



Office of the Deputy Attorney General  
Washington, D.C. 20530

February 1, 2012

The Honorable Darrell E. Issa  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter to the Attorney General dated January 31, 2012 regarding your Committee's inquiry into Operation Fast and Furious. Your criticisms of the Department, in general, and Assistant Attorney General for the Criminal Division Lanny Breuer, in particular, seem predicated on significant misunderstandings both of the documents we recently produced and of the Department's positions on the issues you raise.

You criticize Mr. Breuer for conversations he had with his Mexican law enforcement counterparts in February 2011 on the subject of a proposed cross-border operation. But it is not correct for you to contend, as you do in your letter, that Mr. Breuer was "actively advocating gunwalking" or that he suggested the use of the same failed tactics that had been used in the prior administration's Operation Wide Receiver, in Operation Fast and Furious, or in similar operations. Likewise, your criticism of our response to the Committee's extremely broad October 11, 2011 subpoena fails to account for the substantial efforts we have made in that regard and for the numerous ways in which we have cooperated with the Committee's inquiry, including by taking the nearly unprecedented step of providing the Committee with materials showing the internal process by which our now-withdrawn February 4, 2011 letter was drafted.

And, finally, your letter claims that we have refused to provide the Committee with any materials created after February 4, 2011. That is not the case. Last October, we wrote to you and explained our position on this issue after having discussed it with your staff. Our position is consistent with the position the Department has taken across Administrations of both political parties. To the extent responsive materials exist that post-date congressional review of this matter and were not generated in that context or to respond to media inquiries, and likewise do not implicate other recognized Department interests in confidentiality (for example, matters occurring before a grand jury, investigative activities under seal or the disclosure of which is prohibited by law, core investigative information, or matters reflecting internal Department deliberations), we intend to provide them.

I address each of these issues below.

I turn first to your contentions relating to Assistant Attorney General Breuer. The documents we produced to the Committee on January 5, 2012 suggest that Wide Receiver was an operation in which ATF rejected the idea of having Mexican law enforcement make arrests of

straw purchasers at the U.S./Mexico border. Instead, the documents indicate that ATF believed that arrests at the border were inconsistent with the goals of that investigation. An ATF email about Wide Receiver from April 2007 said that it was not in the agency's interest "to engage in a long term surveillance if the end result would be a Border entry stop or traffic stop in Mexico." HOCR WR 005315. Rather, ATF's plan, as reflected in the documents, was that "once the trafficker moved into Mexico that LE on that side follow the load to it's [sic] ultimate destination and that all phones and other means be utilized to identify the organization involved." *Id.*

This understanding of the goals of Wide Receiver is reaffirmed by a July 13, 2006 memorandum from two Assistant United States Attorneys in Arizona to then-Arizona U.S. Attorney Paul Charlton that we produced to the Committee last October. In that memorandum, Mr. Charlton was advised by his subordinates that Operation Wide Receiver involved "allowing an indeterminate number of illegal weapons, both components of which (the upper and the lower) were provided to the criminals with ATF's knowledge and/or participation, to be released into the community, and possibly into Mexico, without any further ability by the U.S. Government to control their movement or future use." HOCR WR 003364.

The documents relating to Assistant Attorney General Breuer's meeting with Mexican law enforcement officials relate to a potential joint operation with Mexico that would have been dramatically different from Wide Receiver, Fast and Furious and similar operations. The documents reflect that on February 2, 2011, Assistant Attorney General Breuer met with a variety of high-level Mexican officials, including the Attorney General of Mexico, and over the course of that day discussed multiple issues of mutual Mexico/U.S. interest, including U.S. extradition requests to Mexico, the Mérida initiative, and ways to stem the flow of arms from the United States to Mexico. A summary of a meeting that Assistant Attorney General Breuer had with the Mexican Undersecretary for North American Affairs states that, during an arms trafficking discussion, the Undersecretary said that "greater coordination and flow of information would be helpful to combat arms trafficking into Mexico." HOCR DOJ 003104.

According to the document, Assistant Attorney General Breuer followed up with two ideas: that Mexican officials write a letter in support of increased sentencing guidelines for straw purchasers in the United States, and that the United States and Mexico consider working together to allow straw purchasers to "cross into Mexico so SSP can arrest and PGR can prosecute and convict" them.<sup>1</sup> HOCR DOJ 003104. In short, Assistant Attorney General Breuer and the Undersecretary discussed how their two nations could work more closely with one another to fight arms trafficking, including whether U.S. and Mexican law enforcement should consider coordinating their law enforcement operations to enable the Mexican government to interdict straw purchasers at the border and prosecute them in Mexico, given the more expansive prohibitions in Mexico for the possession and purchase of firearms.

As this discussion makes clear, Assistant Attorney General Breuer proposed to his Mexican counterparts a scenario in which those carrying illegal weapons across the border would be arrested at the border by Mexican officials and charged in Mexico. While these officials

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<sup>1</sup> The SSP is Mexico's Secretaría de Seguridad Pública. The PGR is Mexico's Procuraduría General de la República.

ultimately did not pursue that strategy, it is neither fair nor accurate to say that this was advocacy of “gunwalking.” It was not. In light of Assistant Attorney General Breuer’s commitment to stemming the flow of guns from the United States into Mexico and his strong ties and collaborative relationships with his counterparts in Mexico, it is inconceivable that his intention was to have guns released into Mexico.

You also criticize the Department’s response to the Committee’s October 11, 2011 subpoena. This criticism does not recognize our substantial efforts to comply with the extensive requests in the subpoena, or the many other requests for information we have received from the Committee by letter, email or orally, without requiring formal process. We have devoted significant resources to meeting the Committee’s many requests for information. Our cooperation includes:

- Producing or making available for review by the Committee in excess of 6,400 pages of material.
- Making numerous witnesses available either for transcribed interviews or public hearings, including senior-level Department officials.
- Making the Attorney General available six times (including tomorrow’s scheduled appearance) to discuss with members of Congress matters relating to Fast and Furious.
- Making Assistant Attorneys General Weich and Breuer available to testify about this matter before congressional committees.
- Responding to more than three dozen letters on this subject from members of Congress.
- Devoting a team of lawyers and technical personnel to collecting, processing and reviewing documents requested by the Committee and making sure that responsive materials are provided in a timely manner.

Our good faith in this process is further reflected in our decision to provide the Committee with documents relating to the drafting of our now-withdrawn February 4 letter. While your most recent letter suggests that our decision to produce February 4 materials was not voluntary, that is not the case. Our December 2, 2011 letter transmitting those materials set forth our rationale for providing them. We explained that because we had concluded that our February 4 response contained inaccuracies, we had also determined that an exception to the Department’s recognized protocols was appropriate. Thus, we made a rare exception to the longstanding practice of Administrations of both political parties not to disclose deliberative documents and other internal communications generated in response to congressional oversight requests because disclosure would compromise substantial separation of powers principles and Executive Branch confidentiality interests.

Your most recent letter asks that we complete the production process under the October 11, 2011 subpoena by February 9, 2012. The broad scope of the Committee’s requests and the volume of material to be collected, processed and reviewed in response make it impossible to

meet that deadline, despite our good faith efforts. We will continue in good faith to produce materials, but it simply will not be possible to finish the collection, processing and review of materials by the date sought in your most recent letter.

Finally, you assert that the Department is unwilling to produce any information generated after congressional review of these matters commenced. As I noted earlier, that is not the case and it appears that you have misconstrued our position with respect to this issue. To the extent responsive materials exist that post-date congressional review of this matter and were not generated in that context or to respond to media inquiries, and likewise do not implicate other recognized Department interests in confidentiality (for example, matters occurring before a grand jury, investigative activities under seal or the disclosure of which is prohibited by law, core investigative information, or matters reflecting internal Department deliberations), we intend to provide them. Indeed, in last week's production, we included a number of documents that post-date congressional review of this matter. Likewise, Department witnesses have provided information in their transcribed interviews about management and policy changes that the Department has undertaken during the course of congressional review.

Your letter suggests that the first time you learned of the Department's position on this issue was during the Attorney General's testimony before the House Judiciary Committee on December 8. However, in a letter to you dated October 11, 2011, which accompanied the production of certain documents, we confirmed prior discussions with your staff on this very subject. We wrote that:

as we have previously explained to Committee staff, we have also withheld internal communications that were generated in the course of the Department's effort to respond to congressional and media inquiries about Operation Fast and Furious. These records were created in 2011, well after the completion of the investigative portion of Operation Fast and Furious that the Committee has been reviewing and after the charging decisions reflected in the January 25, 2011 indictments. Thus, they were not part of the communications regarding the development and implementation of the strategy decisions that have been the focus of the Committee's inquiry. It is longstanding Executive Branch practice not to disclose documents falling into this category because disclosure would implicate substantial Executive Branch confidentiality interests and separation of powers principles. Disclosure would have a chilling effect on agency officials' deliberations about how to respond to inquiries from Congress or the media. Such a chill on internal communications would interfere with our ability to respond as effectively and efficiently as possible to congressional oversight requests.

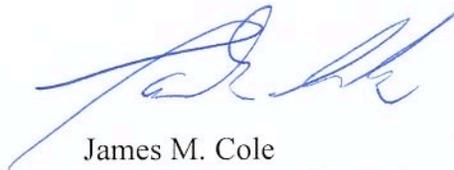
*Letter from Assistant Attorney General Ronald Weich to Chairman Issa at 2 (Oct. 11, 2011).*

The separation of powers concerns we have previously expressed are particularly acute here because Congress has sought information about open criminal investigations and prosecutions. That has required Department officials to confer candidly about how to

accommodate Congress' oversight interests while at the same time ensuring that ongoing law enforcement decision-making is free from even the appearance of political influence.

We remain committed to working to accommodate the Committee's legitimate oversight needs and we trust that the Committee will equally understand our position and will work with us to avoid further conflict on this matter, as the Constitution requires.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. M. Cole", is positioned above the typed name and title.

James M. Cole  
Deputy Attorney General

cc: The Honorable Patrick Leahy, Chairman  
U.S. Senate Committee on the Judiciary

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

The Honorable Elijah E. Cummings, Ranking Member  
U.S. House Committee on Oversight and Government Reform