault weapons to straw purchasers, who then trafficked the guns to Mexican cartels.

These weapons have since been discovered in the hands of criminals both in the United States and Mexico.

Two of these weapons were used in the firefight that led to the tragic death of Border Patrol Agent Brian Terry in December of 2010.

After it became clear that the government planned to cover it up, agents blew the whistle.

On January 27, 2011, I wrote to ATF for answers.

But, the Department of Justice and ATF had no intention of looking for honest answers and being transparent.

In fact, from the onset, bureaucrats employed shameless delay tactics to obstruct the investigation.

In a letter to me on February 4, 2011, Department officials denied that ATF had ever walked guns.

But the evidence kept mounting that the official denial was just plain false.

Through documents obtained during this long litigation, we have learned how the bureaucrats and political appointees reacted when they learned the truth.

As the Department became aware that the information it provided to Congress was wrong, it kept the truth hidden.

It refused to come clean, notify Congress, and correct the record.

As soon as March 2011, officials at ATF and within the Department raised concerns about the inaccuracy of the information in the February 4 letter.

But the Department failed to withdraw the letter until nine months later, in December.

Why did it take so long to admit the truth to Congress?

Our Committees requested documents from the Department that would shed light on this delay.

In October 2011, this Committee issued a subpoena for documents from the Department of Justice, including documents related to the Department's responses to Congress.

The Department initially refused to produce *any* documents responsive to the subpoena.

It refused to assert **any** privilege or provide a log of withheld documents so that the Committee could consider whether there were any legitimate reasons for not providing them.

Instead, the Department merely made vague, feeble claims that the documents implicated “confidentiality interests” and “separation of powers” concerns.

In June 2012, the Justice Department had to ask President Obama to give it some cover by formally asserting executive privilege.

The request came on the eve of a vote in this Committee to hold the Attorney General in contempt.

And the President’s assertion was communicated to this Committee only minutes before the scheduled vote.

The Committee rejected the President’s claim on the merits, and so did the full House in a historic bipartisan vote.

It was the first time an Attorney General was held in contempt of Congress.

But, to add to the obstruction, the Obama Administration refused to present the contempt citation to a grand jury as required by statute.

Then, in August 2012, this Committee filed a civil lawsuit to try and enforce its subpoena that way.

Once in the courts, even more lengthy delays began.

Two years later, in August 2014, the court finally ordered the Department to review all the documents, provide a log explaining why it wanted to withhold specific items, and to produce everything that the Department itself admitted was not covered by **any** privilege.

The Department then produced more than 10,000 of the originally withheld documents.

These documents totaled more than 64,000 pages.

To be clear—and this is very important—the Department tried to hide these documents from Congress by getting President Obama to assert executive privilege, but once the case was before a judge, the President totally abandoned his claim.

In effect, the government admitted that the privilege did not apply to those documents.

Why did it take a contempt citation from Congress to force the Executive Branch to admit that it hid documents from the people's representatives for completely bogus reasons?

Attorney General Holder preferred to be held in contempt rather than admit the authority of this committee to compel production of the documents through a subpoena—even documents that the Justice Department itself and the President did not believe were privileged.

If that doesn't illustrate how broken our system of Congressional subpoena enforcement is, then I don't know what does.

The capitulation of the Department, once a judge finally forced its hand, proves that the initial claims of privilege were deceptive and unfounded.

It was nothing more than an attempt to obstruct Congress' investigation.

The Department's belated admission that those 64,000 pages were not privileged puts the gold seal of authenticity on the House's bipartisan vote to hold the Attorney General in contempt.

The documents exposed the Justice Department's intent to hide information from Congress and upset the balance of powers.

Obstructing a valid inquiry by a separate, co-equal branch of government undermines our Constitutional system of checks and balances.

The documents show a highly politicized climate at the Obama Administration's Main Justice, focused more on spin and cover-up than on transparency and fact-finding.

Now, despite the court's order to the Department to produce documents that were admittedly not privileged, the Judge's opinion as a whole is problematic.

Although she also later ordered the production of more material, the Judge's reasoning is fatally flawed.

The judge erroneously concluded that certain of the Department's underlying privilege claims—although waived—were valid.

The judge gave the House a victory in practice, but gave the Department a victory on the principle.

By splitting the baby in this way, the opinion seeks for the first time to push the scope of executive privilege outside the White House to cloak low-level government bureaucrats in secrecy.

This is new and unprecedented territory.

It is a major threat to the oversight powers of the legislative branch.

The President should not be able to shield information in all the vast agencies and departments of government from Congressional scrutiny.

If it has nothing to do with advice to him by his advisors, then why should it be privileged?

That is why the House must push forward with its appeal to get the District Court's opinion overturned.

The so-called deliberative process privilege is no constitutional privilege at all.

It is a common law doctrine and a statutory exemption under the Freedom of Information Act only.

It only applies to discussions about the formulation of *policy*, and *only before* a final policy decision has been made.

The privilege should not extend to allow the Department to hide its internal communications about responding to Congress.

These communications were not to or from the President, and now we know that they largely focused on obstructing Congress and strategizing to avoid negative press coverage.

Those communications can hardly be characterized as formulating Department of Justice *policy* and should not even be protected by the deliberative process statutory exemption, let alone some new form of executive privilege.

Now, this litigation has been ongoing for a long time.

The American people, including the Terry family here with us today, deserve a complete accounting for questions posed in this investigation that began in 2011.

It has been **six years**, and we are all still waiting.

But this is not just about documents in Fast and Furious.

This case also must be considered from the perspective of the institutional role of Congress.

I urge you to take off your partisan hats for a moment.

Imagine if the shoe were on the other foot.

This case has broad implications for the ability of the elected representatives of the American people to do our constitutional duty to act as a check on the executive branch.

Clearly, Congress needs to do something.

It cannot take years for this body to get answers from a co-equal branch of government about information that has no legal basis to stay hidden from Congress.

That is why I am working with my colleagues on proposals to modernize the rules of engagement in congressional oversight.

We need a package of rules and legislative changes so that responders to congressional inquiries cannot rely on phony privilege claims and delay tactics.

These changes will make it easier for Members of Congress to get the information they need to do their jobs for the people they represent.

I look forward to continuing to work with my colleagues in the Senate and the House on these proposals, and I hope you will all join me. Again, thank you for allowing me to testify today.