

Comm. on Oversight & Gov't Reform, U.S. House of Reps. v. Holder, No. 12-1332 (ABJ)

MEMORANDUM IN SUPPORT
OF DEFENDANT'S MOTION TO DISMISS

Ex. E



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

June 19, 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:

During our meeting today, the Attorney General and I reiterated our concerns about the inappropriate tactics used in Operation Fast and Furious and expressed our appreciation for the whistleblowers who brought these issues to public attention. The Department also made the good faith offer of an extraordinary accommodation to the Committee that will respond to the single outstanding question posed by House Leadership and you in your May 18, 2012 letter to the Attorney General, namely, whether the Department's February 4, 2011 letter to Senator Grassley "was part of a broader effort by your Department to obstruct a Congressional investigation." The answer to that question is an emphatic "no" and we have offered the Committee the opportunity to satisfy itself that that is so.

Today, we offered the Committee documents to answer the question it posed, as well as a briefing, information that would provide greater insight into the documents not being provided, and the ability to ask follow-up questions about these issues. We regret that the Committee rejected our proposal. Our offer would have provided the Committee with unprecedented access to these documents, many of which are not covered by the Committee's subpoenas in this matter.

At the end of last year, the Department produced documents showing that leaders of both ATF and the Arizona U.S. Attorney's Office told Department personnel that allegations being made about Operation Fast and Furious were false and that Department personnel relied on those assertions in drafting the Department's February 4, 2011 letter to Senator Grassley. Eventually, Department leaders concluded that those assertions could not be reconciled with the information being provided by Congress and the media, and the Department therefore undertook significant efforts to understand the true facts about Operation Fast and Furious. What our review showed was that Operation Fast and Furious was just one in a series of Arizona-based investigations dating back to 2006 in the prior Administration that had used such tactics. The Department acted reasonably in waiting to formally withdraw the February 4 letter to review a large volume of electronic materials relating to these matters and to understand the full range of the issues presented.

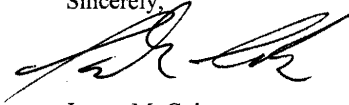
Even before the formal withdrawal of the February 4 letter, however, Department leaders publicly indicated that the facts surrounding Operation Fast and Furious were uncertain and that

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the Department did not continue to rely on the assertions in its letter to Senator Grassley. In late February, the Attorney General referred the matter to the Department's Acting Inspector General for review. And, the Department's concerns about these issues were conveyed in a variety of other ways, including in multiple appearances before congressional committees by the Attorney General and by Assistant Attorneys General. And, as you are aware, in October 2011 the Attorney General told the Committee and other congressional leaders that he believed Fast and Furious was "fundamentally flawed." Finally, the Attorney General and I implemented a series of reforms designed to ensure that the tactics used in Operation Fast and Furious and the other investigations dating back to the prior Administration are not used again.

We had hoped that you shared our interest in bringing this matter to an amicable resolution and we regret that you rejected our extraordinary proposal to do so.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Cole', with a stylized flourish extending from the end.

James M. Cole

cc: The Honorable Patrick J. Leahy
The Honorable Charles E. Grassley
The Honorable Elijah E. Cummings