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# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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June 5, 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 February 8, 2012, Senator Grassley, Congressman Meehan and I wrote to you requesting the Department's assistance in obtaining the wiretap applications from Operation Fast and Furious. We did so because we believed their contents would shed additional light on senior Department officials' level of knowledge of the unacceptable tactics used in Fast and Furious. Other than having acknowledged receipt of the letter, the Department has not responded to the February 8 request. In a May 15, 2012 letter, the Deputy Attorney General reiterated the Department's position that the "inappropriate tactics used in Fast and Furious . . . were not initiated or authorized by Department leadership in Washington."<sup>1</sup> We now know that statement is false.

The Committee has obtained copies of six wiretap applications in support of seven wire intercepts utilized during Fast and Furious. I recently provided these materials to Ranking Member Cummings in a series of three letters that outlined their extraordinary contents. The wiretap applications show that immense detail about questionable investigative tactics was available to the senior officials who reviewed and authorized them. The close involvement of these officials – much greater than previously known – is shocking.

These six applications were approved by senior Justice Department officials in March, April, May, June and July 2010. Each application included a memorandum from Assistant Attorney General Lanny A. Breuer to Paul M. O'Brien, Director, Office of Enforcement

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<sup>1</sup> Letter from Deputy Att'y Gen. James Cole to Chairman Darrell Issa, H. Comm. on Oversight and Gov't Reform (May 15, 2012) [hereinafter DAG Cole letter].

Operations, authorizing the wiretap applications on behalf of the Attorney General.<sup>2</sup> The memoranda from Breuer are marked specifically for the attention of Emory Hurley, the lead prosecutor for Operation Fast and Furious.

### Repeated Department Denials

Throughout the course of the congressional investigation into Operation Fast and Furious, the Department has consistently denied that any senior officials were provided information about the tactics used in Operation Fast and Furious. The wiretap applications obtained by the Committee show such statements made by senior Department officials regarding the wiretaps to be false and misleading.

You have repeatedly either denied involvement by senior officials in Fast and Furious, or asserted that the wiretap applications do not contain rich detail about irresponsible investigative tactics. In a press conference on September 7, 2011, you stated:

The notion that somehow or other this thing reaches into the upper levels of the Justice Department is something that . . . I don't think is supported by the facts. It's kind of something I think certain members of Congress would like to see, the notion that somehow or other high-level people in the department were involved. As I said, I don't think that is going to be shown to be the case – which doesn't mean that the mistakes were not serious.<sup>3</sup>

One month later, in a letter to three Committee Chairmen, you wrote:

I now understand some senior officials within the Department were aware at the time that there was an operation called Fast and Furious although they were not advised of the unacceptable operational tactics being used in it.<sup>4</sup>

In congressional testimony, you have repeatedly stated that you did not believe that the wiretap applications included any discussion of operational tactics. Specifically, on November 8, 2011, you testified:

I don't think the wiretap applications -- I've not seen -- I've not seen them. But I don't know -- I don't have any information that indicates that those

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<sup>2</sup> See, e.g., Memorandum from Lanny A. Breuer, Assistant Attorney General, Criminal Division to Paul M. O'Brien, Director, Office of Enforcement Operations, Criminal Division, Authorization for Interception Order Application, (Mar. 10, 2010).

<sup>3</sup> Mike Levine, *Holder Denies Prior Knowledge of 'Fast and Furious,'* FOXNEWS, Sept. 7, 2011, available at: <http://www.foxnews.com/politics/2011/09/07/holder-denies-prior-knowledge-fast-and-furious/>.

<sup>4</sup> Letter from Att'y Gen. Eric H. Holder, Jr. to Chairman Darrell Issa, H. Comm. on Oversight and Gov't Reform, et al. (Oct. 7, 2011).

wiretap applications had anything in them that talked about the tactics that have made this such a bone of contention and have legitimately raised the concern of members of Congress, as well as those of us in the Justice Department. I -- I'd be surprised if the tactics themselves about gun walking were actually contained in those -- in those applications. I have not seen them, but I would be surprise[d] [if] that were the case.<sup>5</sup>

In sworn testimony before this Committee on February 2, 2012, you also denied that any information relating to tactics appeared in the wiretap applications. You said:

I think, first off, there is no indication that Mr. Breuer or my former deputy were aware of the tactics that were employed in this matter until everybody I think became aware of them, which is like January February of last year. The information -- I am not at this point aware that any of those tactics were contained in any of the wiretap applications.<sup>6</sup>

We now know that all of these statements are not accurate.

The remarkable level of detail about these objectionable tactics contained in the applications renews concerns that senior Department officials failed to perform their jobs. It also raises concerns about the veracity of your testimony before Congress, and the accuracy of recent letters sent to Congress by senior Department officials. Not insignificantly, this is not the first time that the Department presented inaccurate information to Congress during this investigation. Having seen the wiretap applications, we now know that the information coming from the Department has been misleading. That must stop.

#### Senior Officials Authorized Unacceptable Tactics at the Expense of Public Safety

While I am mindful of the legal restrictions that limit the Department's ability to comment on documents potentially under seal, it is disingenuous for Department officials to publicly claim that senior officials were unaware of the unacceptable tactics used in Fast and Furious. Even a perfunctory review of the wiretap applications amply demonstrates the immense detail documenting gun walking tactics that should have prompted senior officials in the Criminal Division to shut down the program immediately.

Senior officials in the Justice Department, including Assistant Attorney General Lanny Breuer, Deputy Assistant Attorney General Jason Weinstein, and Deputy Assistant Attorney General Kenneth Blanco, were responsible for authorizing these wiretap applications. The applications discussed -- in no uncertain terms -- the reckless tactics used in Operations Fast and

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<sup>5</sup> *Oversight of the Dept. of Justice, Hearing before Sen. Comm. on the Judiciary*, 112th Cong. (Nov. 8, 2011) (testimony of Eric H. Holder, Jr., Att'y Gen., U.S. Dep't of Justice).

<sup>6</sup> *Operation Fast and Furious: Management Failures at the Department of Justice: Hearing Before the Comm. on Oversight and Gov't Reform*, 112th Cong. (Feb. 2, 2012) (testimony of Eric H. Holder, Jr., Att'y Gen., U.S. Dep't of Justice).

Furious. In light of the information contained in these wiretap applications, senior Department officials can no longer disclaim responsibility for failing to shut down Fast and Furious because they were unaware of the tactics used.

As early as March 2010, senior officials in the Criminal Division were aware of important facts about Fast and Furious. For example, these officials received information showing that ATF had identified a specific gun trafficking ring led by an individual who had demonstrated the specific intent to transport weapons from the United States to Mexico. This straw purchasing ring was uncomplicated, with just one man at the center and only a few key individuals purchasing 1,300 of the more than 2,000 weapons trafficked.

Throughout the winter, spring, and summer of 2010, these same senior officials received information that ATF decided to break off surveillance of key suspects because a variety of acceptable investigative tactics ATF agents tried had failed. These officials were told that although ATF had contemporaneous knowledge of illegal weapons purchases and knew the leader of the straw purchasing ring had the present intent to take the weapons to Mexico, ATF still broke off surveillance of the suspects right after they purchased firearms illegally.

These officials were given partial transcripts from a previous DEA wire intercept. On that wiretap, participants in the firearms trafficking ring discussed purchasing, stashing, and transporting weapons to Mexico. The senior Department officials received reports that people who had no steady source of income were purchasing large volumes of expensive weapons and paying exclusively in cash. This information provided further evidence that they were acting illegally on behalf of an organized crime ring. Provided with this information, senior Department officials could have asked questions about the questionable tactics exposed in the applications and halted this fundamentally flawed operation. Instead, they simply authorized the wiretap applications. Tragically, this failure to halt Fast and Furious had deadly consequences.

On May 15, 2012, the Deputy Attorney General wrote that “considerations of public safety do not appear to have been taking into account in formulating and carrying out the investigative plan for the Operation.”<sup>7</sup> He was right. Senior Department officials, including Lanny Breuer, Jason Weinstein, and Kenneth Blanco, did not take public safety into account when they approved the wiretap applications.

It was top ATF officials, and not leaders in Department headquarters, who were concerned about the number of weapons purchased during Fast and Furious and the impact those weapons would have on the surrounding community. ATF Deputy Director William Hoover became so concerned about the volume that he demanded an exit strategy so that Fast and Furious would be shut down sooner. Yet, when presented with this same information – the large volume of high powered weapons, short time-to-crime, repeated straw purchasing, and the termination of surveillance – Department leadership simply rubber-stamped the operation and authorized its unacceptable tactics.

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<sup>7</sup> DAG Cole letter, at 11.

Accountability

The wiretap applications are a crucial component of the Fast and Furious investigation, and establish a direct link between what was happening on the ground in Phoenix and senior Justice Department officials in Washington, D.C. The approval of wiretap applications, replete with details of the investigative techniques used, reveals a major failure of leadership within the Department and requires scrutiny.

During your December 8, 2011 testimony before the House Judiciary Committee, you stated:

There is an impatience here, and in some ways, I understand it. The reality is that we have to do these things on the basis of evidence, on the basis of findings that are factually grounded. . . . I want to assure you and the American people, people will be accountable for the mistakes that were made in Fast and Furious.<sup>8</sup>

The new information contained in the wiretap applications places us in a position to begin the process of assigning accountability among senior Department officials, some of whom were responsible for approving the wiretap applications. After having reviewed these applications, we now understand why the Department has been resisting our efforts to secure full cooperation and compliance with the subpoena. It is because, as former ATF Acting Director Kenneth Melson testified, "it appears thoroughly to us that the department is really trying to figure out a way to push the information away from their political appointees at the department."<sup>9</sup>

With the wiretap applications in possession of the Committee, the Department can no longer push such information away from its political appointees. These appointees were responsible for approving the reckless tactics used during Fast and Furious. Because of the wiretap applications, we now know which senior Department officials made these serious mistakes. It is time for you to honor your commitment to Congress and the American people by holding these individuals accountable.

Sincerely,

  
Darrell Issa  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

<sup>8</sup> *Oversight Hearing on the United States Department of Justice: Hearing Before the H. Comm. on the Judiciary, 112th Cong. (Dec. 8, 2011) (testimony of Eric H. Holder, Jr., Att'y Gen., U.S. Dep't of Justice).*

<sup>9</sup> Transcribed interview of Acting Director Kenneth E. Melson, at 130 (July 4, 2011).

The Honorable Eric H. Holder, Jr.

June 5, 2012

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The Honorable Charles E. Grassley, Ranking Member  
U.S. Senate, Committee on the Judiciary

The Honorable John Boehner, Speaker of the House

The Honorable Eric Cantor, House Majority Leader

The Honorable Kevin McCarthy, House Republican Whip