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January 31, 2012

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
Washington, DC 20530-0001

Dear Attorney General Holder,

As Congress's investigation into the Bureau of Alcohol, Tobacco, Firearms, and Explosives' ("ATF") Operation Fast and Furious enters its second year, we have encountered a disturbing pattern in the Department of Justice's (the "Department") response to our investigation. Far from being forthright, the Department has been slow to produce responsive documents and has continuously conceded only what Congress has already been able to prove.

Your own testimony before the House Judiciary Committee on May 3, 2011, fits this pattern. You testified that you had first heard of Operation Fast and Furious a few weeks before the hearing. Six months later, confronted with evidence that belied this testimony, you conceded that you probably "should have said a few months."

The Department's latest production of documents raises similar questions. Late Friday evening, the Department produced 486 new documents to the Committee. In one set of emails, then-United States Attorney Dennis Burke notified the Attorney General's then-Deputy Chief of Staff Monty Wilkinson that Border Patrol Agent Brian Terry had died. "Tragic," responded Mr. Wilkinson. "I've alerted the AG."

A few minutes later, Mr. Wilkinson emailed again, "Please provide any additional details as they become available to you." Later that day, Mr. Burke wrote: "The guns found in the desert near the murder [*sic*] officer connect back to the investigation we were going to talk about—they were AK-47s purchased at a Phoenix gun store." Mr. Wilkinson responded to this email saying, "I'll call tomorrow."

It is not known if that call ever took place. Both Mr. Wilkinson and Mr. Burke claim that they do not remember ever following up on this email. And Mr. Wilkinson has stated that he never relayed the information regarding the guns found at the scene of Agent Terry's death to the Attorney General.

In another set of documents released late Friday, Lanny Breuer, the head of the Department's Criminal Division, suggested allowing straw purchasers to transport weapons across the border into Mexico so that Mexican officials could arrest the illicit purchasers. Mr. Breuer thought that this would "send a strong message to arms traffickers" because Mexico has stringent gun control laws. Mr. Breuer had been made aware of previous gunwalking during the ATF's Operation Wide Receiver and had claimed that, at that time, he immediately took steps to ensure that the ATF did not continue the practice.

As you know, the Department's initial February 4, 2011, response to Congress denied that ATF walked guns. It is now clear that at least two senior Department officials knew that this assertion was false when the letter was drafted. While the misstatements may have been the result of a good faith error rather than an intent to deceive, it is unacceptable that the Department took nine months to retract the deficient letter and correct the record.

Mr. Breuer received copies of the February 4 letter while he was in Mexico. At that time, he not only knew that ATF had "walked" guns in the past, but he was actively proposing that it do so again. Even if Mr. Breuer failed to read the drafts of the letter that were sent to him, it is unacceptable that he never attempted to correct the record with Congress in the ensuing nine months. Furthermore, Mr. Breuer had asserted that, upon learning of Operation Wide Receiver, he instructed his staff to ensure that the practice was discontinued. This assertion is belied by Mr. Breuer's own recommendation that the practice be continued even as the controversy was becoming public.

While the Department's Office of the Inspector General continues its investigation, the timeframe of that investigation is too long to allow the Department to forestall comprehensive action until after its completion. It is past time for the Department to provide a full and honest accounting of Operation Fast and Furious with details about its conception, approval, and who knew what when.

The House Judiciary Committee and the American people have a right to know the whole truth, not just bits and pieces released here and there over several months. As Attorney General, you have an obligation to ensure that the statements given to Congress are both accurate and complete. Unfortunately, the documents released by the Department continue to raise serious questions about the validity of statements made by senior Department officials.

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I request that the Department work with the House Judiciary Committee to arrange interviews with Mr. Wilkinson and Mr. Breuer. Please contact the Committee by February 10, 2012, to schedule these interviews.

Sincerely,



Lamar Smith
Chairman

Enclosure

cc: The Honorable John Conyers, Jr.