

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. C



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

June 14, 2012

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

Dear Mr. Chairman:

Thank you for your letter dated June 13, 2012. I appreciate that the Committee has narrowed its request for information related to its review of Operation Fast and Furious and now no longer seeks sensitive law enforcement information arising out of that investigation. We have repeatedly expressed concern that the production of such materials would undermine the integrity and independence of the Department's core law enforcement operations. The Committee's decision not to insist on the production of those materials is an important step forward in this accommodation process.

In the last week, I have testified before both the House and Senate Judiciary Committees that the Department is prepared to compromise with the Committee in order to answer the questions set forth in the May 18, 2012, letter to me from you and House Leaders. I reiterate that offer today with a specific focus on the collection of documents to which you referred in your letter to me of June 13. More specifically, the Department is prepared to provide documents that, while outside the scope of the Committee's interest in the inappropriate tactics used in Fast and Furious, are responsive to how the Department's understanding of the facts regarding that matter evolved throughout 2011 and how the Department came to withdraw its February 4, 2011, letter to Senator Grassley. The Department is willing to accommodate the Committee's interest in those materials.

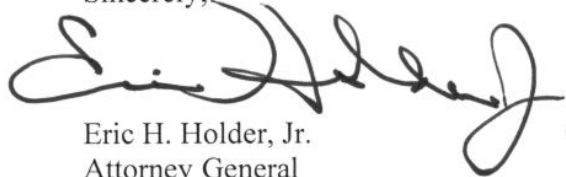
The record in this matter reflects that until allegations about the inappropriate tactics used in Fast and Furious were made public, Department leadership was unaware of those tactics. Indeed, as the documents we provided to the Committee relating to the drafting of the February 4 letter reflect, Department leaders were assured by the heads of Department components in the best position to know the true facts that the allegations being made were "categorically false." However, over a period of months in 2011, as documents to be provided to the Committee were collected and reviewed, and as witness testimony before the Committee was evaluated, Department leadership learned more and began to assess the facts of this matter independently. The Department's understanding of the facts underlying Fast and Furious became more developed, particularly as evidence came to light that was inconsistent with the initial denials

provided to Department personnel. Over time, Department leadership came to recognize that Fast and Furious was fundamentally flawed, as I noted in my October 7, 2011, letter to you and other members of Congress. And, notwithstanding numerous public statements and communications to the Committee throughout 2011 reflecting our increasing concern about what actually had happened in the operation and the accuracy of the February 4 letter, the Department took the extraordinary step of formally withdrawing that letter in early December of last year and providing unprecedented access to deliberative materials reflecting how the letter came to be drafted.

Over the past few weeks, our staffs have had productive conversations aimed at identifying relevant documentation that would respond to remaining congressional concerns about the post-February 4 period. The Department is prepared to offer an extraordinary accommodation of the Committee's interest in those issues by providing a briefing, based on documents that the Committee could retain, explaining how the Department's understanding of the facts of Fast and Furious evolved during the post-February 4 period, and the process that led to the withdrawal of the February 4 letter. We believe that this briefing, and the documents we are prepared to provide – which will include information you have requested regarding whistleblowers – will fully address the remaining concerns identified in the recent letters to me from you and House Leadership.

The Department's willingness to provide these materials is a serious, good faith effort to bring this matter to an amicable resolution. However, because as the Chairman only you have the authority to bind the committee, I continue to believe that a meeting is required both to assure that there are no misunderstandings about this matter and to confirm that the elements of the proposal we are making will be deemed sufficient to render the process of contempt unnecessary. I seek your direct engagement for precisely that reason, and I propose that the meeting occur by Monday, June 18, 2012.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric H. Holder, Jr.", with a stylized flourish at the end.

Eric H. Holder, Jr.
Attorney General

cc: Speaker John Boehner
Majority Leader Eric Cantor
Majority Whip Kevin McCarthy
The Honorable Elijah E. Cummings
Ranking Minority Member
Minority Leader Nancy Pelosi
Minority Whip Steny Hoyer
The Honorable James E. Clyburn
Deputy Attorney General James M. Cole