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UNITED STATES DEPARTMENT OF JUSTICE

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BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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UNITED STATES DEPARTMENT OF JUSTICE

THURSDAY, DECEMBER 8, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to call, at 9:37 a.m., in room 2141, Rayburn House Office Building, the Honorable Lamar Smith (Chairman of the Committee) presiding.

Present: Representatives Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Lungren, Chabot, Issa, Pence, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Griffin, Marino, Gowdy, Ross, Adams, Quayle, Amodei, Conyers, Berman, Scott, Watt, Lofgren, Jackson Lee, Waters, Cohen, Johnson, Pierluisi, Quigley, Chu, Deutch, Sánchez and Polis.

Also present: Representatives Schiff and Farenthold.

Staff Present: (Majority) Crystal Jezierski, Counsel; Travis Norton, Counsel; Dave Lazar, Clerk; (Minority) Perry H. Apelbaum, Minority Staff Director and Chief Counsel; and Joe Graupensperger, Counsel.

Mr. SMITH. The Judiciary Committee will come to order. Without objection, the Chair is authorized to declare recesses of the Committee at any time.

I am going to recognize myself for an opening statement; and then the Ranking Member, the gentleman from Michigan; then the gentleman from California Mr. Issa; then the gentleman from Virginia Mr. Scott, and we will proceed to hearing from the Attorney General.

Attorney General Eric Holder appeared before the House Judiciary Committee last May, and we appreciate his willingness to appear today to address many issues, including questions about his previous testimony.

While I am pleased to welcome back Attorney General Holder, I am disappointed in the Department's repeated refusal to cooperate with this Committee's oversight request. This lack of cooperation is evident in the Department's handling of inquiries related to the Bureau of Alcohol, Tobacco, Firearms and Explosives; Operation Fast and Furious; and the death of Border Patrol agent Brian Terry in December 2010. And inconsistent statements from the Department officials about who knew what and when have only raised more concerns.

I am also disappointed in how the Department has responded to my oversight request regarding Justice Kagan's involvement in health care legislation and related litigation while she served as

United States Solicitor General. Despite claims from Obama administration officials that then-Solicitor General Kagan was walled off from discussions regarding the President's health care law, recently released e-mails indicate there may be more to the story.

On March 21, 2010, an e-mail from the Deputy Solicitor General forwarded to Solicitor General Kagan contained information about a meeting at the White House on the health care law and asked, "I think you should go, No. I will regardless, but feel this is litigation of singular importance." Solicitor General Kagan responded by asking him for his phone number.

We also know from the e-mails that she personally supported the legislation's passage. In a March 21, 2010, exchange with a Justice Department colleague discussing the health care legislation, Ms. Kagan exclaims, "I hear they have the votes, Larry. Simply amazing." These e-mails reveal inconsistencies with the Administration's claims that then-Solicitor General Kagan was walled off from the issue.

To help clear up any confusion, I wrote the Justice Department to get additional documents and conduct staff interviews. It took nearly 4 months before the Department sent a one-page response that denied my request. The Department did not assert any legal privilege over the requested information, but simply refused to comply with the request. That is not a sufficient answer.

Health care legislation was passed by the Senate on December 24, 2009. On January 8, 2010, Ms. Kagan told the Deputy Solicitor General that she definitely would like the Office of the Solicitor General to be involved in preparations to defend against challenges to the pending health care proposals. Ms. Kagan found out she was being considered for a potential Supreme Court vacancy on March 5, 2010. So the issue is how involved was she in health care discussions between January 8 and March 5. Just as President Nixon had an 18 and a half minute gap, does Ms. Kagan have a 2-month gap?

The Office of the Solicitor General is responsible for defending the positions of the Federal Government in litigation before the Supreme Court. So it was the duty of then-Solicitor General Kagan to participate in meetings and discussions regarding the legal defense strategy for the President's health care proposal. It would have been a surprising departure from her responsibilities for Solicitor General Kagan not to advise the Administration on the health care bill. The law clearly states that Justices must recuse themselves if they "participated as counsel, advisor or material witness concerning the proceeding, or expressed an opinion concerning the merits of the particular case" while they worked in a government capacity.

The public has a right to know the extent of Justice Kagan's involvement with the legislation as well as any previously stated legal opinions about the legislation while she served as Solicitor General. The NFL would not allow a team to officiate its own game. If Justice Kagan was part of the Administration's team that put the health care mandate into play, she should not officiate when it comes before the Supreme Court.

If the Department has nothing to hide, why not provide Congress with the requested information? The continued refusal to cooperate

with legitimate oversight inquiries only heightens concerns that she may, in fact, have a conflict of interest.

President Obama has promised an open and transparent government. Unfortunately we often see a closed and secretive Justice Department.

I know all Members of the Committee look forward to asking questions on these and other issues.

I now recognize the gentleman from Michigan, the Ranking Member of the Judiciary Committee, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Smith, and a hearty welcome to not only the Attorney General of the United States Eric Holder, but as well to a—well, this is the most numerous number of police chiefs and Department of Justice officials that I have seen in this room at one time in quite awhile. All of them, but particularly to the Detroit police chief Ralph Godbee who is here, I send a special welcome.

Now, Chairman Smith, would it be appropriate that our colleague, a former Member of the Committee, Adam Schiff of California sit on the dais with us?

Mr. SMITH. Mr. Conyers, we normally don't do that, but in this case we would be very pleased to have the gentleman from California Mr. Schiff sit up at the dais with us. We do have a policy that non-Members of the Committee will not be able to ask questions, but we certainly welcome his presence up here.

Mr. CONYERS. I thank you for that courtesy.

Adam, come on up.

Mr. SMITH. If he can find room.

Mr. CONYERS. There are two parts to my comments this morning, Members of the Committee. The first deals with what are the problems underlying the reason for the hearing, and the second deals more specifically with the career and contributions of the Attorney General of the United States. And I have the privilege of putting these solutions that I would like to you consider in my opening statement. We can go over the details ad nauseam if you would like, but I would refer everyone to the November 8, 2011, hearings in the United States Senate Committee on the Judiciary in which Chairman Pat Leahy with more than a dozen Senators on that Committee have plowed through this. And I have been going over and over it for the last couple days, but I think you want to have that as a basis for anybody that is particularly interested.

Now, the problem of gun trafficking in the Southwest is a serious problem, and I recommend to my Judiciary Committee colleagues, with whom this whole subject matter is the jurisdiction of this Committee, that we commit to maintaining the new rule requiring the reporting of multiple sales of semiautomatic weapons and shotguns, rifles by individuals in the Southwest Border States. There have been a number of programs that have dealt with this subject, but I think that that is probably number one on my recommended list.

Secondly, we must see to it that we confirm a Director of Alcohol, Tobacco & Firearms. It has been operating under Acting Directors for the last 5½ years. The Senate has failed to act on the nominations not only of the current President, but of President Bush as well. So if we are going to criticize ATF, I think we must work to

revitalize it, not to tear it down, because it is too important a source of protection and a way of ending violence in this important part of our country.

And last, we must enact some legislation to prohibit gun trafficking. The transfer of multiple guns when we know they will be transferred to those who are legally prohibited from carrying a gun or people who intend to use guns illegally must be further prohibited by legislative and congressional action. I commend our New York colleague Carolyn Maloney, who has sponsored a very good idea in this regard.

And so I conclude, Mr. Chairman and Members, by telling you I have never encountered an Attorney General more dedicated and more professionally effective than the current occupant of that chair, Eric Holder, who has achieved impressive results across the full range of his mission, especially what has happened in the Civil Rights Division. And I think that the questions today here are appropriate. I think the hearing is fair. I think we have a Chairman that will make sure we proceed in a manner that will make us all proud that we attended and participated in this hearing today.

But we also know that letting guns roam around this country is something that all of us have a great responsibility to make sure that that is diminished or comes to an end as soon as possible. And I thank you, Mr. Chairman, for this opportunity.

Mr. SMITH. Thank you, Mr. Conyers, for those comments.

The gentleman from California, Chairman of the Oversight and Government Reform Committee, is recognized for an opening statement.

Mr. ISSA. Thank you, Mr. Chairman. And I would first like to ask unanimous consent that the following document be placed in the record. December 7, an article by Sharyl Attkisson entitled "Documents: ATF used 'Fast and Furious' to make the case for gun regulations."

Mr. SMITH. Without objection, it will be made a part of the record.

[The information referred to follows:]

December 7, 2011 1:44 PM

Documents: ATF used "Fast and Furious" to make the case for gun regulations

Sharyl Attkisson



Documents obtained by CBS News show that the Bureau of Alcohol Tobacco, Firearms and Explosives (ATF) discussed using their covert operation "Fast and Furious" to argue for controversial new rules about gun sales.

PICTURES: ATF "Gunwalking" scandal timeline

In Fast and Furious, ATF secretly encouraged gun dealers to sell to suspected traffickers for Mexican drug cartels to go after the "big fish." But ATF whistleblowers told CBS News and Congress it was a dangerous practice called "gunwalking," and it put thousands of weapons on the street. Many were used in violent crimes in Mexico. Two were found at the murder scene of a U.S. Border Patrol agent.

ATF officials didn't intend to publicly disclose their own role in letting Mexican cartels obtain the weapons, but emails show they discussed using the sales, including sales encouraged by ATF, to justify a new gun regulation called "Demand Letter 3". That would require some U.S. gun shops to report the sale of multiple rifles or "long guns." Demand Letter 3 was so named because it would be the third ATF program demanding gun dealers report tracing information.

On July 14, 2010 after ATF headquarters in Washington D.C. received an update on Fast and Furious, ATF Field Ops Assistant Director Mark Chait emailed Bill Newell, ATF's Phoenix Special Agent in Charge of Fast and Furious:

"Bill - can you see if these guns were all purchased from the same (licensed gun dealer) and at one time. We are looking at anecdotal cases to support a demand letter on long gun multiple sales. Thanks."

More Fast and Furious coverage:
Memos contradict Holder on Fast and Furious
Agent: I was ordered to let guns "walk" into Mexico
Gunwalking scandal uncovered at ATF

On Jan. 4, 2011, as ATF prepared a press conference to announce arrests in Fast and Furious, Newell saw it as "(A)nother time to address Multiple Sale on Long Guns issue." And a day after the press conference, Chait emailed Newell: "Bill--well done yesterday... (I)n light of our request for Demand letter 3, this case could be a strong supporting factor if we can determine how many multiple sales of long guns occurred during the course of this case."

This revelation angers gun rights advocates. Larry Keane, a spokesman for National Shooting Sports Foundation, a gun industry trade group, calls the discussion of Fast and Furious to argue for Demand Letter 3 "disappointing and ironic." Keane says it's "deeply troubling" if sales made by gun dealers "voluntarily cooperating with ATF's flawed 'Operation Fast & Furious' were going to be used by some individuals within ATF to justify imposing a multiple sales reporting requirement for rifles."

The Gun Dealers' Quandary

Several gun dealers who cooperated with ATF told CBS News and Congressional investigators they only went through with suspicious sales because ATF asked them to.

Sometimes it was against the gun dealer's own best judgment.

Read the email

In April, 2010 a licensed gun dealer cooperating with ATF was increasingly concerned about selling so many guns. "We just want to make sure we are cooperating with ATF and that we are not viewed as selling to the bad guys," writes the gun dealer to ATF Phoenix officials, "(W)e were hoping to put together something like a letter of understanding to alleviate concerns of some type of recourse against us down the road for selling these items."

Read the email

ATF's group supervisor on Fast and Furious David Voth assures the gun dealer there's nothing to worry about. "We (ATF) are continually monitoring these suspects using a variety of investigative techniques which I cannot go into detail."

Two months later, the same gun dealer grew more agitated.

"I wanted to make sure that none of the firearms that were sold per our conversation with you and various ATF agents could or would ever end up south of the border or in the hands of the bad guys. I guess I am looking for a bit of reassurance that the guns are not getting south or in the wrong hands...I want to help ATF with its investigation but not at the risk of agents (sic) safety because I have some very close friends that are US Border Patrol agents in southern AZ as well as my concern for all the agents (sic) safety that protect our country."

"It's like ATF created or added to the problem so they could be the solution to it and pat themselves on the back," says one law enforcement source familiar with the facts. "It's a circular way of thinking."

The Justice Department and ATF declined to comment. ATF officials mentioned in this report did not respond to requests from CBS News to speak with them.

The "Demand Letter 3" Debate

The two sides in the gun debate have long clashed over whether gun dealers should have to report multiple rifle sales. On one side, ATF officials argue that a large number of semi-automatic, high-caliber rifles from the U.S. are being used by violent cartels in Mexico. They believe more reporting requirements would help ATF crack down. On the other side, gun rights advocates say that's

unconstitutional, and would not make a difference in Mexican cartel crimes.

Two earlier Demand Letters were initiated in 2000 and affected a relatively small number of gun shops. Demand Letter 3 was to be much more sweeping, affecting 8,500 firearms dealers in four southwest border states: Arizona, California, New Mexico and Texas. ATF chose those states because they "have a significant number of crime guns traced back to them from Mexico." The reporting requirements were to apply if a gun dealer sells two or more long guns to a single person within five business days, and only if the guns are semi-automatic, greater than .22 caliber and can be fitted with a detachable magazine.

On April 25, 2011, ATF announced plans to implement Demand Letter 3. The National Shooting Sports Foundation is suing the ATF to stop the new rules. It calls the regulation an illegal attempt to enforce a law Congress never passed. ATF counters that it has reasonably targeted guns used most often to "commit violent crimes in Mexico, especially by drug gangs."

Reaction

Sen. Charles Grassley, R-Iowa, is investigating Fast and Furious, as well as the alleged use of the case to advance gun regulations. "There's plenty of evidence showing that this administration planned to use the tragedies of Fast and Furious as rationale to further their goals of a long gun reporting requirement. But, we've learned from our investigation that reporting multiple long gun sales would do nothing to stop the flow of firearms to known straw purchasers because many Federal Firearms Dealers are already voluntarily reporting suspicious transactions. It's pretty clear that the problem isn't lack of burdensome reporting requirements."

On July 12, 2011, Sen. Grassley and Rep. Darrell Issa, R-Calif., wrote Attorney General Eric Holder, whose Justice Department oversees ATF. They asked Holder whether officials in his agency discussed how "Fast and Furious could be used to justify additional regulatory authorities." So far, they have not received a response. CBS News asked the Justice Department for comment and context on ATF emails about Fast and Furious and Demand Letter 3, but officials declined to speak with us.

"In light of the evidence, the Justice Department's refusal to answer questions about the role Operation Fast and Furious was supposed to play in advancing new firearms regulations is simply unacceptable," Rep. Issa told CBS News.

Mr. ISSA. Thank you, Mr. Chairman. I thank you for holding this hearing. It is deja vu all over again. We are beginning the process of getting to the bottom, to the truth of Fast and Furious.

I take exception to my colleague on the other side of the aisle Mr. Conyers. What is too important is the Second Amendment. The idea that regulations without any approval of Congress had been added to create databases in the Southern Southwestern States, including California, Arizona, Mexico—New Mexico—Texas and New Mexico, clearly shows, in fact, this Administration is more interested in building databases, more interested in talking about gun

control than actually controlling the drugs and guns that they had control over. Whether it is money laundering, or, in fact, it is the flow of guns knowingly, just one individual was allowed to buy, under the auspices of the Justice Department, 700 weapons, knowing exactly who they were going to before they ever went.

Our discovery, with the help of Senator Grassley, has shown that this was not an accident, and that this project was failed and flawed from the beginning. It is not just ATF, it is not just DEA; in fact, it includes the Department of Homeland Security in a task force that obviously did not respect the safeguards of the American people.

Brian Terry is dead today, in my opinion, because of this failed program. But even today we will not hear Justice taking responsibility. They will instead talk about the two guns that were recovered. Yes, they were from Fast and Furious, but ballistics are inconclusive. And yet this Justice Department is not looking for a third weapon. They are not looking for who killed Brian Terry while they try to have the plausible deniability that Fast and Furious may not have been responsible. That is reprehensible to the family suffering under Brian Terry's needless murder.

Mr. Chairman, Fast and Furious began in November 2009. It was a new operation building on a failed operation under the previous Administration. The difference in the previous Administration is there was coordination with the Mexican Government. They made a real effort under Wide Receiver to pass off a small amount of weapons and track them. This program, just the opposite; even knowing the drug cartels are going to receive them, they simply allowed them to go to the stash house.

Mr. Attorney General, today I hope you will not point fingers and say that somehow this is not organic. There is nothing more organic that a law enforcement officer being gunned down because of a failure to protect within the Department of Justice. There is nothing more organic in Congress's responsibility than, in fact, following up on Congress being lied to. My Committee just next door was systematically lied to by your own representatives. There is a highly likelihood an individual was deliberately duped, but he was duped by people who still work for you today, still work for you today.

The President has said he has full confidence in this Attorney General. I have no confidence in a President who has full confidence in an Attorney General who has, in fact, not terminated or dealt with the individuals, including key lieutenants, who from the very beginning had some knowledge and long before Brian Terry was gunned down knew enough to stop this program.

There has been recrimination. There has been an attempt to find scapegoats. Many of the people who have been pointed to do share in the blame. But, Mr. Attorney General, the blame must go to your desk, and you must today take the real responsibility. Why haven't you terminated the many people involved? Why is it that we are still hearing about inconsistencies that don't even take the correct responsibility for Border Patrol agent Brian Terry's death? Those are the things we want to hear today.

Mr. Attorney General, I respect the fact that you said in the Senate that you gave truthful testimony, but I would like to hear

what—when a few days becomes a few weeks, or a few weeks becomes a few months, are we to have the confidence that the President says he has in you and the many people up and down the chain of command at Justice who saw this program, this operation and let it happen? And the many people who called your legislative affairs representative, who is sitting right behind you, caused him to bring false testimony to the Committee. It is unheard of for testimony—or for letters or testimony to be taken back. They have had to be taken back because of people who still worked for Justice.

Mr. Chairman, I thank you for your indulgence, and I appreciate the opportunity to speak here and would ask that Blake Farenthold, a member of my Committee who has been intimately involved in the investigation, also be allowed to sit on the dais under the same terms as Mr. Schiff.

Mr. CONYERS. Is he a Member of Congress?

Mr. ISSA. He is a Member of Congress.

Mr. SMITH. Mr. Issa, thank you.

Mr. ISSA. He is a freshman from Texas. He is impacted by these gun control regulations. He is an attorney.

Mr. SMITH. I understand there is no room right now, but we will consider that request in just a minute. As much as I would like to have a Texas colleague up at the podium——

Mr. ISSA. You got a few, but he is a good one.

Mr. SMITH. He is not a former Member of the Judiciary Committee, though. We certainly appreciate his expertise on this subject. So let us wait until we have room, and we will take it up at that point.

Mr. ISSA. I thank the gentleman.

Mr. SMITH. The gentleman from Virginia Mr. Scott, the Ranking Member of the Crime Subcommittee, is recognized for an opening statement.

Mr. SCOTT. Thank you, Mr. Chairman. And I join my colleagues in welcoming the Attorney General this morning. I understand that the invitation to the Attorney General to appear this morning specifically referenced gun trafficking in the southwest border, so today we have an opportunity to discuss with him the positive steps we must take to protect our citizens from illegal firearms.

I am heartened that this Attorney General recognizes that the smartest and most effective way to protect ourselves from crime is to prevent it from occurring in the first place. With respect to preventing firearm violence, there are steps that we can take to reduce the toll of the injured and murdered. And there are steps that we must take in order to enhance the ability of law enforcement to effectively investigate gun crimes that have already occurred.

I note, as it is often said around here, that the best strategy to use when you are in a hole is to stop digging. Unfortunately this Committee approved and the House passed a dangerous bill that would override the laws of almost every State by requiring each State to accept concealed handgun carry permits—concealed handgun carry permits from other States, even if the permit holder would not be allowed to carry or even posses a handgun in his home State or the State where he is traveling. Actions like this make the hole deeper and do not make us safer. We in Congress

can best take the steps to help law enforcement prevent and investigate gun violence.

Specifically with reference to the problem of gun trafficking on the southwest border, we know that the rule that went into effect in August requiring the reporting of multiple sales of certain assault weapons is an important tool to help law enforcement fight the straw purchasing that fuels gun trafficking. Unfortunately, while that rule was under consideration, 21 members of this Committee voted last February to prevent funds from being used to implement this important reporting requirement. If that measure had been included in the final version, the prohibition against that reporting requirement had been included in the final version of the bill, the ATF would not be receiving these reports today, and they would be denied information which is helping them investigate suspected straw purchasing.

The ATF has an important role in protecting us from the dangers of illegal use and trafficking of firearms, the illegal use and storing of explosives, and acts of arson and bombing. We must make sure this agency is capable of fulfilling its important mission, and it needs strong leadership. In that light we need to encourage our Senate colleagues to confirm the President's nominee to be Director of the ATF.

Finally, we have learned that we need to give prosecutors a critical additional tool to fight gun trafficking. For example, we need a statute that specifically prohibits the transfer of multiple firearms into the hands of those legally ineligible to possess them and to those who intend to use them to commit crimes. I hope this Committee will take action on legislation in this area in the near future.

These are things we need to do to address the real problem, and those who want to focus on Operation Fast and Furious and gun-walking tactics that it employed, I will just note that these tactics originated in the ATF investigations under the Bush administration. And a November 16, 2007, memo refers to the fact that so-called gun walking was already occurring in the Bush administration. In contrast, there is no evidence that Attorney General Holder knew of these tactics while they were being used, and he should be praised for consistently saying that they were unacceptable and referring this matter to the inspector general soon after he learned about them.

So I thank the Attorney General for appearing here today, and I look forward to his testimony.

I yield back.

Mr. SMITH. Thank you, Mr. Scott.

We are pleased to welcome today's witness, United States Attorney General Eric H. Holder, Jr. On February 3, 2009, Attorney General Holder was sworn in as the 82nd Attorney General of the United States.

Attorney General Holder has enjoyed a long and distinguished career in public service. First joining the Department through the Attorney General's Honors Program in 1976, he became one the Department's first attorneys to serve in the newly formed Public Integrity Section. He went on to serve as a judge of the Superior

Court of the District of Columbia and a U.S. attorney for the District of Columbia.

In 1997, Mr. Holder was named by President Clinton to be the Deputy Attorney General. Prior to becoming Attorney General, Mr. Holder was a litigation partner at Covington & Burling, LLP, in Washington, D.C.

Mr. Holder, a native of New York City, is a graduate of Columbia University and Columbia Law School.

Again, we welcome you and look forward to your testimony.

Mr. ISSA. Mr. Chairman? Mr. Chairman? I would move that the witness be sworn.

Mr. SMITH. I am going to ask that the gentleman withdraw that for two reasons. First of all, the Attorney General did receive a letter from the Committee reminding him of the need and, in effect, that he is testifying under oath. And two, we don't need to go through that necessarily because that is assumed by anybody who does testify before the Committee.

Mr. ISSA. Point of inquiry, Mr. Chairman. Isn't it true that a false statement to Congress bears a different criminal violation than a sworn statement?

Mr. SMITH. I believe the answer to that is yes.

Mr. ISSA. Then I would once again ask, since this Committee has at times sworn witnesses, as have all the Committees, that in light of——

Mr. SMITH. If the gentleman would yield.

Mr. ISSA. Of course.

Mr. SMITH. I misunderstood the question, and the answer was no. So it is deemed as if he is under oath right now, any witness.

Mr. ISSA. So he is exactly the same as if he swears under our rules.

Mr. SMITH. That is correct.

Mr. ISSA. Then I withdraw.

Mr. SMITH. Okay. I thank the gentleman.

If the Attorney General will proceed.

TESTIMONY OF THE HONORABLE ERIC H. HOLDER, JR., ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Attorney General HOLDER. Thank you, Mr. Chairman.

Chairman Smith, Ranking Member Conyers and Members of the Committee, I appreciate the opportunity to appear before you today to describe the decisive action that we have taken to ensure that the flawed tactics used in Operation Fast and Furious and in earlier operations under the prior Administration are never repeated.

For nearly 3 years I have been privileged to work with this Committee to strengthen national security and to strengthen law enforcement, and I am extremely proud of our record of achievement. In offices around the world, the Department's 117,000 employees have made historic progress in protecting the American people from a range of unprecedented threats, from global terrorism and violent crime to financial fraud, human trafficking and more. We have disrupted numerous, potentially devastating terrorist plots and successfully prosecuted scores of dangerous terrorists.

The Department's efforts on behalf of the most vulnerable among us, including victims of civil rights abuses and hate crimes, have

never been more effective. The partnerships that we have built with State, local and tribal law enforcement officials have never been stronger.

Today it is a privilege to be joined by several of our key public safety partners. These five police executives, Chief Fred Bealefeld of Baltimore, Commissioner Ed Davis of Boston, Chief Rodney Monroe of Charlotte, Chief Ralph Godbee of Detroit, and Commissioner Charles Ramsey of Philadelphia, have been leaders in developing and implementing innovative and effective crime-prevention strategies. They have also worked closely with the Department in advancing critical efforts to reverse the alarming rise in law enforcement fatalities in recent years.

The work that we do along the southwest border is influenced by the efforts that they have undertaken in their own cities. In the cities that they serve and in communities across the country, this work is a priority. And in our ongoing efforts to protect the American people and our brave law enforcement personnel, a critical area of focus will continue to be our battle against gun violence on the southwest border.

Now, in recent years the Department has devoted significant resources to this fight, and specifically to addressing the unacceptable rate of illegal firearms trafficking from the United States to Mexico. Unfortunately, in the pursuit of that laudable goal, unacceptable tactics were adopted as part of Operation Fast and Furious.

Now, as I have repeatedly stated, allowing guns to walk, whether in this Administration or the prior one, is wholly unacceptable. The use of this misguided tactic is inexcusable, and it must never happen again.

Soon after learning about the allegations raised by ATF agents involved with Fast and Furious, I took action designed to ensure accountability. In February, I asked the Department's acting inspector general to investigate the matter, and in early March I ordered that a directive be sent to law enforcement agents and prosecutors prohibiting such tactics. More recently the new Acting Director of ATF Todd Jones implemented reforms to prevent these tactics from being used in the future, including training and stricter oversight procedures for all significant investigations.

Now, although the Department has taken steps to ensure that such tactics are never used again, it is an unfortunate reality that we will continue to feel the effects of this flawed operation for years to come. Guns lost during this operation will continue to show up at crime scenes on both sides of the border.

As we work to identify where errors occurred and to ensure that these mistakes never happen again, we must not lose sight of the critical challenge that this flawed operation has highlighted, and that is the battle to stop the flow of guns to Mexico. Of the nearly 94,000 guns that have been recovered and traced in Mexico in the last 5 years, more than 64,000 were sourced to the United States. During this time the trafficking of firearms across our southwest border has contributed to approximately 40,00 deaths in Mexico.

Now, the reforms that we have undertaken do not make any of the losses of life more bearable for grieving families. These tragedies do, however, portray in very stark terms the exceptionally dif-

ficult challenges that law enforcement agencies confront every day in working to disrupt illegal firearms transfers. Operation Fast and Furious appears to have been a deeply flawed effort to respond to these very challenges.

As we work to avoid future losses and further mistakes, it is unfortunate that some have used inflammatory and inappropriate rhetoric about one particular tragedy that occurred near the southwest border in an effort to score political points. Nearly 1 year ago, while working to protect his fellow citizens, U.S. Customs and Border Protection agent Brian Terry was violently murdered in Arizona. We all should feel outrage about his death. And as I have communicated directly to Agent Terry's family, we are dedicated to pursuing justice on his behalf.

The Department is also working to answer questions that the Terry family has raised, including whether and how firearms connected to Fast and Furious end up with Mexican drug cartels. In her independent review I expect the Department's acting inspector general to answer these questions.

I understand that Congress also wants answers. Justice Department employees have been working tirelessly to identify, to locate and to provide relevant information to this Committee and to the two other Committees that are investigating Fast and Furious, all while preserving the integrity of our ongoing criminal investigations and prosecutions.

The Department has been fully cooperative and responsive in its dealings with this Congress. I have answered questions in the House and the Senate on four occasions concerning this matter. To date we have provided almost 5,000 pages of documents for congressional investigators to review. We have scheduled numerous witness interviews and testified at public hearings. Just last week we provided an unprecedented access to internal deliberative documents to explain how inaccurate information was initially conveyed to Congress.

Now, these documents demonstrate Justice Department personnel relied on information provided by supervisors from the components in the best position to know the relevant facts. We now know that some information provided by those supervisors was inaccurate. I understand that in subsequent interviews with congressional investigators, these supervisors have stated that they did not know at the time that information provided in the letter to congressional leaders earlier this year was inaccurate.

The documents produced to date also belie the remarkable notion that this operation was conceived by Department leaders, as some have claimed. It is my understanding that Department leaders were not informed about the in appropriate tactics employed in this operation until those tactics were made public and, as is customary, turned to those with supervisory responsibility over the operation in an effort to learn facts.

But what is clear is that disrupting the dangerous flow of firearms along the southwest border and putting an end to the violence that has claimed far too many lives is, and will continue to be, a top priority for this Department of Justice. This year alone we have led successful investigation into the murders of United States citizens in Mexico, created new cartel-targeting prosecu-

torial units, and secured the extradition of more than 100 defendants wanted by the United States law enforcement, including the former head of the Tijuana cartel.

We have also built crime-fighting capacity on both sides of the border by developing new procedures. We are using evidence gathered in Mexico to prosecute gun traffickers in U.S. courts by training thousands of Mexican prosecutors and investigators, by successfully fighting to enhancing sentencing guidelines for convicted traffickers and straw purchasers, and by pursuing coordinated multidistrict investigations of gun-trafficking rings.

Now, despite this progress we have more to do. Each of us has a duty to act and to rise above partisan divisions and politically motivated "gotcha" games. The American people deserve better. It is time for a new dialog about these important issues, one that is respectful, responsible and factual. This will require us to apply the lessons that we have learned from law enforcement officers like the ones who sit behind me today, who protect public safety and our national security every day.

In that regard not only did ATF agents bring the inappropriate and misguided tactics of Operation Fast and Furious to light, they also sounded the alarm for more effective laws to combat gun trafficking and improve public safety. The ATF agents who testified before the House Committee on Oversight and Government Reform this summer explained that the agency's ability to stem the flow of guns from the United States into Mexico suffers from a lack of effective enforcement tools.

One critical first step should be for Congress to provide ATF with the tools and the authorities that it needs. Unfortunately, earlier this year the majority of House Members voted to keep law enforcement in the dark when individuals purchase multiple semiautomatic rifles, shotguns and long guns like AK-47s in gun shops in four Southwest Border States.

Going forward, I hope that we can work together to provide law enforcement agents with the tools that they desperately need to protect the country and to ensure their own safety. And for their sake we cannot afford to allow the tragic mistakes of Operation Fast and Furious to become a political sideshow or a series of media opportunities. Instead we must move forward and recommit ourselves to shared public safety obligations. I am willing to work with you in this effort.

I look forward to your questions.

Mr. SMITH. Thank you, Mr. Attorney General.

[The prepared statement of Mr. Holder follows:]



Department of Justice

STATEMENT FOR THE RECORD OF

ERIC H. HOLDER, JR.
ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

ENTITLED

"OVERSIGHT OF THE UNITED STATES DEPARTMENT OF JUSTICE"

PRESENTED

DECEMBER 8, 2011

Statement of
Eric H. Holder, Jr.
Attorney General
United States Department of Justice
Before the
Committee on the Judiciary
United States House of Representatives
at a
Hearing Entitled
"Oversight of the United States Department of Justice"
Presented on
December 8, 2011

Chairman Smith, Ranking Member Conyers, and members of the Committee. I appreciate the opportunity to appear before you today to describe the decisive action we have taken to ensure that the flawed tactics used in Operation Fast & Furious – and in earlier operations under the prior Administration – are never repeated.

For nearly three years, I have been privileged to work with this Committee to strengthen national security and law enforcement. I am extremely proud of our record of achievement.

In offices around the world, the Department's 117,000 employees have made historic progress in protecting the American people from a range of unprecedented threats – from global terrorism and violent crime, to financial fraud, human trafficking, and more. We have disrupted numerous potentially devastating terror plots and successfully prosecuted scores of dangerous terrorists. The Department's efforts on behalf of the most vulnerable among us, including victims of civil rights abuses and hate crimes, have never been more effective. And the partnerships we have built with state, local, and tribal law enforcement officials have never been stronger.

In our ongoing efforts to protect the American people and our brave law enforcement personnel, a critical area of focus will continue to be our battle against gun violence on the Southwest Border.

In recent years, the Department has devoted significant resources to this fight – and, specifically, to addressing the unacceptable rate of illegal firearms trafficking from the United States to Mexico. Unfortunately, in the pursuit of that laudable goal unacceptable tactics were adopted as a part of "Operation Fast and Furious."

As I have repeatedly stated, allowing guns to "walk" – whether in this Administration or in the prior one – is wholly unacceptable. The use of this misguided tactic is inexcusable. And it must never happen again.

Soon after learning about the allegations raised by ATF agents involved with Fast and Furious, I took action designed to ensure accountability. In February, I asked the Department's Acting Inspector General to investigate the matter, and in early March I ordered that a directive be sent to law enforcement agents and prosecutors prohibiting such tactics. More recently, the new Acting Director of ATF, Todd Jones, implemented reforms to prevent these tactics from

being used in the future, including training and stricter oversight procedures for all significant investigations.

Although the Department has taken steps to ensure that such tactics are never used again, it is an unfortunate reality that we will continue to feel the effects of this flawed operation for years to come. Guns lost during this operation will continue to show up at crime scenes on both sides of the border.

As we work to identify where errors occurred and to ensure that these mistakes never happen again, we must not lose sight of the critical challenge this flawed operation has highlighted: the battle to stop the flow of guns to Mexico.

Of the nearly 94,000 guns that have been recovered and traced in Mexico in the last five years, more than 64,000 were sourced to the United States. In the last five years, the trafficking of firearms across our Southwest Border has contributed to approximately 40,000 deaths.

The reforms we have undertaken do not make any of the losses of life more bearable for grieving families. These tragedies do, however, portray in stark terms the exceptionally difficult challenges that law enforcement agents confront every day in working to disrupt illegal firearms transfers. Operation Fast and Furious appears to have been a deeply flawed effort to respond to these very challenges. As we work to avoid future losses and further mistakes, it is unfortunate that some have used inflammatory and inappropriate rhetoric about one particular tragedy that occurred near the Southwest Border in an effort to score political points.

Nearly one year ago, working to protect his fellow citizens, U.S. Customs and Border Protection Agent Brian Terry was violently murdered in Arizona. We all should feel outrage about his death, and – as I have communicated directly to Agent Terry's family – we are dedicated to pursuing justice on his behalf.

The Department is also working to answer questions that the Terry family has raised, including whether and how firearms connected to Fast and Furious could end up with Mexican drug cartels. In her independent review, I expect the Department's Acting Inspector General to answer these questions.

I understand that Congress also wants answers. Justice Department employees have been working tirelessly to identify, locate, and provide relevant information to this Committee and the two other committees investigating Fast & Furious – all while preserving the integrity of ongoing criminal investigations and prosecutions.

The Department has been fully cooperative and responsive in its dealings with Congress. I have answered questions in the House and Senate on four occasions concerning this matter. To date, we have provided almost 5,000 pages of documents for congressional investigators to review. We have scheduled numerous witness interviews and testified at public hearings. And just last week, we provided unprecedented access to internal deliberative documents to explain how inaccurate information was initially conveyed to Congress. These documents demonstrate that Department personnel relied on information provided by supervisors from the components in the best position to know the relevant facts. We now know that some information provided by those supervisors was inaccurate. I understand that, in subsequent interviews with congressional investigators, these supervisors have stated that they did not know – at the time – that information included in the letter was inaccurate.

The documents produced to date also belie the remarkable notion that this operation was conceived by Department leaders, as some have claimed. It is my understanding that Department leaders were not informed about the inappropriate tactics employed in this operation until those tactics were made public and, as is customary, turned to those with supervisory responsibility over the operation in an effort to learn the facts.

But what's clear is that disrupting the dangerous flow of firearms along the Southwest Border, and putting an end to the violence that has claimed far too many lives, is – and will continue to be – a top priority for the Justice Department.

This year alone, we have led successful investigations into the murders of U.S. citizens in Mexico, created new cartel-targeting prosecutorial units, and secured the extradition of more than 100 defendants wanted by U.S. law enforcement – including the former head of the Tijuana Cartel. We've also built crime-fighting capacity on both sides of the border by developing new procedures for using evidence gathered in Mexico to prosecute gun traffickers in U.S. courts; by training thousands of Mexican prosecutors and investigators; by successfully fighting to enhance sentencing guidelines for convicted traffickers and straw purchasers; and by pursuing coordinated, multi-district investigations of gun-trafficking rings.

Despite this progress, we have more to do. And each of us has a duty to act, and to rise above partisan divisions and politically motivated "gotcha" games. The American people deserve better. It is time for a new dialogue about these important issues – one that is respectful, responsible, and factual.

This will require us to apply the lessons we've learned from law enforcement officers, like the ones who sit behind me today, who protect public safety and our national security every day. In that regard, not only did ATF agents bring the inappropriate and misguided tactics of Operation Fast and Furious to light, they also sounded the alarm for more effective laws to combat gun trafficking.

ATF agents who testified before the House Committee on Oversight and Government Reform this summer explained that the agency's ability to stem the flow of guns from the United States into Mexico suffers from a lack of effective enforcement tools. For example, earlier this year, the majority of House Members voted to keep law enforcement in the dark when individuals purchase multiple semi-automatic rifles and shotguns, long guns like AK 47's, in Southwest border gun shops in four states.

Going forward, I hope that we can work together to provide law enforcement agents with the tools they desperately need to protect the country and ensure their own safety. For their sake, we cannot afford to allow the tragic mistakes of Operation Fast and Furious to become a political sideshow or a series of media opportunities. Instead, we must move forward and recommit ourselves to our shared public safety obligations.

I am willing to work with you in this effort. I would be pleased to answer your questions.

Mr. SMITH. Other Members are going to ask you about Fast and Furious, so I am going to pick a different subject and ask you about the extent of Justice Kagan's involvement with the health care legislation.

My first question is this: To your knowledge, did then-Solicitor General Kagan ever give advice or express an opinion on legal or constitutional issues involving the health care legislation?

Attorney General HOLDER. I do not believe so. In fact, as I testified in the Senate last month, I guess, we took steps to physically exclude or have her remove what conversations——

Mr. SMITH. What month did that take place? When did you start excluding her from those types of meetings?

Attorney General HOLDER. I am not sure when that started, but my memory is that whenever we had conversations about the health care bill, then-Solicitor General Kagan was not present.

Mr. SMITH. And the reason for excluding her was because of her possible consideration for the Supreme Court?

Attorney General HOLDER. Yeah, I think that is right. We understood that that was a possibility.

Mr. SMITH. She testified that she first became aware of that possibility that she might be considered in early March, so you would not have excluded her prior to early March.

Attorney General HOLDER. Again, I don't know exactly when these events occurred, but I do feel comfortable in saying that in terms of conversations that occurred in my conference room about the health care legislation——

Mr. SMITH. Right, right. But would you have had any reason to exclude her, any reason to wall her off in the words that you were told by a deputy prior to the time that she was considered for the Supreme Court?

Attorney General HOLDER. Well, I can tell you that with regard to, as I said, the conversations that occurred in my conference room about the health care bill, I do not remember her being present for any of them.

Mr. SMITH. Okay. Would you be able to check your records to find out what the date would have been when you started telling her that she should either excuse or recuse herself from those discussions?

Attorney General HOLDER. We will attempt to do that. I am not sure that that information exists anyplace, but to the extent that it does, I will provide it to you.

Mr. SMITH. Okay. And would you have a record of any meetings, because of your schedule, that she attended?

Attorney General HOLDER. Would I have a record?

Mr. SMITH. Right, of any meeting that she attended. Because if you went back and looked at your schedule, I assume that that would be on your schedule.

Attorney General HOLDER. Yeah. The schedule for what is our 9/15 meeting lists the people who are expected to be there. I am not sure if we actually keep track of who actually does come.

Mr. SMITH. If you will give me the dates when you started telling her that. Again, I don't believe you would have any reason to exclude her before she was being considered for the Supreme Court vacancy. And as I mentioned in my opening statement, she would actually have a duty to be involved in conversations regarding the health care bill.

Let me go to another question. This goes to some of the correspondence that I had written you asking for documents and to be

allowed to interview both present and former staff members. But is the Department asserting a legal privilege in refusing to comply with my request for those documents and those interviews about then-Solicitor General Kagan's involvement with the health care legislation?

Attorney General HOLDER. Well——

Mr. SMITH. You know your letter to me did not assert any legal privilege.

Attorney General HOLDER. Yeah. The Department has released documents under FOIA relating to this matter, and those documents are certainly available to Members of the Committee. The documents that we have released are consistent with——

Mr. SMITH. I am not asking about the documents. Are you asserting a legal privilege; is that why you are refusing to give me those documents?

Attorney General HOLDER. Well, it is our view that in terms of trying to determine the answers to the questions that you have, that with regard to recusal questions, those are requests best brought by those who were involved in the context of the litigation.

Mr. SMITH. Right. So you are not asserting any legal privilege.

Attorney General HOLDER. Well, there are, it seems to me, separation of powers concerns given the fact that Members of Congress are amici—amicus, amici in the ongoing legislation, and so I would have concerns there with regard to separation of powers.

Mr. SMITH. What would be the legal privilege you are asserting if you assert one then?

Attorney General HOLDER. Well, all I am saying is that with regard to the information that is requested, it has been provided.

Mr. SMITH. Okay. So again, you are not asserting a legal privilege. Is there any reason, therefore, I should not get the documents or be able to interview the individuals that I requested to interview?

Attorney General HOLDER. Well, as I have said, that the Federal law provides for the resolution of these recusal questions, and each Justice has to make those kinds of——

Mr. SMITH. Right. I am not taking about recusal questions or what a Supreme Court Justice might or might not do. I am talking about my request for documents. I can't imagine any good reason why you would withhold them, unless you were to assert a legal privilege, and then we could discuss a legal privilege. But I haven't heard you say you are asserting any legal privilege.

Attorney General HOLDER. Well, the documents I think that you have requested have essentially been released under a FOIA that has been filed, and those documents are available.

Mr. SMITH. No, the documents that I requested may or may not have been released. That is what we are trying to find out is what other documents might exist. We also requested to interview two individuals, and you have not agreed to let us interview those individuals. But if you are not asserting a legal privilege, then I will move forward with scheduling those interviews and look forward to the documents.

Attorney General HOLDER. Well, we have not expressed, I guess, at this point a legal privilege. What we have expressed, as I indi-

cated before, are constitutional concerns about the nature of the request.

Mr. SMITH. I know, but concerns don't rise to the level of a legal privilege. We all have concerns about a lot of subjects. I have expressed some of my concerns today. But if you are not going to assert a legal privilege, then I don't see any reason why I shouldn't get those documents and conduct those interviews. Thank you for that.

The gentleman from Michigan Mr. Conyers is recognized for his questions.

Mr. CONYERS. Thank you, Mr. Chairman.

You have got here Chief Ralph Godbee, lots of other police chiefs and law enforcement people behind you. Would you tell us how you partner with them to fight violent crime and particularly gun running with State and local police officers who are on the front lines, sir?

Attorney General HOLDER. Well, the gentlemen who sit behind me and the people who they represent are essential partners in our fight against violent crime generally and against gun violence in particular.

The Federal Government relies on our State and local partners, who are obviously in the front lines in this fight. We try to support them in ways that we can, we try to come up with programs that protect their lives, but the reality is that in coming up with—and that is why I think these five gentlemen are so good to have here today. They are the ones who have come up with really innovative programs that we have tried to support and then tried to expand across the Nation. They are, first and foremost, great partners in this fight, and what they are doing in their cities are things that we are trying to replicate not only in other cities, but in the work that we are doing along the southwest border as well.

Mr. CONYERS. Thank you.

Tell me where is the Mexican Government in all of this gun running, and violence, and drug epidemics that goes on that usually starts in Mexico, but eventually gets to the U.S. and Southwest area? What is the Mexican Government's role and attitude? How do you work with them?

Attorney General HOLDER. They have also been good partners. President Calderon has, I think very courageously, committed his government to fight the cartels. He has done so in a way that has done, I think, at great political cost. It has certainly cost the lives of many Mexican law enforcement officials who have been a part of this battle. Forty thousand people in Mexico have lost their lives over the course of the last 5 years in connection with this fight.

The Mexican Government is committed to eradicating the cartels. We have worked with them in unprecedented ways in terms of extraditing people to the United States in cooperation, in sharing intelligence, and working with vetted units in Mexico. We have moved resources to the southwest border and have linked up with task forces with our Mexican partners.

So our interaction with the Mexican Government in dealing with these cartels is really unprecedented.

Mr. CONYERS. Well, I mentioned several things that we really ought to do in terms of getting on top of not just the drug—the gun

smuggling and gun walking, but the drug problem as well. And you are our chief law enforcement officer in the Nation. I know you are relying on State and local law enforcement as well, but what are the big issues? What is the big picture in terms of what it is we might want to consider in the Congress to help get on top of this and to help you and the Department of Justice get on top of not only the drugs, but the guns as well?

Attorney General HOLDER. Well, I think there are certain things that would be very helpful. There is no gun-trafficking statute now or even an express prohibition on straw purchasing. If Congress would consider legislation in that regard, I think that would be—that would be good. We have to rely now on paperwork violations to try to get at gun traffickers, and the sentences that are typically given for those kinds of technical violations are far too low for the serious nature of the crimes.

It is far too easy for criminals to get their hands on weapons. Congressional support for the regulation that we put in place along those—in those four Border States to deal with the long guns, the long guns that can be purchased there, a regulation that is consistent with what we already do with regard to handguns is something that congressional support would be important for.

So the possibility of having ways in which we could have a good dialogue about effective measures that would reduce the flow of guns to Mexico, make this Nation more safe, protect the lives of people in law enforcement in this country, and respect the Second Amendment at the same time is something that I think a meaningful good dialogue with Members of the Committee would be very productive.

Mr. CONYERS. I am glad you mentioned the Second Amendment so that my friend and colleague Darrell Issa won't be nervous about the other strategies that you will be using.

Mr. ISSA. I will still be nervous.

Mr. CONYERS. I thank you very much, General Holder, and I return the balance of my time.

Mr. SMITH. Thank you, Mr. Conyers.

The gentleman from Wisconsin Mr. Sensenbrenner is recognized for his questions.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

Mr. Holder, I deeply appreciate your coming here to talk largely about Fast and Furious, and the way this has been handled within the Justice Department, I think, has put the Justice Department as an institution under a cloud that has not been exceeded since the infamous COINTELPRO scandal of the 1970's.

You are at the top of the Justice Department. Do you think the buck stops with you?

Attorney General HOLDER. I am ultimately responsible for all of the actions that occur within the Department, but I think as you look at what happened with regard to Fast and Furious and try to decide what kind of performance I have done in this regard, I think you have to look at what happened, what I did once I learned of these matters.

Mr. SENSENBRENNER. Well, that is a question of when you learned it, because there have been inconsistent submissions to Congress. You know, you yourself testified that you had only heard

about it a few weeks earlier, and then in November you said it probably was a few months. As late as October 7, in response to allegations that you lied on May 3, you wrote to Congress your statements on Fast and Furious have been, quote, "truthful and consistent." And then your underlings on February 4, Assistant AG Ronald Weich, responded to Senator Grassley denying that the ATF had walked guns, and that letter ended up being withdrawn.

As Mr. Issa has said, lying to Congress is a Federal felony. You know, I don't want to say that you have committed a felony, Mr. Attorney General, but obviously there have been statements so misleading that a letter had to be withdrawn.

You know, I think that some heads should roll. And I do agree with Senator Grassley that Assistant Attorney General for the Criminal Division Lanny Breuer should be fired. And I know that that decision is not yours, but it is the President's, but I think that merely getting the head of the ATF Director at the time is not sufficient since it is obvious that there was knowledge within the Justice Department.

What are you going to do to clean up this mess?

Attorney General HOLDER. Well, first let me make something very clear, and in response to an assertion that you made, or hinted at, nobody in the Justice Department has lied.

Mr. SENSENBRENNER. Then why was the letter withdrawn?

Attorney General HOLDER. The letter was withdrawn because there is information in there that was inaccurate. The Justice Department letter of February 4——

Mr. SENSENBRENNER. Okay. Well, tell me what is the difference between lying and misleading Congress in this context.

Attorney General HOLDER. Well, if you want to have this legal conversation, it all has to do with your state of mind and whether or not you had the requisite intent to come up with something that can be considered perjury or a lie.

The information that was provided in that February 4 letter was gleaned by the people who drafted the letter after they interacted with people who they thought were in the best position to have the information.

Mr. SENSENBRENNER. Well, okay. The wagons down the street are in a pretty tight circle, you know, Mr. Attorney General. The American people need the truth. They haven't gotten the truth from what has been coming out of the Justice Department in the last year, and they were relying on Congress to get the truth. Now, you are here today, and, again, I appreciate your being here today as a way to get the truth, but the answers that you have given so far are basically saying, well, gee, somebody else did it, and, you know, there is really no responsibility within the Justice Department.

You know, the thing is is that if we don't get to the bottom of this, and that requires your assistance on that, there is only one alternative that Congress has, and it is called impeachment, where our subpoena powers are plenary, and there can't be any type of legal immunity or privilege that can be asserted on that. Now, you know, I have done more impeachments than anybody else in the history of the country. It is an expensive and messy affair, and I don't want to go this far, but if we keep getting pushed down the

road, and the can keeps on getting kicked, and we don't get closure to this, what is Congress to do so that we don't spend all of our time in court arguing privilege, which is not a way to get at the truth?

Attorney General HOLDER. Well, the Justice Department has released facts, and I think that is what we need to focus on, facts. As part of the creation of the February 4 letter, I made the determination that we would release things that a Justice Department has never, ever released before, deliberative—core deliberative material about how that letter was put together, information that clearly could have been withheld and has always been withheld by my predecessors, and I expect by my successors as well.

Getting to the bottom of this is something that we all want to do. The inspector general, pursuant to my request, is conducting an investigation of this matter, and I suspect we will have a great many more answers than we presently do. I don't have the ability to do a top-to-bottom investigation at this point out of deference to the investigation that is being done by the inspector general. That does not, however, preclude me from taking action that I think appropriate based on information that comes to my attention in spite of the fact that the inspector general has an ongoing investigation.

Mr. SENSENBRENNER. Well, you won't have an independent counsel, and we end up having the Justice Department investigating itself in the absence of an independent counsel. And, you know, having gone through interminable hearings on COINTELPRO, with all due respect, Mr. Attorney General, you have got to get this done much more quickly than plugging the holes that COINTELPRO ended up showing existed in the Department at that time.

I yield back.

Ms. JACKSON LEE. Mr. Chairman, I have a parliamentary inquiry.

Mr. SMITH. For what reason what does the gentlewoman from Texas seek to be——

Ms. JACKSON LEE. I seek clarification. The gentleman in his questioning indicated impeachment. I was not sure which official or which person he was speaking of in terms of impeachment.

Mr. SMITH. The gentleman from Wisconsin was referring to the fact that while he was Chairman of this Committee, he oversaw the impeachment process.

Ms. JACKSON LEE. Continuing my inquiry. The statement that the only one alternative is impeachment, I am trying to——

Mr. SMITH. That is not a parliamentary inquiry.

The gentleman from California Mr. Berman is recognized.

Ms. JACKSON LEE. Clarification.

Mr. BERMAN. Thank you, Mr. Chairman. I would like to yield a little time to the Ranking Member on this issue.

Mr. CONYERS. Thank you, Howard Berman.

I merely wanted to clear the record with Jim Sensenbrenner. I have had far more impeachment experience than he has.

Mr. SENSENBRENNER. Would the gentleman yield?

Mr. BERMAN. The answer is only if the Chairman allows my time to be extended.

Mr. SMITH. The gentleman from California recognized for a full 5 minutes, that is correct.

Mr. BERMAN. Thank you, Mr. Chairman.

We have heard a lot, some of it quite unbelievably overblown. I would like to give you some of the truth as I see it.

You are on record as admitting that the Fast and Furious program was a fundamentally flawed program. Fast and Furious is only one program in many undertaken by the U.S. law enforcement authorities not only to limit the harm of illegal gun trafficking, but also, most importantly, achieve the broader goal of protecting U.S. and Mexican citizens.

There has got to be a little perspective on what is going on in the U.S.-Mexico relationship on this issue. Once President Calderon made the historic decision to take the fight directly to the drug cartels, law enforcement both in Mexico and the United States became more complicated and more dangerous. And the fact is—and I see it from a Foreign Affairs Committee perspective as well as from this perspective—that U.S.-Mexico law enforcement cooperation and general cooperation is wider and deeper today than it has ever been in the history of our two nations.

The Department of Justice has apprehended and extradited an unprecedented number of criminals, including some of the most dangerous cartel leaders. They have successfully investigated violent crimes committed against American nationals in Mexico and along the border. They have trained hundreds of Mexican prosecutors and police officers, many of whom work side by side with U.S. counterparts on these shared goals. The level of intelligence sharing and cooperation is unprecedented at this particular time.

We also have to acknowledge the negative impact caused by the significant stream of guns going into Mexico from the United States. Every day thousands of guns are smuggled across the United States border into Mexico, making citizens of Mexico and the United States less safe. The U.S. Southwest Border States, Texas, New Mexico, Arizona and California, are the top four source locations for firearms received and traced in Mexico back to the United States.

General Holder, I am wondering if you could develop—I think you got into this a little bit with Ranking Member Conyers—what could the Congress be doing in terms of funding, in terms of passing laws to help make this a successful endeavor? I would like you to just expand on some of those specific issues. Are we giving you the resources you need to make this cooperation produce the goal that both countries' governments share?

Attorney General HOLDER. Well, frankly, no.

We have sought additional legislative enhancements to our abilities to deal with the gun trafficking problem, as I indicated to the Ranking Member. We have also sought funds to increase the number of ATF agents who operate in these teams along the Southwest border. I think we requested funds so that we would have 14 of these teams. That number was reduced, based on the funding level that we got, to about seven or eight, I believe, which decreased our ability to act or interact effectively or as effectively as we might with our Mexican counterparts.

So there are funding issues, there are issues with regard to the confirmation of an ATF Director, a permanent ATF Director. There are legislative statutory tools that we could use from Congress and

that we have proposed. All of these things would help us in our fight against the gun trafficking problem that you have I think so rightfully identified.

Mr. BERMAN. The only thing I guess I would just close with the simple statement that as we pursue responsibly our oversight responsibilities on a program that you have stated was fundamentally flawed, that we keep in mind our obligations as a Congress to help something that I think there is a broad consensus must continue, must expand, and must achieve the goals that our two governments are committed to, and to have some perspective on what is going on. That perspective seems to have been lost in some of the rhetoric that has come in recent months.

Mr. ISSA. Would the gentleman yield?

Mr. BERMAN. I yield back.

Mr. ISSA. Would the gentleman yield?

Mr. BERMAN. Do I have time to yield?

Mr. ISSA. You do.

Mr. SMITH. The gentleman has 5 seconds left.

Mr. BERMAN. I yield.

Mr. ISSA. I would just make the point that Fast and Furious is not a program. We have been repeatedly told it is less than a program; it is just an operation, just an operation.

Mr. SMITH. The gentleman is recognized for an additional 30 seconds.

Mr. BERMAN. I take your point. I just don't quite understand it.

Mr. ISSA. Just that when we try to——

Mr. SMITH. The gentleman from California has the time.

Mr. ISSA. Would the gentleman continue to yield?

I thank the gentleman. The point that I am making is there is a wide question of a lot of things that go on at Justice. And I agree with the gentleman that we need to look at the overall management of Justice. But this small operation and the refusal to give us the truth early on has caused it to be a bigger——

Mr. BERMAN. I appreciate the time. I also would love to hear about Congress' agenda to make this cooperation truly as effective as it could be, funding, the legislation regarding the paper trail on guns and all the other things that the General mentioned that we should be doing.

Mr. SMITH. Thank you, Mr. Berman.

The Judiciary Committee will stand in recess until immediately after this series of four votes. I do not expect to take a lunch break. So when we return, we will proceed until the next series of votes, about 1:15. We stand in recess until after these votes.

[Recess.]

Mr. SMITH. The Judiciary Committee will come to order. And the gentleman from North Carolina, Mr. Coble, is recognized for his questions.

Mr. COBLE. Thank you, Mr. Chairman.

Good morning, General.

Attorney General HOLDER. Good morning.

Mr. COBLE. General, the FBI, as you know, operates under Attorney General guidelines for most or all of their investigative activities. The objective of these guidelines is the full utilization of all authorities in investigative matters consistent with the Constitu-

tion and the laws of the United States. It furthermore ensures that activities must be lawful and reasonable, and respect liberty and privacy, and avoid unnecessary intrusion into the lives of law-abiding citizens. They enable the FBI to perform its duties with effectiveness, certainty, and confidence. The purpose of these guidelines, though it appears apparent, is to establish consistent policies in such matters. General, does the ATF and/or other Department of Justice law enforcement components operate under these guidelines?

Attorney General HOLDER. There are general guidelines that exist within the Department and that control the activities of the various investigative agencies that are part of the Department, the Marshals Service the DEA, the ATF, and the FBI. There might be some that apply specifically to the FBI given its unique mission with regard to counterterrorism and intelligence that might not apply to the other components.

Mr. COBLE. I think you may have already answered this one, but are the guidelines identical investigative activities, or may one agency do something that another cannot do under similar circumstances? And if they differ, how do they differ from the guidelines under which the FBI operates?

Attorney General HOLDER. There are general guidelines that handle or control the way in which investigations are to occur. For instance, if we are looking at Fast and Furious, those were outside the guidelines certainly that apply to ATF, but they would also be outside the guidelines that would apply to the Drug Enforcement Administration, to the FBI as well. One of the things that we have tried to do in this reform of ATF, and under the leadership of Todd Jones, is come up with a whole set of new policy changes and recommendation—and rules with regards to how ATF itself can handle and conduct certain investigations.

Mr. COBLE. General, if I would have had two words to describe Fast and Furious, it would be reckless at best, and a disaster at worst. But firearms, I am told, sold under the Fast and Furious program were included in ATF statistics on the retail sale of firearms and related regulations. Now that we know that ATF apparently skewed the statistics, particularly about long gun sales, will these statistics be scrapped or abandoned?

Attorney General HOLDER. I don't if that in fact is true, but the 2,000 weapons or so that were involved in Fast and Furious should not be counted as part of that overall number. And to the extent that that is true, we would pull—I don't know if that is true or not.

Mr. COBLE. General, have you implemented any policy to end programs such as Fast and Furious? And these changes, are they permanent or temporary?

Attorney General HOLDER. Well, as I said, in addition to the things that Todd Jones has put in place that deals with certainly the problems that are I think most egregious about ATF, he talks about the way in which surveillance has to occur when you are monitoring trafficking, gun trafficking operations, I released in March of this year a field directive through the Deputy Attorney General that indicated that gun walking, as we have come to call that practice, is prohibited, and made sure that every agent in the Justice Department, every prosecutor in the Justice Department

understands that. So it is clear that gun walking is not acceptable, was never acceptable, but is certainly not acceptable after my policy pronouncement in March of this year.

Mr. COBLE. General Holder, earlier this year, August, I believe, you named Todd Jones as the new director of ATF. This appears irregular because he currently continues to serve as U.S. Attorney for that area in Minnesota, while at the same time—he is wearing two hats, in other words. Am I missing the mark, or is this irregular?

Attorney General HOLDER. It is irregular. I mean, we have a nominee, a very qualified person who could be the head of ATF. I thought a management change was necessary at ATF. And in the absence of a confirmed head, I had to go with who I thought was best for the organization. Todd is a very experienced prosecutor. He is a great U.S. Attorney.

But you are right; he is in fact wearing two hats. He is working extremely hard. But I think he has made meaningful changes at ATF. He has lifted morale. He has put in place a set of regulations that would prevent the mistakes from the flawed Fast and Furious operation I think from ever occurring again. But you are right, it is irregular. And given my druthers, I would rather have a confirmed, permanent head at ATF.

Mr. COBLE. Thank you, General.

I see my red light has illuminated, so I will yield back.

Mr. SMITH. Thank you, Mr. Coble.

Another gentleman from North Carolina, Mr. Watt, is recognized for his questions.

Mr. WATT. Thank you, Mr. Chairman.

And Mr. Chairman, I had hoped the way my colleague from North Carolina started his questioning, that we were going to treat this as a general oversight hearing, which is the way my memo said it was going to be, rather than an inquiry into one single subject. So I want to spend my time asking about some other things unrelated to Fast and Furious, because there are a number of other important things going on in life.

And some of those things the Attorney General and his staff have made tremendously good decisions about. One of those is to have all these police chiefs sitting behind you today, one of whom is from my hometown of Charlotte, North Carolina. And for the Members on the Democratic side at least, they will certainly get to know Chief Rodney Monroe when they come to Charlotte for the Democratic National Convention. So I want to applaud the work that he is doing to prepare us for that significant national event.

Perhaps the police chief from Tampa is behind you also—I don't know him—he will be doing that counterpart work for the Republicans at the Republican National Convention. But that is a massive, massive undertaking.

And I know that the Attorney General's Office, the Department of Justice, Secret Service, all of the Federal authorities are working well, based on everything I have heard, to prepare for those big security events. And I want to say publicly how much I applaud that.

Second, there are a number of things going on on an issue that we are dealing with or trying to deal with in this Committee dealing with online piracy. And we have some proposed legislation. I

won't ask you to comment on that. But I would ask you to comment briefly on the extent of the problem and briefly on what the Department of Justice is doing to try to combat online privacy until we can get the bill passed. And I say comment briefly, because I have got one other subject that I want to get to related to redistricting, and voter suppression, and the preclearance process under the Voting Rights Act. Perhaps those issues, voter suppression in particular, may not be as important to some of my colleagues on this Committee as Fast and Furious and guns, but for a number of people in this country who would like to have the opportunity to vote, they are very serious issues.

So why don't I just ask you to comment on what is happening in both of those areas, online piracy and the voter suppression, redistricting, and preclearance process.

Attorney General HOLDER. We have been, I think, very aggressive with regard to our law enforcement efforts concerning intellectual property concerns. In February 2010, I established the Department's task force on intellectual property. I traveled to China I guess sometime last year, was at the White House I think 2 weeks or so ago to announce a program where I cut some radio spots, in addition to television spots that were done by others to talk about the whole question of piracy. And I think we have to understand the significance of it. It is a moral and legal problem there, but it is also a job killer. When things like intellectual property are stolen by other countries, by other people in this country, inappropriately, it costs jobs. It inhibits creativity. And so we have looked at it in a variety of ways.

I work with Victoria Espinel, who heads up the White House effort in this regard. And this is a priority item for us. I would certainly like to work with you with regard to the bill that you mentioned and see if we can come up with a way in which we put more teeth into our enforcement efforts. With regard to the whole question of voter suppression and challenges, we have filed a number of lawsuits with regard to changes under covered districts covered by the Voting Rights Act. I actually will be giving a speech at the LBJ Library on Monday and talking about this in a more fulsome way.

The Justice Department has the responsibility under the Voting Rights Act to look at proposed changes in voting schemes that are in areas covered by the Voting Rights Act. And there is only so much I can say there because we have to act in a neutral way or almost act as judges in that regard. I can tell you, though, that I am concerned about some of the things that I have seen, without getting into specifics about any one. I was a prosecutor in the public integrity section, and I actually investigated and prosecuted voter fraud cases when I was a young prosecutor. And I am concerned that some of these changes go far beyond that which exists in terms of vote fraud. I think we need to have some kind of notion of proportionality. And the arc that we have seen over the course of this country has always been to increase the number of people who have the ability to vote, whether it is, you know, after the Civil War, the enfranchisement of women, we have always tried to make it easier. And I am concerned that these recent efforts are going to have a negative impact. And I think ultimately that is not

good for our democracy. We want as many people as we can to have their voices heard in the most important way, and that is by casting votes.

Mr. WATT. Thank you, Mr. Chairman.

I yield back.

Mr. SMITH. Thank you, Mr. Watt.

The gentleman from California, Mr. Gallegly, is recognized.

Mr. GALLEGLY. Thank you very much, Mr. Chairman.

Good morning, General Holder. You know, General, I continue to hear from ICE agents, from many ICE agents, that they are frustrated that they have had significant difficulty with U.S. Attorneys prosecuting work site enforcement cases. Can you give us specific, and I want to emphasize the word specific, data regarding the number of prosecutions DOJ have accepted and how many they have declined?

Attorney General HOLDER. Well, if you allow me to respond to that after the hearing in a written fashion, I am sure I can come up with some numbers. But I don't have those numbers.

Mr. GALLEGLY. I can completely understand that. But I would, for the sake of the record of this hearing, appreciate that information as soon as you can get it to us.

As everyone clearly understands, welfare fraud is playing a major role in our ability to continue providing service, the level of service that is necessary in Medicare, and the fact that fraud is playing a significant threat as it relates to the solvency of that fund. There have been several estimates that exceed well in excess of $60 billion annually in fraud. And I am sure you are aware of that.

There is also evidence that organized crime, including gangs from Russia and other Eastern European countries and other places as well, that they are finding that filing fraudulent claims is a fast and quick way to make a lot of money. And most of that money is going offshore. Can you give us any detail as to what DOJ is doing in prosecuting these offenders and working with local law enforcement? I have met with my local people in the Los Angeles area. They are very frustrated. How much effort is really being put into it, and what success are you having with dealing with the issue of Medicare fraud?

Attorney General HOLDER. Congressman, you are right to point that out as an issue that is of great concern. It is one that we have tried to focus our attention on. We work with our partners at HHS. Secretary of HHS Sebelius and I have been to a number of places to raise the consciousness of local officials, work with our Federal partners to deal with this problem. It is a multibillion dollar issue. And given the problems that we have with the solvency of those programs, this is a problem that we have to get a handle on. We have put together what we call the HEAT task forces around the country. I think we are in about 13 cities now. I think that is about right. And that is the way in which we identify the places where we see the greatest amount of fraud. We then deploy these task forces to those places. Interestingly, they proved to be pretty effective. But the problem is the fraudsters tend to move from that site and go to another city.

But the concern you raise is a very real one. And it is something that we have to pay attention to and for which I hope we will receive adequate funding, both at HHS and at DOJ.

Mr. GALLEGLY. I appreciate the assessment that many of these are moving onto other cities. But I am sure it won't come as any news flash that that isn't necessarily the case in areas like Los Angeles. They may move, but it may be across the street or into another pigeon hole where millions and millions of prescriptions are filled, or never filled, in storefronts that have maybe 150 square feet in them that is providing so-called Medicare benefit or Medicare recipients in the thousands. So how would you describe the level of success you feel that you are having with resolutions to these folks that you are after? How many are you really—for instance, in Los Angeles how many major rings have you been able to shut down and put in jail?

Attorney General HOLDER. Again, I would have to maybe provide you with some specific information after the hearing with regard to how successful we have been in Los Angeles. But I think the way in which you have described the issue, and as these intracity moves, moving from one place in Los Angeles to another place, this notion of storefronts exactly describes the problem, where people come in for—allegedly come in for services that aren't rendered, and the government is billed for them, everything from blood transfusions to the use of prosthetics. There are a whole variety of scams that are used. And the way in which you have described it, especially with regard to storefronts in these strip malls, I mean, those are the kinds of things that we are trying to confront. I will get you the information about——

Mr. GALLEGLY. If you would be kind enough to get us information. I would like some specificity as it relates to durables, prescriptions, and things such as mammograms to people that are repeatedly received as many as three and four mammograms in 1 week. I see my time has expired. Yield back.

Attorney General HOLDER. I would just say you identified something that really has to be a priority for the Justice Department. And I hope that Congress will support our funding request and HHS's funding request. The money that we spend in these enforcement efforts, we save huge amounts of money down the road by just investing relatively small amounts of money in prevention and enforcement. It makes the programs that much more financially stable.

Mr. GALLEGLY. I look forward to seeing the data.

And I yield back, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Gallegly.

Mr. ISSA. Mr. Chairman?

Mr. SMITH. For what purpose does the gentleman from California seek recognition?

Mr. ISSA. Thank you, Mr. Chairman.

I would like to renew my request that Mr. Farenthold be able to sit on the dais. Apparently, Mr. Schiff has left—Mr. Schiff is there, but we have a number of seats that are vacant on this side. And since he won't be asking questions, any position would normally be fine.

Mr. SMITH. Mr. Issa, I talked to the gentleman from Texas, and actually, I was just getting ready to recognize him. And he has requested, and I want to recognize the gentleman from Texas, my colleague, Blake Farenthold, who is an active member of the Oversight and Government Reform Committee. And he is sitting on the front row.

Blake, give us a wave.

And appreciate his being here. And he is, I think, happy to observe the Committee from where he is sitting.

Mr. ISSA. He looks better on the dais, though, Mr. Chairman.

Mr. SMITH. Thank you.

Mr. ISSA. I thank the gentleman.

Mr. SMITH. Okay.

The gentlewoman from Texas, Ms. Jackson Lee, is recognized for her questions.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, and to the Ranking Member, for the opportunity.

Mr. Attorney General, let me first of all thank you for your service and thank those who are sitting so prominently behind you. I work with chiefs of police as a former judge in my community. I think my former mayor, Mayor Lee P. Brown was a drug czar, but he was also the head of the Major Chiefs Association. He had the uncanny ability of being mayor and chiefs of police in New York, Houston, and Atlanta. And I notice our good friend that was formerly the police chief here in the city—the District of Columbia has now moved onto Philadelphia. But I was looking at the timeline, and this will not be my total lineage of questioning, but I was looking at the timeline of operation Fast and Furious. Could you tell me when you were sworn in as the Attorney General of the United States of America?

Attorney General HOLDER. In February of 2009.

Ms. JACKSON LEE. And I noticed that the ATF launched Project Gunrunner in 2005. Were you in the Justice Department in 2005? I don't recollect that you were.

Attorney General HOLDER. No, I wasn't.

Ms. JACKSON LEE. So this is an ongoing program that started in essence under the Bush administration?

Attorney General HOLDER. Well, Gunrunner started under the Bush administration, and Wide Receiver started under the Bush administration. Fast and Furious started under—during the Obama administration.

Ms. JACKSON LEE. And then there was some morphing. It is sort of a continuity of sorts, because I think they had sort of the same intent, if I am not mistaken.

Attorney General HOLDER. Right. Operations with the same aim, which was designed to stop the flow of guns from the United States to Mexico.

Ms. JACKSON LEE. I am looking at some news articles. And I am reading some numbers that are absolutely overwhelming. And one number says that nearly 40,000 have been killed in gangland drug warfare. Is that a crisis from your perspective?

Attorney General HOLDER. It is a crisis of immense proportions. These are 40,000 people killed in Mexico over the last 5 years. But it is a national security concern for the United States of America.

Ms. JACKSON LEE. And I think you made it very clear that the horrific infractions, failings of Fast and Furious, you are doggedly, along with the IG, on the process, doggedly pointing and looking to investigate what the flaws may have been.

Attorney General HOLDER. That is correct. I have described it as a flawed investigation, flawed in concept, flawed in execution.

Ms. JACKSON LEE. You made the record very clear.

Attorney General HOLDER. It is something that—where mistakes were made. And we have to find out where those mistakes were made. And then I am going to hold people accountable in that regard.

Ms. JACKSON LEE. And likewise, we have offered our sympathy to any fallen officer, but in particular to our fallen officer that was murdered in Arizona.

Attorney General HOLDER. Officer Terry.

Ms. JACKSON LEE. And I offer, as well as we did when we lost an officer that suffered in the Customs and Border, in the incident in Mexico that happened as well, that was an issue that we confronted on the Homeland Security Committee.

I just want to make sure I offer into the record, you mentioned what we can do in terms of no national gun trafficking law, and I would ask the Chairman that our Committee begin hearings on that because we need to be a partner with you. But I would like to put into the record that we recently passed, Mr. Secretary, H.R. 82, which allows anyone to carry a gun into another State where they have a permit. I see uniformed officers behind you. My argument was that this might jeopardize our uniformed officers and also violate States' rights. I have here a list of opponents that include 56 major chiefs of police. This bill was passed on the floor of the House. I would ask the Chairman to allow me to put this list again in the record regarding opposing H.R. 822.

Mr. SMITH. Without objection, the document will be made a part of the record.

[The information referred to follows:]

Opponents of H.R. 822

Police Organizations

- International Association of Chiefs of Police
- Major Cities Chiefs Association, which represents police executives of 63 of the largest urban areas in the United States, including:
    - Atlanta, Georgia
    - Austin, Texas
    - Baltimore, Maryland
    - Baltimore County, Maryland
    - Boston, Massachusetts
    - Buffalo, New York
    - Cincinnati, Ohio
    - Charlotte/Mecklenberg, N.C.
    - Cleveland, Ohio
    - Columbus, Ohio
    - Dallas, Texas
    - Denver, Colorado
    - Detroit, Michigan
    - El Paso, Texas
    - Houston, Texas
    - Fairfax County, Virginia
    - Indianapolis, Indiana
    - Jacksonville, Florida
    - Kansas City, Missouri
    - Las Vegas, Nevada
    - Long Beach, California
    - Los Angeles County, California
    - Memphis, Tennessee
    - Miami-Dade, Florida
    - Milwaukee, Wisconsin
    - Montgomery County, Maryland
    - Nashville, Tennessee
    - Nassau County, New York
    - New Orleans, Louisiana
    - New York City, New York

- Newark, New Jersey
- Oakland, California
- Philadelphia, Pennsylvania
- Pittsburgh, Pennsylvania
- Portland, Oregon
- Prince George's County, Maryland
- St. Louis, Missouri
- Salt Lake City, Utah
- San Antonio, Texas
- San Francisco, California
- San Jose, California
- Tucson, Arizona
- Virginia Beach, Virginia
- Washington D.C.

- Police Foundation
- National Association of Women Law Enforcement
- International Association of Campus Law Enforcement Administrators

State and Local Police Organizations and Individuals

- Alabama: Alabama Association of Chiefs of Police
- California: California Police Chiefs Association
- Colorado: Colorado Association of Chiefs of Police, Bellingham, CO Police Chief Todd Ramsey, Broomfield, CO Police Chief Thomas Deland, Colorado Springs Police Chief Richard Myers, Wheat Ridge, CO Police Chief Don Brennan
- Florida: Daytona Beach, FL Police Chief Mike Chitwood, Miami, FL Police Chief Manuel Orosa, Tampa, FL Police Chief Jane Castor
- Maryland: Maryland Chiefs of Police Association, Maryland Office of Crime Control and Prevention
- Massachusetts: Boston Police Commissioner Edward Davis, New Bedford, MA Police Chief David Provencher, Revere, MA Police Chief Terence Reardon
- Minnesota: Minnesota Chiefs of Police Association, Minneapolis Chief of Police Timothy Dolan, Duluth Police Chief Gordon Ramsay
- Nevada: Nevada Sheriffs' and Chiefs' Association, Las Vegas Metropolitan Police Department Sheriff Douglas Gillespie
- Pennsylvania: Pennsylvania Law Enforcement Gun Policy Group, Philadelphia, PA Chief Charles Ramsey, York, PA Police Chief Wes Kahley, Reading, PA Police Chief William Heim
- Virginia: Virginia Association of Chiefs of Police
- Wisconsin: Wisconsin Association of Chiefs of Police, Milwaukee County Law Enforcement Executives, Milwaukee, WI Police Chief Edward Flynn

Domestic violence abuse victims advocates that oppose this legislation include:

- **Colorado Coalition Against Domestic Violence**
- **National Network to End Domestic Violence**, representing 56 state and territorial domestic violence coalitions.
- **Minnesota Domestic Abuse Project**
- **Protect Minnesota**
- **New York State Coalition Against Domestic Violence**
- **Pennsylvania Coalition Against Domestic Violence**
- **People Against Domestic and Sexual Abuse (WI)**
- **Wisconsin Coalition Against Domestic Violence**
- **The Women's Center (WI)** \

Mayors

- More than 600 leaders of big cities and small towns across America are united in opposition to stripping communities of the ability keep themselves safe.
- Mayors are perfectly positioned to hear and respond to the needs of their communities, not politicians in Washington with gun lobbyists buzzing in their ears. Their highest responsibility is to enforce laws that protect their citizens, and they say this legislation would put people at risk by putting more guns in the hands of people who would not qualify for a local permit.

Faith leaders that oppose this legislation include:

- Faiths United, a coalition of more than 30 major religious organizations:
    - African Methodist Episcopal Church
    - American Baptist Churches of the South
    - American Friends Service Committee
    - Baptist Peace Fellowship of North America
    - Catholic Health Association of the United States
    - Catholics in Alliance for the Common Good
    - Church of the Brethren
    - Church Women United
    - Conference of Major Superiors of Men (CMSM)
    - Disciples Home Mission, Christian Church (Disciples of Christ)
    - Dominican Sisters of Peace
    - The Episcopal Church
    - Franciscan Action Network
    - Friends Committee on National Legislation (FCNL)
    - Health Ministries Association
    - Heeding God's Call
    - Imam Makram N. El-Amin (MN)

- International Parish Nurse Resource Center
- Islamic Society of North America
- Jewish Reconstructionist Federation
- Leadership Conference of Women Religious
- Maine Council of Churches
- Mennonite Central Committee, Washington Office
- National Advocacy Center, Sisters of the Good Shepherd
- National Council of Churches Of Christ in the U.S.A.
- National Episcopal Health Ministries
- NETWORK, A National Catholic Social Justice Lobby
- Presbyterian Church USA
- 28 Presbyterian Church Leaders (VA)
- Progressive National Baptist Convention
- Rabbinical Assembly
- Union for Reform Judaism
- Unitarian Universalist Association
- United Church of Christ – Justice and Witness Covenanted Ministry
- United Methodist Church – General Board of Church and Society
- United Methodist Church – United Methodist Women
- United Synagogue of Conservative Judaism
- World Sikh Council – American Region

- Rev. James Coen - Oak Ridge Presbyterian Church, *Oak Ridge, New Jersey*
- Vernon Williams - Perfect Peace Ministry, *New York, New York*
- Pastor Harry Eberts - Lyndhurst Community Presbyterian Church, *Cleveland, Ohio*
- Rabbi Michael Ungar - Congregation Tifereth Israel, *Columbus, Ohio*
- Imam Makram N. El-Amin - Mosque Masjid An Nur, *Minneapolis, Minnesota*
- Chairperson and Rev. James McIntire – Heeding God's Call, *Philadelphia, Pennsylvania*
- Rev. Jesse L. Jackson - Chicago Rainbow PUSH Coalition, *Chicago, Illinois*
- Rabbi Howard Apothaker (OH)
- Reverend Andrew Miller, Bishop of Milwaukee (WI)
- Reverend Gene Savoy, Jr. (NV)

Prosecutor organizations and leaders opposed to this legislation include:

- National Organizations
  - Association of Prosecuting Attorneys
  - American Bar Association

- Iowa: Attorney General Tom Miller
- Minnesota: Minneapolis Office of the City Attorney Susan Segal
- Minnesota: Minneapolis Department of Civil Rights
- New York: New York State District Attorney's Association
- New York: Attorney General Eric Schneiderman
- New York: New York County District Attorney Cyrus R. Vance, Jr.
- New York: New York State Law Enforcement Council
- New York: Former New York County District Attorney Robert Morris Morgenthau
- Pennsylvania: Philadelphia, PA District Attorney Seth Williams

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Ms. JACKSON LEE. Let me ask you how that compounds, potentially, the idea, having gone to the other body, potentially the damage and the devastation that may impact local chiefs and law departments who are on the streets every day.

Attorney General HOLDER. Well, the concern that we certainly have with regard to officer safety, something that we have focused on a lot at the Justice Department in the last couple of years, we have seen historic drops in the crime rate. Over the last 2 years,

however, we have seen, unfortunately, a tragic rise in the number of officers who have been killed in the line of duty. And we have seen a spike in that rise over the course of this year.

Ms. JACKSON LEE. And I am not going to cut you off. My time is short. I just want to put this comment to my good friend from Wisconsin who compared this, the most major devastating incident in the Department of Justice since COINTELPRO—I happened to be a person that was on the select committee on assassinations for King and Kennedy, as a staffer, and I know full well what COINTELPRO was, and also dealing with the incident in terms of gun running in the Reagan administration. But the point I want to make is when an Attorney General covers up a torture memo, I believe that we should not so lightly point to an incident happening in your department where you are fully investigating it. I questioned Secretary—excuse me, Attorney General Gonzales, with great respect for him, over and over again about the happenings in the hospital with then-Attorney General Ashcroft—and this was when Gonzales became Attorney General—regarding the torture memo, which was an enormous international, if you will, incident. And I could never get the truth on that particular set of circumstances.

So let us not compare the full investigation that you are engaged in with something worse than we could have ever expected. And I still don't understand who the gentleman was trying to impeach, for this has no basis in the law for any impeachment proceedings, whether he is intending to speak to you or to the President of the United States.

And I just wanted to be very clear that we are not in the grandstanding position today; we are in the getting truth position today, Mr. Chairman.

And Mr. Attorney General, you are in the business of getting the truth.

Thank you very much. I yield back.

Mr. SMITH. The gentleman from Virginia, Mr. Goodlatte, is recognized for questions.

Mr. GOODLATTE. Thank you, Mr. Chairman.

General Holder, before turning to Fast and Furious, I would like to ask you a question regarding an investigation that is taking place in another Committee, the Energy and Commerce Committee. And that relates to the Solyndra Corporation and their default and bankruptcy and the investigation related to that. The law that set up the incentives for innovative technologies provides for the Secretary of Energy to notify the Attorney General when there is a default on an obligation. This is 22 U.S.C., Section 16512, Subsection 4(a). If the borrower defaults on an obligation, the Secretary shall notify the Attorney General of the default. Did Secretary Chu ever notify you of that default prior to this becoming the public furor that it has become?

Attorney General HOLDER. I don't know if something like that has been transmitted to the Justice Department or not.

Mr. GOODLATTE. It requires that it be transmitted to you. Are you familiar with such a transmission being relayed to you?

Attorney General HOLDER. This is not something that I have seen. It doesn't mean, however, it might not exist someplace in the Department. I just don't know.

Mr. GOODLATTE. The reason it is important is that the next section, Subsection B, says that on notification, the Attorney General shall take such action as is appropriate to recover the unpaid principal and interest due from, one, such assets from the defaulting borrower as are associated with the obligation; or two, any other security pledged to secure the obligation. Obviously, if you are not notified, you are not able to take that action.

In addition, that same public law provides in another section that the obligation shall be the subject to condition that the obligation is not subordinate to any other financing. Obviously, the fact has been determined that Solyndra did subordinate its obligation to the U.S. to other private financiers. And I am wondering if, given the fact that it appears the law was violated in that regard, if the Attorney General's Office is going to investigate what happened there, how it was the Department of Energy allowed that subordination to take place, which required their approval, and if that investigation of who was responsible for that is taking place.

Attorney General HOLDER. Well, I guess on September the eighth of this year, agents from the FBI and from the Department of Energy's Inspector General's office executed search warrants on Sylindra's offices. There is an ongoing investigation which kind of precludes my ability to speak too much about this matter, other than to say that this is something that we have under active investigation.

Mr. GOODLATTE. Let me just follow up on my first question. Would you take a look and determine whether that notification from Secretary Chu was sent to the Attorney General's Office? And if so, when that took place? And would you let the Committee know the answer to that question?

Attorney General HOLDER. Yes. I can get you that answer, Congressman.

Mr. GOODLATTE. Thank you very much.

Now, with regard to the Fast and Furious investigation, although the Department has taken steps to ensure that these tactics are never used again, it is certainly an unfortunate reality that we will continue to feel the effects of this flawed operation for years to come because thousands of firearms were transferred as a part of this program. The guns lost during this operation will continue to show up at crime scenes on both sides of the border. What are you doing to track them down?

Attorney General HOLDER. Well, I agree with you. And that is what I said in my opening statement, and what I said before in the Senate last month, that we are going to be feeling the repercussions of those mistakes and the flawed operation for years to come. And you are right, that we will be seeing these weapons in the United States I fear, certainly in Mexico as well. We are in the process of trying to determine, you know, to the extent we can, where they are, trying to use the tools that we have to seize these weapons.

Mr. GOODLATTE. You know who purchased them. You know when and where they were purchased. And are you aggressively fol-

lowing those leads? Even if some of those people may have been informants and so on, are you attempting to recover through those individuals these weapons?

Attorney General HOLDER. We are certainly trying to follow those leads. But one of the flaws in the program——

Mr. GOODLATTE. How many have you recovered?

Attorney General HOLDER. Of the 2,000 guns, some several hundred have been recovered. I don't know what the number is now precisely. That is another number that we can get you.

But one of the problems is that once these guns are purchased and they get into the stream of commerce, they become difficult to follow. And one of the problems with the operation is that we don't have all of the information, all of the information that you would want to have.

But we are trying. I think several hundred weapons have been recovered. I don't know how many are still out there. But your observation is a correct one, and one that I agree with, that this is an issue that is going to be with us for many years to come.

Mr. GOODLATTE. And begs the question if they are difficult to follow, why were they ever allowed to get into this pipeline in the first place?

Attorney General HOLDER. That is the flaw of Operation Fast and Furious. There is no question about that.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Goodlatte.

The gentlewoman from California, Ms. Waters, is recognized.

Ms. WATERS. Thank you very much, Mr. Chairman.

Mr. Holder, Attorney General Holder, I am trying to sort out some contradictions that are very obvious in this whole discussion about walking guns. And I am concerned about U.S. Congressman Dan Boren of Oklahoma and Denny Rehberg of Montana, who amended H.R. 1, the fiscal year continuing appropriations act of funding year 2011, to prohibit the use of Federal funds for a new regulation currently being proposed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives. From what I can understand, the AFT proposal would require licensed Federal firearms dealers to file reports with ATF on all sales of two or more semi-automatic rifles within 5 consecutive business days if the rifles are larger than 22-caliber and use detachable magazines.

I don't know whether or not this would apply to all of the States, or whether or not this would apply to California, Arizona, New Mexico, and Texas. But my real question is, given all of your actions and your opposition to gun walking that started in the previous Administration, and the way in which you are trying to make sure that this doesn't happen again, all the actions that you have taken, why would anyone propose that your hands be tied and that you not be able to have a proposal that would certainly make all of us safer?

I live in California. And we are constantly bombarded with the reports of drug lords and the killings that go on there on the border and the creeping into San Diego and other parts of California. So I am very supportive of what you have identified by way of containing guns being easily accessible to these drug lords and not allowing gun walking to ever happen again. So can you discuss with

me why your proposal should be adopted by AFT, and what would happen if in fact this amendment is—this Boren of Oklahoma and Denny Rehberg of Montana, their amendment would successfully get, you know, passed and to the President's desk? How would this hamper your efforts?

Attorney General HOLDER. Well, I share your concerns. That is one of the things I talked about in my opening statement. It is a very reasonable, I think, and limited measure. It only applies to the four States that border Mexico. It would provide the ATF with real-time lead information. And it is consistent with what the rule that now exists with regard to the purchase of handguns.

Just to give you a dramatic example, if somebody walked into one of these licensed dealers in one of those four States without this provision and wanted to buy 100 AK-47s, that information would not be reported to the ATF. The ATF, if that information was reported to them, would have the ability to start making initial determinations as to whether or not there is something we need to be concerned about.

But in the absence of that provision, somebody can walk in, and over the course of 5 days, whatever number of days, buy as many of these dangerous weapons, so many of which have been used in——

Ms. WATERS. Excuse me, Mr. Attorney General, that was a dramatic statement that you just made. Someone could legally purchase 100 weapons of the sort that you just described, and it wouldn't have to be reported?

Attorney General HOLDER. Not—if this provision were in place, that information would have to be reported——

Ms. WATERS. Yes.

Attorney General HOLDER [continuing]. By the dealer to the ATF.

Ms. WATERS. Yes.

Attorney General HOLDER. But in the absence of that, in those four States, that would not occur. As long as there was not—as long as the guns were not—they would not have to do that.

Ms. WATERS. And you are talking about AK-47s, for example?

Attorney General HOLDER. Yeah. I am using a dramatic example, but that would be accurate.

Ms. WATERS. Well, that is alarming. Are you sure that you have made Mr. Boren and Mr. Rehberg aware of how they could potentially hamper the ability to get that kind of information that would be so important for ATF?

Attorney General HOLDER. It is something that we have certainly tried to share information with Members of Congress about. We are in litigation now here in the District Court in Washington with people who are opposed to the implementation of this, I think, very reasonable regulation. It is something that we are prepared to fight for.

Ms. WATERS. Well, thank you very much. And I am hopeful that there is some way that you can make this absolutely clear to all of the Members of Congress. Because I suspect there are many Members who do not understand what would happen with the Boren amendment. And I think it is important that at least we have the facts as you have described them. Thank you.

And I yield back the balance of my time.

Mr. SMITH. Thank you, Ms. Waters.

The gentleman from California, Mr. Lungren, is recognized.

Mr. LUNGREN. Thank you very much.

Thank you for being here, Mr. Attorney General.

Mr. Attorney General, just for some facts on the table. With respect to the previous quote-unquote Gunrunner programs, including Wide Receiver, in those programs, are you aware of whether or not the agents involved were instructed to break off surveillance once the weapons were delivered?

Attorney General HOLDER. No, they were not. But both of——

Mr. LUNGREN. Isn't that one of——

Attorney General HOLDER [continuing]. The programs were different in terms of the instructions that were given, the reality is that guns nevertheless made their way, in Wide Receiver, to Mexico.

Mr. LUNGREN. I understand that. I understand that. I am not talking about that. Were you aware of that, the Wide Receiver program? Were you aware of the failure of the Wide Receiver program before you were aware of the Fast and Furious?

Attorney General HOLDER. No, I became aware of Wide Receiver I guess during the course of our examination of Fast and Furious.

Mr. LUNGREN. Anybody under your overall supervision aware of the failure of Wide Receiver, either prior to the time that Fast and Furious started or during its operation?

Attorney General HOLDER. Well, we now know that people in the Criminal Division of the Justice Department were aware of Wide Receiver, the problems that were associated with Wide Receiver.

Mr. LUNGREN. Can you give me any reason why anybody would believe that a program like this would be contemplated with the idea that the agents would be instructed to break off surveillance once the weapons were delivered? Isn't that asking for disaster?

Attorney General HOLDER. Yeah. And again, I don't disagree with you that that is a flawed concept. And exactly who did it, why they did it is something that the Inspector General, I hope, will help us resolve.

Mr. LUNGREN. I understand you have got the Inspector General, but you are running a Department. And frankly, if you passed everything off to the Inspector General before making management decisions about whether people who were responsible for previous decisions should remain in power, frankly, you would be giving the Inspector General the job to do.

Attorney General HOLDER. I understand that I have——

Mr. LUNGREN. No, no. Here is the only reason that I bring this up. You are the one who brought up the question of the previous Administration. And okay, you want to do that. But let's talk about the distinction between those programs. That was not gun walking in the terminology that most people think. When you talk about a controlled delivery, even though you can go to the dictionary and say controlled delivery means you just control it to delivery. The parlance of controlled delivery in previous programs meant that you followed it afterwards.

Now, they screwed up because they found that those indicators that they had that were supposed to let them know where the weapons were, the bad guys figured that out. But I would hope

that—I mean, here is my problem. I mean, when I became a Congressman this time around, people said what is the difference between being Attorney General of California and being a Congressman? I said, well, after I finish a meeting, I don't have to go out and face reporters who ask me about something one of my 5,000 employees has done that I don't know anything about. And I know you have more than 5,000 employees. But that was my internal thought. The fact of the matter is I am responsible. I was responsible for what they did. And you are responsible for what these folks did.

And the frustration I have is this, and maybe it is unfair, so maybe you can help me with this. After all this time, we still don't know, because the Inspector General is looking at it, we still don't know who knew what when and who made the decisions. And that doesn't give much confidence to the American people, particularly when CBS reports that there is a memo from AFT Field Operations Assistant Director Mark Chait e-mailed Bill Newell, I guess Newell, with this, quote, Bill, can you see if these guns were all purchased from the same licensed gun dealer and at one time? We are looking at anecdotal cases to support a demand letter on long gun municipal sales, thanks.

I have got to deal with people in my district who are law-abiding citizens who believe in the Second Amendment who say to me look, the Feds are overreaching all over the place, and here you got a situation where they screwed up. They are the ones responsible for hundreds, if not thousands of weapons going to Mexico. People are dying, including some of our law enforcement agents. And yet they are using that as an excuse to extend their reach in the law. Now, either this memo—are you aware of this memo, July 14, 2010, from Mark Chait to Bill Newell?

Attorney General HOLDER. No, I am not aware of it.

Mr. LUNGREN. Would you think that would be appropriate?

Attorney General HOLDER. Well, I think what you—you are taking a memo and taking it I think out of context.

Mr. LUNGREN. Sir, I will give you a chance to answer, but I will tell you why I don't think I am taking it out of context. This is in direct reference to the guns that were involved in Fast and Furious. And then you have someone under your direction—not saying you directed them to do it, but someone who is under your authority saying, let's use this stuff. Maybe it is going to help us. I don't know if it is going to help us at a hearing, but it is going to help us try and get our new policy through. And then I am trying to respond to law-abiding citizens who believe in the Second Amendment who say, you got the Federal Government who screws up sending thousands of weapons south; they are using that as an excuse why they should put more restrictions on us. So how do I respond to that in a way that is fair based on the facts when so far I have heard, I am sorry, Mr. Congressman, I can't tell you because the Inspector General is looking at it?

Attorney General HOLDER. Let me deal with both of those things. First, that the Inspector General has a responsibility that I have asked her to assume, and that is to do an independent investigation of that. That will take time.

That does not, however, lessen the responsibility that I have as the head manager of the Justice Department to take steps where that is appropriate. And I have taken steps. I have made personnel decisions. I am prepared—those were initial determinations that I have made. And I am prepared to take other steps before the Inspector General reports back. I think that will be—her conclusions, her findings will be useful for me in trying to make ultimate determinations. But I don't need the Inspector General to make certain determinations that I will make.

With regard to the question of that memo and the long gun rule, the ATF reached out to the field to obtain examples of cases or operations where that kind of a rule would have been helpful. Now, the operation known as Fast and Furious was one of seven cases that were already underway, already underway, that ATF later cited as an example to illustrate the potential benefit of collecting information about the multiple sales of certain types of rifles. So this was already underway when that question was——

Mr. LUNGREN. I understand, but you would see how some people might reasonably come to the conclusion that it was sort of self-dealing. The Department creates a situation in weapons go south across the border in the hundreds, if not the thousands, and then uses evidence of the fact that that occurred to support their effort to try and extend the reach of the law. That is my question.

Attorney General HOLDER. But Congressman, with all due respect——

Mr. SMITH. The gentleman from California is recognized for an additional 30 seconds so the Attorney General can answer the last question.

Attorney General HOLDER. I say this with all due respect. Take a step back and think about the implications of what you are saying is that the Justice Department came up with a flawed program in order to justify a regulation. And given all that has flown——

Mr. LUNGREN. I am talking about after the fact, after the fact. You screwed up, you ought to admit you screwed up, but you ought not to use your screw-up as a basis for trying to extend your authority. That is my point. I am not trying to talk about a conspiracy. I am talking about a responsible action after the fact. When you screw up, you ought to say you screw up. The people involved ought to say they screwed up. And then don't allow your screw-up to be the basis for trying to extend your legislative agenda. That is all I am saying.

Attorney General HOLDER. And all I am saying is, as I said, there were seven cases. These things were already underway when that information was sought.

Mr. SMITH. Thank you, Mr. Lungren.

The gentleman from Georgia, Mr. Johnson, is recognized.

Mr. JOHNSON. Thank you, Mr. Chairman.

Thank you, Attorney General Holder, for being here today.

There is a hole in our gun control laws that is so large that you could drive or fly a space shuttle through it. And it is called the gun show loophole. And what that gun show loophole enables unlicensed firearms sellers to do is to sell an unlimited amount of firearms per year, or per gun show, to anybody, without having to perform a background check as a licensed gun dealer must. And so we

have got gun shows, thousands of gun shows per year being held throughout America, and we have got untold numbers of licensed gun dealers who are selling their wares at those gun shows, and you have untold thousands of unlicensed private weapons dealers who are selling firearms, including automatic assault rifles of the type that walked away in Operation Fast and Furious.

How many automatic assault rifles walked away during Fast and Furious?

Attorney General HOLDER. I think the number that has generally been reported is about 2,000.

Mr. JOHNSON. It is about 2,000.

Now, how many firearms are sold to al-Qaeda terrorists, to other convicted felons, to domestic violence perpetrators, to convicted felons, to White supremacists, how many unlicensed gun dealers—or let's say how many weapons, how many assault rifles let's just say in a given year are sold to such individuals by unlicensed gun dealers at these gun shows that are unregulated? And how many of those end up walking away to Mexico? Can you give us a number on that?

Attorney General HOLDER. I don't have a number on that. I can certainly endeavor——

Mr. JOHNSON. Would it be more than a couple of hundred?

Attorney General HOLDER. Sir, I am pretty certain it would be more than 2,000. But in terms of getting those numbers for you, I can try to do that and provide you with those numbers after the hearing.

Mr. JOHNSON. It would seem to me that with the thousands of gun shows and unknown numbers of private gun owners selling an unknown number of weapons, including assault rifles, to unknown people, it would seem to me that there is a fair possibility that a whole lot more than 2,000 weapons would walk out of the gun show and find their way into the hands of a Mexican drug cartel. Would you agree with me on that?

Attorney General HOLDER. Again, without knowing the numbers, I wouldn't want to guess. But I think that one of the things we need to focus on is to know who actually is buying weapons.

Mr. JOHNSON. And we don't have that ability right now with that gun show loophole. Correct?

Attorney General HOLDER. We don't have it across the board.

Mr. JOHNSON. Okay. Now, let me ask you this question. Over the last 5 and a half years, we have had five acting directors of the ATF. How does the Senate's failure and refusal to confirm a nominee for that important agency, what effect does that have on the ability of that agency to be guided in a way so as to avoid the kind of situations like Fast and Furious?

Attorney General HOLDER. I think that is actually a very good point. When you have a confirmed head, there is a certain prestige that goes with that demarcation. But beyond that, it allows a person to have a longer term, to have a certain consistency to put in place programs, to put in place controls that did not exist and that allowed Fast and Furious to happen. What Todd Jones has done as the acting head of ATF in a relatively short period of time I think is fairly remarkable. It would be a better thing if we had somebody in his place who had a confirmed—was a confirmed person, and

could extend the time that he would spend or she would spend running the organization. Todd is still the head of the U.S. Attorney's Office in Minnesota. And I can't expect him to devote, you know, 4 years, for instance, as somebody might if they were a confirmed head and serve a full term, a full Presidential term, to do the same thing. And that consistency, that presence for an extended period of time has I think a huge positive impact on an organization.

Mr. JOHNSON. You think the NRA and other Second Amendment rights radicals have confidence that the U.S. will not have a competent ATF head if the Senate continues to deny a leader for that organization, thus rendering it rudderless? Is politics causing that, you think?

Attorney General HOLDER. I mean, it certainly has a negative impact on the organization. There are certain groups that I think have actively opposed nominees, both put up by President Bush as well as President Obama, who I think were amply qualified to lead the organization and who, for whatever reason, were not confirmed.

Mr. SMITH. Thank you, Mr. Johnson.

The gentleman from California, Mr. Issa, is recognized.

Mr. ISSA. Thank you, Mr. Chairman.

And I would be remiss if I didn't take exception to calling the NRA members, the millions of them, radicals. I think that is an offensive statement beneath contempt in this Committee.

Mr. Attorney General, will you agree to come before the Oversight Committee without the need for a subpoena in the January time frame?

Mr. JOHNSON. Will the gentleman yield?

Mr. ISSA. I will not.

Mr. Attorney General, will you agree to come before the Committee I Chair, the Oversight Committee, the one you produced these documents to, in the January time frame without the need for a subpoena?

Attorney General HOLDER. I will consider it, but I will note I have testified on four occasions with regard to this matter. I have appeared before you on at least two occasions.

Mr. ISSA. You have appeared before this Committee. Your organization pushed back on the request for a joint hearing here today. Not will you consider it, but do I need to serve a subpoena on yourself, and Lanny Breuer, and the other people under direct investigation of my Committee, or will you agree to come voluntarily in the January time frame before the Committee?

Attorney General HOLDER. I will consider any request that you make.

Mr. ISSA. I thank you, Mr. Attorney General.

I now would go to the questions of e-mails. This is the document you refer to. Most of these documents, 5,000 or so, are, in fact, e-mails. Mr. Attorney General, I have a question for you. Not one of these e-mails, in fact, is yours. Aren't you an a prolific e-mailer?

Attorney General HOLDER. No.

Mr. ISSA. Don't you e-mail?

Attorney General HOLDER. Yes.

Mr. ISSA. Do you have a personal e-mail account and as well as an Attorney General's e-mail account?

Attorney General HOLDER. I have an e-mail account at the Justice Department, yes.

Mr. ISSA. Do you have a personal e-mail?

Attorney General HOLDER. Yes.

Mr. ISSA. Do you regularly e-mail to Lanny Breuer, your former partner and your head of the Criminal Division?

Attorney General HOLDER. No, I wouldn't say regularly. There are only a limited number of people who know my e-mail address in the Justice Department.

Mr. ISSA. Let me cut to the chase. Don't you think it is a little conspicuous in his absence that there is not one e-mail to or from you related to Fast and Furious in any way, shape or form?

Attorney General HOLDER. There are a variety of reasons why the e-mails that we have shared with you are there. We have shared in an unprecedented way e-mail information that no Justice Department, no Attorney General has ever authorized before. You have deliberative information contained, I guess, in——

Mr. ISSA. But isn't it true that executive privilege does not flow to the Attorney General, only to the office of the President? So deliberative process within your Department running law enforcement, in fact, doesn't serve executive privilege. As the Chairman said going on, you haven't cited any reason that these would not have been delivered.

Attorney General HOLDER. In making production determinations, we have followed what Attorneys General in the past have always used in applicable standards, and these are Republican as well as Democratic Attorneys General. And the information that we have provided to you has been responsive, has been, I think, fulsome, and also unprecedented.

Mr. ISSA. Well, unprecedented would be an Attorney General who knew nothing about something where his own DAG, now his present chief of staff, was intimately familiar.

Gary Grindler was well aware, according to documents provided of Fast and Furious, on March 12, 2010. Are you aware of that, that he with an aware of Fast and Furious and what its procedures were on March of 2010?

Attorney General HOLDER. It was certainly brought to his attention as a part of a regular briefing he got from ATF, but he did not hear during that briefing anything about the tactics.

Mr. ISSA. Really? Is that why in his own handwriting when he talks about going to stash houses, he clearly understood in a document you have delivered—he clearly understood in his own handwriting what the tactic was.

Attorney General HOLDER. No, that is not——

Mr. ISSA. I am sorry, but I am going to ask you a different question——

Attorney General HOLDER. Well——

Mr. ISSA. Because he understood. No, no.

Attorney General HOLDER. Could I answer that question?

Mr. ISSA. You have answered it less than truthfully.

Ms. JACKSON LEE. Could the questioner allow the witness to answer the question?

Mr. ISSA. Madam, this is my time. I am not yielding.

Ms. JACKSON LEE. I am not asking you to yield.

Mr. SMITH. The gentleman from California Mr. Issa has the time.

Ms. JACKSON LEE. I would appreciate it if you would allow the witness to answer the question.

Mr. SMITH. The gentleman from California Mr. Issa has the time.

Ms. JACKSON LEE. I understand that.

Mr. SMITH. The gentlewoman from Texas——

Ms. JACKSON LEE. I would appreciate it if the witness could be allowed to answer the question, Mr. Chairman.

Mr. SMITH. The gentlewoman from Texas has not been recognized.

Ms. JACKSON LEE. I ask for a sense of protocol here.

Mr. SMITH. The gentleman from California has the time.

Mr. ISSA. Mr. Attorney General, as I was saying, Mr. Grindler—you can't answer on his behalf, and so it makes no sense to. This is evidence that was delivered.

Do you regularly talk to your chief of staff? And do you regularly receive oral briefings from Mr. Grindler? And, in fact, when you made the decision to have him be the DAG and then the chief of staff, wouldn't it be reasonable to assume that if he knew on March 10th, as this document indicates, that you would also know, March 10th, March of 2010, March 12 of 2010?

Attorney General HOLDER. Well, first, he was not intimately—made intimately familiar with the program as a result of that briefing. The briefing that he received from then-Acting Director Nelson did not go into the tactics. Nelson indicated——

Mr. ISSA. Of course it didn't go into the tactics.

Mr. Chairman, I would ask that I have the time restored that I lost with the lady's interruption.

Mr. SMITH. The gentleman is recognized for an additional minute and also to give the opportunity to the Attorney General to respond to the question.

Mr. ISSA. I certainly look forward to that.

Mr. Attorney General——

Attorney General HOLDER. I was in the middle of an answer, I think.

Mr. ISSA. You know, you are in the middle of filibustering, so I will let you answer. I have two more things to quickly go over, and then you can have all the time the Chairman will give you.

Does it surprise you that these boxes, five boxes, represent just what one gun dealer gave us voluntarily, while, in fact, this seems to be all the information you have responsive to our subpoena; does it cause you to think that, in fact, we believe you were withholding documents? We believe that, in fact, there is more production. So my final question—and you can answer all of them for as long as the Chairman wants—is do you today have documents responsive to the lawful request of the Oversight Committee that have not yet been granted?

Attorney General HOLDER. All right. Well, Let me go back to my first answer that I was not——

Mr. ISSA. Well, mine is pretty easy. Mine is a yes or no, and then the others you are going to go on for a while.

Attorney General HOLDER. I will get to that.

Mr. ISSA. Would you please get to it first?

Attorney General HOLDER. With regard to Gary Grindler, he was not provided with a detailed analysis of Fast and Furious. He was given information about——

Mr. ISSA. Mr. Chairman, I asked earlier that the Attorney General be placed under oath. I was denied that. But what I will make the point is that it is not productive for anyone to come before this Committee and tell us what somebody else didn't know. That is exactly how the legislative liaison behind the Attorney General Mr. Weich came and gave false testimony to my Committee, false because people who are still working for the Attorney General knowingly gave him misleading information in addition to the U.S. attorney, and no action has been taken.

Ms. JACKSON LEE. Is the gentleman's time extended, or is there regular order?

Mr. ISSA. I might note for the record that the IG——

Ms. JACKSON LEE. I have a parliamentary inquiry, Mr. Chairman.

Mr. SMITH. The gentleman——

Ms. JACKSON LEE. I have a parliamentary inquiry, Mr. Chairman.

Mr. SMITH. The gentleman from California continues to be recognized. And let me make a point in the record that he is not over time near as much as the gentlewoman from Texas was a few minutes ago.

Ms. JACKSON LEE. I thank you for your courtesies, but I would like to understand whether the gentleman has extended time.

Mr. SMITH. And he was recognized for that purpose, as the Attorney General will be recognized for the purpose of responding——

Ms. JACKSON LEE. And will he allow the Attorney General to answer the question?

Mr. ISSA. I look forward to it.

Ms. JACKSON LEE. Thank you very much.

Mr. ISSA. Mr. Chairman, I use only 5 more seconds.

The fact is the inspector general has released information that was secret to the object of our investigation with the knowledge of the Justice Department. She is not currently, in our opinion, qualified to investigate and, in fact, has overstepped the line by delivering secret tapes to the object of our investigation while the Justice Department was slow-rolling that discovery. And this is the ATF agent that was intimately involved with this.

So I want you to understand I have treated this Attorney General as a hostile witness because ultimately when he comes before us saying he is going to clean house, no house has been cleaned. And I would love to hear his answers.

Mr. SMITH. The gentleman's time has expired. The Attorney General will be given the opportunity to respond.

Attorney General HOLDER. I will try again. Gary Grindler was not provided with information as you have described, intimate information, about Operation Fast and Furious. He was not told about the tactics that were used there. The person who did the briefing was the acting head of ATF, and he has, I understand, testified before your Committee that he did not, in fact, share that tactical information with Mr. Grindler.

I note that Mr. Nelson also briefed you, Congressman, about a month or so later or before, I forget which, and he said at that time he did not share with you information about those tactics. So the notion for your contention that Gary Grindler was familiar with this or intimately familiar with this is inconsistent with what I think the facts are.

And you take me to task for trying to assume what I know Grindler to have said. You have not interviewed him as well, and nevertheless you feel comfortable doing the same thing.

With regard to the documents that you talked about, we have not withheld any documents that are responsive to the matters that you have—that you have asked us about. We have withheld information that pertains to ongoing investigations; that is the thing that might have limited our document production. But again, what we produced on February the 4th is unlike anything that any Committee in any part of this Congress, Senate or House, has ever seen before. And I want to make clear, as we said in that letter, that is not precedential, not holding, and I don't think any future Attorney General should be expected to do that, but given the nature of what we did in withdrawing that February 4 letter, it seemed to me to make sense to make an exception to what has been a long-recognized rule.

Mr. ISSA. Mr. Chairman, could the AG be allowed to fully answer, since it was pursuant to a subpoena whether or not his answer about did he provide——

Mr. SMITH. The gentleman's time has expired.

Mr. ISSA. It means he was withholding or not withholding. He did not answer that.

Ms. WATERS. Mr. Chairman, that requires unanimous consent. I withhold——

Mr. SMITH. The gentlewoman has now been recognized.

I was asking the Attorney General a question. Does the Attorney General wish to respond any further to the questions?

Attorney General HOLDER. I am fine.

Mr. SMITH. The gentleman from Virginia Mr. Scott is recognized for his question.

Mr. SCOTT. Thank you, Mr. Chairman.

General Holder, a lot has been made about the letter written by your Assistant Attorney General Mr. Ron Weich. Nobody expected him or believes that he has any personal knowledge of the information, but expected him to get the information and relay it. The information has, I think, been subsequently determined to be false. Do you know where he got the false information?

Attorney General HOLDER. The information that was contained in that letter, the incorrect information that was contained in that letter, was derived from people in the field who had the operational responsibility for Operation Fast and Furious, both from the ATF in Phoenix as well as the U.S. Attorney's Office in Phoenix. That information, I think logically, was presumed to be accurate. That information was transmitted to people in Washington, who put the letter together. And if you look at the February 4 document production that we made, you can see how this went back and forth and how the letter was actually put together.

It turned out that the people in Phoenix had information that was not, in fact, accurate, and that is the stuff that found itself into the February the 4th letter.

Mr. SCOTT. Now, what did you do when you found out that the information was not accurate?

Attorney General HOLDER. I couldn't hear you.

Mr. SCOTT. What did you do when you found out that the information was not accurate?

Attorney General HOLDER. One of the things that I did early on was to ask the inspector general to look into this. I was hearing from inside the Justice Department one set of facts. I was hearing from Members of Congress and members of the media something else. An it seemed to me that given this disparate information that I was receiving, that an investigation needed to be had. And on February the 28th, I asked the inspector general to begin an investigation.

Mr. SCOTT. An article in USA Today says, "The program," referring to Fast and Furious, "was fundamental"—"which Holder has finally acknowledged is fundamentally flawed occurred with the knowledge and approval of Justice."

Do you want to respond to that statement?

Attorney General HOLDER. That is not true. I mean, the notion that people in Washington, the leadership of the Department, approved the use of those tactics in Fast and Furious is simply incorrect. This was not a top-to-bottom operation; this was a regional operation that was controlled by ATF and by the U.S. Attorney's Office in Phoenix.

Mr. SCOTT. There is a memo dated November 16, 2007, about a meeting of the Attorney General in 2007 with the Mexican Attorney General that says, Of particular importance ATF has recently worked jointly with Mexico on the first-ever attempt to have a controlled delivery of weapons being smuggled into Mexico by a major arms trafficker. While the first attempts at this controlled delivery have not been successful, the investigation is ongoing.

Does that suggest to you that guns were so-called walking in 2007?

Attorney General HOLDER. Well, certainly not walking in the same way that they were allowed to walk in Fast and Furious, but the reality was guns did find their way into Mexico in an inappropriate way.

And one thing that I want people to understand is that I don't know what Attorneys General did back then and how they reacted to it, but I can tell you what this Attorney General did. I asked for an inspector general investigation. I sent out a directive to the field that this kind of activity was inappropriate. I made personnel changes. And I am overseeing with the help of Todd Jones substantial reforms at ATF. I was very active in dealing with this issue. You can look at what other Attorneys General did.

Mr. SCOTT. Thank you.

Switching subjects, the last Administration was cited for political hiring within the Civil Rights Division. Have you continued that political hiring in violation of the law?

Attorney General HOLDER. We hire people within the Civil Rights Division on the basis of their experience, their commitment

to that which the Civil Rights Division has historically stood for, people who are going to be good litigators, people who are going to work hard. We don't hire people on the basis of political or ideological affiliation.

Mr. SCOTT. Thank you, Mr. Chairman. I have a number of other questions that I will be submitting——

Ms. JACKSON LEE. Would the gentleman yield for a moment? Would the gentleman yield?

Mr. SCOTT. For the record I yield the balance of the time.

Ms. JACKSON LEE. Thank you.

Very quickly, Mr. Chairman, I would like to put into the record the Examiner: Mexico Losing Its War on Drug Cartels; and the Los Angeles Times that says how many have died in Mexico's drug war. Mr. Chairman?

Mr. SMITH. I am sorry.

Mr. SCOTT. She asked unanimous consent.

Mr. SMITH. Without objection.

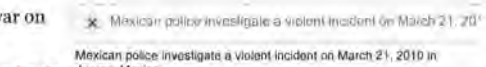
[The information referred to follows:]

The Examiner
washingtonexaminer.com

Mexico losing its war with drug cartels

By Sara A. Carter | 01/17/11 8:05 PM
National Security Correspondent

What happens when a country declares war on its deadly illegal drug cartels and loses?


Mexican police investigate a violent incident on March 21, 2010 in Juarez, Mexico.

The violent deaths of nearly 35,000 in Mexico in the past four years symbolize a growing crisis for the United States as its southern neighbor is increasingly destabilized by competing drug organizations that have infiltrated every level of government, according to numerous U.S. officials.

President Felipe Calderon's efforts to dismantle the drug gangs since taking office in 2006 has increased the number of grisly killings without diminishing the strength of the various criminal groups so far, experts said. That has placed U.S. security and Mexican security at risk.

"Mexico needs to take down the major cartel players or ask for our help to get it done," said a U.S. official who is familiar with operations in the region. "Mexico is at a crisis point, and the situation is getting worse. We are left with an insecure border controlled by drug cartels, and our ability to limit their operations starts on our side. Unfortunately, that's not good enough."

The escalation in violence also presents a serious risk to U.S. federal law enforcement officials who complain the situation is not being given the attention it deserves, said T.J. Bonner, president of the National Border Patrol Council.

"I'm not sure what it's going to take to get our attention on Mexico," Bonner said. "I'm not sure what it's going to take to get the federal government to realize what a serious security risk our border and Mexico really is."

Calderon said last week that 2010 was a "year of extreme violence" that has led to the brutal deaths of Mexican law enforcement and government officials. Beheadings, mutilations and shootings last year were part of the drug cartels' modus operandi. Killings escalated by 60 percent in a year, claiming 15,000 lives in 2010, according to Mexican authorities.

"We are aware that we are going through a very difficult time on security issues," Calderon said to reporters and anti-crime groups in Mexico on Wednesday.

The official death toll understates the problem, one U.S. official said. Corruption inside the Mexican government and police organizations makes it difficult to conduct joint U.S.-Mexico operations without putting U.S. agents at risk, the official added.

"Many times when a person is executed they go down as missing because there isn't a body to be found associated with the crime," the official said. "We must also be vigilant when it comes

to sharing information with Mexican authorities on operations because some are in the pockets of the drug cartels. The situation is out of control and may require military action on the part of Mexico and the U.S. to dismantle the top narcos."

Last week, 14 headless bodies of men between the ages of 15 and 30 were discovered in the resort city of Acapulco. Along with the bodies were handwritten messages signed "El Chapo's People," a reference to one of Mexico's most powerful cartels, the Sinaloa cartel headed by Joaquin "El Chapo" Guzman.

Chapo's cartel was also believed to be responsible for the deaths of 17 more people near the same area, including two policemen who were shot dead on patrol in the beachside area.

"It's difficult when Chapo has the members of the federal government, state and local authorities in his pocket," the U.S. official said. "That's why Chapo is still in control and free to terrorize."

According to Mexican authorities, the four-year death toll from drug traffickers includes 30,913 executions, 3,153 deaths in shootouts between gangs and 546 deaths involving attacks on authorities, many of whom were on the drug cartel payrolls.

Bonner will be attending a memorial service Friday for slain Border Patrol Agent Brian Terry, a U.S. Marine veteran who was shot and killed in early December while working on the border in Rio Rico, Ariz. The 40-year-old agent was killed by bandits who had been "robbing illegal immigrants crossing into the U.S.," Bonner said.

Bonner added that Terry's death is just one example of how violence from Mexico has spilled into the United States.

"Despite all the pronouncements that the border is better now, more secure than at any other time, all we need to do is look at Terry's death," Bonner said. "The bandits had targeted the area because it was used to move a large number of illegal people into the United States. That doesn't give me warm fuzzies that the border is secure when you have hundreds of people crossing into the U.S."

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URL: http://washingtonexaminer.com/news/world/2011/01/mexico-losing-its-war-drug-cartels

June 2011

Los Angeles Times
La Plaza
NEWS FROM LATIN AMERICA AND THE CARIBBEAN

How many have died in Mexico's drug war?

June 7, 2011 | 10:42 am



The last figure released by the Mexican government on the number of dead during its 4 1/2-year, military-led crackdown on organized crime came in January, at just over 34,000. It covered the period from the start of the drug war in December 2006 until the end of 2010.

Homicides attributed to the drug war continue across the country on a daily basis, and many more violent incidents probably go unreported. Self-censorship is widespread among news outlets in violent states such as Tamaulipas and Chihuahua.

With 2011 nearing its midway point, how many people have been killed in Mexico?

Until May many major international news outlets covering Mexico used the general figure of 34,000 or 35,000 drug war deaths -- while bodies have kept piling up in shootouts or discovered in mass graves by the hundreds. In the border city of Ciudad Juarez alone, for example, at least 976 people have been violently killed in the metropolitan region since the beginning of 2011, reports the tally at Frontera List.

But several news outlets in Mexico, as well as the peace movement of poet **Javier Sicilia**, have begun citing a figure of 40,000 dead since last month. A U.S.-based law-enforcement group favoring more liberal drug policies assembled this online data map from news and Internet sources to arrive an estimate topping 40,000, an increase of about 6,000 since the last official figure. (The Times lately has cited an estimate of at least 38,000, based on the official figures plus an approximation for the first months of 2011 derived from mainstream Mexican media tallies.)

Many drug-related deaths are simply not counted, and scores of people remain missing or disappeared. As The Times has reported, the missing constitute a confounding mystery that casts doubt on virtually any figure of deaths related to the drug war.

The death tally also functions as a political tool. As the number of victims creeps upward, the toll is seen as politically useful for Sicilia's peace movement (link in Spanish).

A "peace caravan" led by the poet left Cuernavaca in Morelos state last week and is set to arrive in Ciudad Juarez on Friday. Sicilia is expected to meet with an array of border and peace activists to sign a "national pact" making six demands of President **Felipe Calderon**. These include a demilitarization of the effort against Mexico's powerful drug cartels, placing more emphasis on education reform and targeting money laundering and entrenched corruption.

In turn, Calderon's conservative government argues that its campaign against the drug cartels is not an enforcement-only effort but incorporates steps to address some of the social and institutional causes of drug-related violence. The administration has repeatedly argued that the vast majority of the deaths stem from battles between rival trafficking groups -- a sign that the crackdown is weakening them.

Through a spokeswoman, Calderon's office told La Plaza late Monday that government analysts are updating the drug war toll, but do not yet have a specified release date. The government maintains a searchable database (link in Spanish) of deaths related to organized crime through 2010.

The death toll has always included a presumed majority of suspected cartel members, plus smaller numbers of military personnel, federal and local police officers, politicians, journalists, lawyers, human-rights activists, students, migrants from Central and South America and a handful of U.S. government employees, including a consular official killedin Ciudad Juarez and a customs agent gunned down in San Luis Potosi.

Overall, 111 U.S. citizens were killed in Mexico in 2010, by far the most violent year in the war, according to the last travel advisory issued by the U.S. State Department. The advisory does not specify which of those deaths may be tied to the drug war. In addition, numerous innocent bystanders and even infants have fallen victim to the violence.

Whatever the toll in Mexico, tallies have not included victims of violence attributed to Mexican drug cartels that are infiltrating Central America. Last month, 27 people were found decapitated on a remote farm in Guatemala in an attack blamed on a Mexican cartel.

-- Daniel Hernandez in Mexico City

Mr. SCOTT. I yield back.

Mr. SMITH. The gentleman yields back his time.

The gentleman from Iowa Mr. King is recognized.

Mr. KING. Thank you, Mr. Chairman, and thank you, Attorney General Holder, for coming here to testify. I had a number of questions that come to mind as I listened to the responses that are here. They sort down to this: As near as I can determine, have you identified the weapon that actually killed Agent Terry?

Attorney General HOLDER. That would go into a ballistics report determination, and I am not prepared to talk about that given that it is still a pending case.

Mr. KING. It is still under investigation, but there is some data there that is being examined by Justice?

Attorney General HOLDER. As I said, there is an ongoing investigation. There is a case that has been indicted, and obviously a part of that trial will be the ballistics report.

Mr. KING. Have you identified a suspect or a person of interest?

Attorney General HOLDER. Somebody has been indicted in connection with that case.

Mr. KING. Somebody has been. And that is not information that you can speak to today?

Attorney General HOLDER. There are some rules there that don't allow me to—apparently this is a matter that is under seal.

Mr. KING. But there has been an indictment.

Attorney General HOLDER. Yes, there has been an indictment.

Mr. KING. Thank you.

And if you were to tell us who that was, you couldn't did so in this setting?

Attorney General HOLDER. That is correct.

Mr. KING. If we were in executive session, could you do that?

Attorney General HOLDER. I don't think so. I think it is a court-ordered seal.

Mr. KING. Okay. That is satisfactory to me.

Attorney General HOLDER. We have to seek leave of the court in order to do that.

Mr. KING. That is satisfactory. Thank you.

Do you have a sense, or an estimate, or data on the numbers of Mexicans that have been killed or homicide investigations that have brought about deaths where there have been weapons used that are from Fast and Furious in Mexico? We lost Agent Terry. How many Mexicans do you estimate have died because of the weapons that have been sent to Mexico?

Attorney General HOLDER. I don't know that figure, Congressman King, but I fear that the number of people on the Mexican side of the border, frankly as well on the United States border, will be negatively impacted by the mistakes of Fast and Furious are going to—there are going to be people who are going to be harmed. I don't have any numbers, but I fear that that is what is going to happen, has probably already happened, and is likely to happen in the future.

Mr. KING. Do you have, though, reports or data that would give you some sense of that? Is it a report that is delivered to you in your briefing that when we know all about Agent—we know about Agent Terry, but I am thinking about this from a public relations standpoint, and I am thinking that if this happened in the United States—and I am going to guess that there are multiple deaths in Mexico—if there is anything proportional to the distribution of the weapons, are there any reports that give you a sense of this happening as a communication going back and forth across the border and identifying Fast and Furious weapons that may have been used in crimes and homicides in Mexico so that you have a sense of that number?

Attorney General HOLDER. I don't have a sense of that as yet. I mean, we certainly work with our Mexican partners to try to trace guns that are seized in connection with crimes. That is why I said that, you know, we have traced 64,000 of those guns over the last 5 years. My guess will be that we will trace some guns over the coming years and months back to Fast and Furious, and then we will be able to connect those traced weapons to crimes that have occurred in Mexico. But to date I have not received that information.

Thank you. I would like to shift a little bit. I know the last time you were before this Committee May 3 of this year as I recall we had a discussion about the Pigford farms issue, and I submitted a series of questions about that, and you have answered most of those questions in writing as of, date, I think it was October of this year. So I would like to narrow in on that a little bit, because the Pigford farms issue you cite as the authority for Justice and presumably USDA to negotiate with Black farmers the authority that is in the Farm Bill, commonly known as a farm bill, and you cite the sections of the bill.

And I will just tell you in this Committee that I had a conversation with the then-chairman of the AG Committee, Collin Peterson on the way over to the floor to vote on this farm bill, and I said to him the authorization that you granted in the farm bill, which you cite in your response, will open up the door to $1.3 billion in additional Pigford claims. His response to me was no, that $100 million caps the spending on the settling all outstanding Pigford claims, you will be satisfied with the results of that. That was our disagreement. I have had the Secretary of Agriculture cite the same section that you have cited. I have the section before me, and I will ask unanimous consent to introduce it into the record at the conclusion, but it says here that "shall not exceed $100 million and it shall be construed to effectuate its remedial purpose of giving a full determination on the merits of each Pigford claim previously denied that determination," which is the language that opened up Pigford 2.

So I will submit that authority only exists to resolve all outstanding Pigford claims and cap them within $100 million. We have a claim coming back to Congress for an additional 1.15 billion. I have no information in my letter that tells me how many claims you have from Pigford. And I don't have any information that tells me what was spent on attorney fees in settlements of Pigford 1. So I would appreciate if you could respond to that.

Attorney General HOLDER. Sure, we will get you that information.

Mr. KING. And including the value, the cost of attorney fees in Pigford 1?

Attorney General HOLDER. Sure.

Mr. KING. And anything that is current.

Attorney General HOLDER. Whatever information we have with regard to the questions you have asked, I will make sure it gets passed on to you.

Mr. KING. And I will just ask for follow-up.

Mr. SMITH. The gentleman's time has expired.

Mr. KING. I ask unanimous consent to complete my question.

Mr. SMITH. The gentleman continues to be recognized for a final question and then the AG to respond.

Mr. KING. Thank you, Mr. Chairman. I would just ask that we know that there are negotiations according to your letter that took place between the Department of Justice, the USDA, and representatives of the Black farmers, which sounds to me in their response to be multiple organizations, multiple entities. So I would ask you if you personally had a conversation with Secretary Vilsack with regard to Pigford and who are those entities that were negotiated with to come to this settlement that I contend goes beyond $100 million cap that was authorized.

Attorney General HOLDER. Well, I certainly talked about this matter with Secretary Vilsack, the person who is primarily responsible for the settlement of the case, from the Justice Department side is the associate Attorney General Tom Perrelli. There were a variety of organizations, entities, individuals who were engaged. We were trying to work out a settlement short of litigation so people who were potential plaintiffs were part of these conversations to reach this agreement.

Mr. SMITH. Thank you, Mr. King.

Mr. KING. Thank you.

Mr. SMITH. The gentleman from Tennessee, Mr. Cohen, is recognized.

Mr. COHEN. Thank you, Mr. Chairman. General Holder, I am understanding this issue some, but it is a great tragedy this agent was killed and it will be a year next week, as I understand it. And it was a Fast and Furious weapon that he was killed by, as I understand it. Is there any great difficulty in Mexico for folks who are part of these drug cartels or, you know, folks to get guns? Are guns rather plentiful in Mexico in general?

Attorney General HOLDER. I think we can safely say that they are readily available, and the part of the problem with their ready availability is the fact that so many guns flow from the United States to Mexico. As I said over the last 5 years, at least 64,000 weapons traced to the United States that were found in Mexico, and those were only the ones that were traced. There are undoubtedly additional guns in Mexico that have not been traced back to the United States.

Mr. COHEN. So while it is a supposition I would presume that if Fast and Furious didn't occur, that the individuals that committed this act, this violent act and resulted in the death of the agent, they would have probably had weapons anyway?

Attorney General HOLDER. You know, we can never—you can never suppose, but for is always hard to determine, but I don't think that is an illogical conclusion that the people who were involved in that senseless, tragic, awful murder probably could have had access to other weapons.

Mr. COHEN. I kind of remember the president of Mexico saying something about most of the guns that come there come from the United States. I think he also said something about most of the market he has from marijuana comes from the United States too. So we supply him with guns and a market. We could certainly dry the market up, but that is the job of the Judiciary Committee, I realize.

What are we doing to try to stop guns from going into Mexico? Are there efforts at the border to stop guns from traveling this country there?

Attorney General HOLDER. We have moved people to the border. We work with our partners—the Justice Department works with our partners at DHS to try to come up with ways in which we inspect cars that are going from United States to Mexico. We have teams of agents that work together to try to determine ways in which we can stop the flow of guns. We use a variety of intelligence methods that I can't really get into to try to determine if cartels are trying to bring into Mexico huge stashes of guns.

We also need to use things on this side of the border, and that is one of the reasons why that long gun rule, I think, is so important. If we see substantial numbers of these long guns being purchased, it gives the ATF real-time leads that they can follow to see if, in fact, these are legitimate purchases or if they are purchases by people intending to have those guns shipped to Mexico.

Mr. COHEN. Coming home which is where I think the real issues are, not to say that they are not important about the border and all, but in our cities, we have a lot of youth violence and gangs. I want to commend you for having a national forum on youth violence prevention and including Memphis in the forum. Can you give the Committee some information about what you have done to help inner cities fight youth violence and gang activities?

Attorney General HOLDER. One the things I want to say is the five police chiefs behind me from Charlotte, Detroit, Philadelphia, Baltimore and Boston, have all embraced, and we learned from them, the way in which we deal with this issue of youth violence. It is not simply a question of doing what is traditional law enforcement, that we have to come up with ways in which we deal with the underlying problems that involve our young people in these antisocial behaviors.

Congressman Scott has been, I think, very forward leaning in this regard with legislation that he has proposed and that we support. We have tried to deal with these underlying causes, and it has been particularly useful to have our partners in law enforcement identify with and be participants in these preventive activities in addition to all the great things that they do on the enforcement side. The thing you have talked about what we are doing in Memphis is an example of the kinds of things we are trying to do in the Obama administration.

Mr. COHEN. I would like, Mr. Chairman, to comment that the gentleman from Philadelphia, the chief, I recognize you and I kept thinking where do I know you from. And where I know you from is when you testified before this Committee on the bill to allow folks who had gun permits to travel from State to State based on Federal edict rather than state cooperative agreements. And at the time, I was a sponsor of the bill that ended up passing, but because of your testimony and law enforcement's objections, as well as my belief in States' rights, I changed my position, came off as a sponsor and voted against the bill. Your testimony was effective and it is nice to see you again, and I thank you for that.

I yield back the remainder of my time, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Cohen. The gentleman from Texas, Mr. Gohmert, is recognized.

Mr. GOHMERT. Thank you, Mr. Chairman, and thank you, Attorney General for being here. We do appreciate the law enforcement being here. We have had multiple of our Democratic friends point out their presence and we do appreciate the job you do. I thought, and everybody needs friends, and I am glad you are supporting the Attorney General. I thought about inviting the law enforcement that is furious over Fast and Furious, but there is just not room in the room or building so I didn't do so.

Let me ask you, Attorney General, have you read the opinion from the 5th Circuit Court of appeals on Holy Land Foundation trial that came out yesterday?

Attorney General HOLDER. I have not seen that.

Mr. GOHMERT. Well, we know from prior documentation that there has been relationship with CAIR and the Justice Department; is there any ongoing relationship, any reach-out at this time still to CAIR?

Attorney General HOLDER. Well, we certainly reach out to a variety of Muslim groups as we try to——

Mr. GOHMERT. I am talking specifically about CAIR.

Attorney General HOLDER. I was getting there. But I don't think that we have any particular outreach efforts at this point with CAIR.

Mr. GOHMERT. You know there was a partnership between the FBI and CAIR, in 2009 it was temporarily suspended. I didn't know if there was informal outreach to CAIR.

Attorney General HOLDER. I——

Mr. GOHMERT. We do know from this opinion yesterday, we know from the prior Fifth Circuit opinion when CAIR and ISNA and others tried to have their names struck as named coconspirators, that it was unsuccessful that the circuit basically saying there is a case there to prove. And then as we know, you decided not to pursue those, or your Department did as we talked about before.

In the decision yesterday, the court said that the Palestine Committee created not only the Holy Land Foundation, but a number of other Islamist entities in the U.S., leaders of one of those entities the Islamic Association of Palestine subsequently created CAIR, Council on American Islamic Relations which are cited as coconspirators, so it does create some concerns.

We know there was massive document, a massive number of documents being furnished to the defendants in that case. A lot of production of documents, but I would like to ask that we get copies of the documents that were provided to the five defendants who are now convicted and affirmed by the Fifth Circuit. Would the Justice Department make those documents available?

Attorney General HOLDER. I am not sure I know what documents you are talking about. If they were provided in litigation?

Mr. GOHMERT. Correct.

Attorney General HOLDER. And if we can provide them, I am sure that we would. I don't know if there are documents that have been provided in discovery that we don't have the ability to provide. I just don't know the answer to that.

Mr. GOHMERT. Well, they have been furnished to your Department to the defendants in the case. Those defendants have now been found guilty of providing support to terrorism. There is no question in my mind that those documents are now in the possession of terrorists. And so we have had trouble getting production of all the documents that we have desired and requested. And I didn't think that there should be any problem with privilege or anything of that nature since the defendants are convicted of supporting terrorism have them, the terrorists have them. And I just felt like it would be a good idea for Congress to have them.

Attorney General HOLDER. I will take that request under advisement and to the extent we can provide documents——

Mr. GOHMERT. I hope we will have as good a standing as the terrorist supporters that have been convicted.

I am familiar as a judge handling massive litigation, been an MDL with a document dump. About 100 of these are Grassley's letters. But I want to ask you, since you had said before in your statement that you asked the Department Inspector General to investigate this Fast and Furious matter in March, you ordered a directive be sent to law enforcement prosecutor prohibiting such tactics, and in this entire stack is not an e-mail, not a letter, not a transcript of a speech, nothing from you. I would ask where they are. If you did those things in February or March, where are they? And not only that, you testified May 3 in here as we recall that you had just learned about Fast and Furious a few weeks before. And now you say actually in February, March you made these orders. When was the first time after May the 3rd you began to suspect that you may have actually taken actions in this case?

Attorney General HOLDER. Well, actually took actions well before May the 3rd, on February 28.

Mr. GOHMERT. Well, unless you were intentionally misrepresenting the facts on May 3, which I am not contending at all no.

Attorney General HOLDER. No.

Mr. GOHMERT. Then at some point you began to wonder gee, I believe I issued some orders in this matter. We haven't seen the orders, all we have is the transcript here. We know you are capable of mistakes as you have verified. Where are the e-mails, letters, orders, where are they from February and March?

Attorney General HOLDER. There are a couple of things going on here. I didn't play any role in the drafting of the February 4 letter. With regard to the notion——

Mr. GOHMERT. So you were not the one who ordered the——

Mr. SMITH. The gentleman's time has expired. The AG will be allowed to answer the last question.

Attorney General HOLDER. With regard to the question of what I said on May 3 about a few weeks, I said a few weeks about when I first learned about Fast and Furious, I learned about Fast and Furious when this became a matter of controversy. I think some time in the beginning of the year. My guess is probably the middle of February, which would have been 10 or 12 weeks before I said a few weeks. Now, I could have said a couple of months, maybe I should have been more precise. But a few weeks, from my perspective, was accurate then and it still seems to be accurate now, when

I say a few weeks, 10 or 12 weeks that I think be encompassed in that description.

Mr. GOHMERT. Mr. Chairman, I would ask that he be allowed to actually answer the question of whether or not he is the one that actually ordered the inspector general to investigate that. And if so, where the documentation of it is. That was my question.

Mr. SMITH. Has the AG answered?

Attorney General HOLDER. I will answer. I was, in fact, the person who requested, ordered the inspector general to begin this investigation. I don't think I did that in any written form. I think that was transmitted from me either through my chief of staff, the Deputy Attorney General, to the IG. There might be a writing that exists in that regard. I don't think I signed off on anything actually. I have a good relationship with the inspector general, the inspector general's office had looked at this whole question of gun trafficking before, and it seemed logical to ask them to expand their inquiry and look into Fast and Furious. As I said, I don't think it is any writing from me, but I can check that. I don't think there is any writing from me that exists with regard to.

Mr. GOHMERT. We should ask for a copy if any such exists. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Gohmert.

The gentlewoman from California, Ms. Lofgren, is recognized.

Mr. LOFGREN. Thank you, Mr. Chairman. There has been a lot of discussion on a lot of topics today. I noted the Chairman took the opportunity to discuss health care. And since we don't get you in front of us that often, I am going raise an issue that is not Fast and Furious. That is the Second Amendment; there is an amendment that comes before that and that is the First Amendment, and that is the subject of my inquiry.

As you know, for over a year, ICE and the Department of Justice have been seizing domain names as hundreds of Web sites on allegations of criminal copyright and trademark infringement. One particular domain name was seized a year ago, November 2010, Dajaz1.com a very popular blog that was dedicated to hip-hop music. Just today, the news is with the details that the seizure, which I thought raised troubling questions at the time about the government's conduct in the case, and really raises questions about constitutional rights of due process and free speech as they apply to Web sites. After the government seized the domain name, its owner filed a quest for the government to return it to them. And under the law, the government has 90 days to initiate a full forfeiture proceeding against the domain, or else it has to return the property.

However, in this case, the deadline passed with no action. And when the Web site's lawyer asked with your Department's lawyers, he was told the government had filed an extension with the court, entirely under seal without notice to him. They had no notice, they had no opportunity to respond. And when the lawyer, of course, this was according to the news reports, asked for any sort of proof that the extension had actually existed, your Department's lawyers reportedly said he would just have to trust them.

The government then claimed to have received two additional extensions under the same process without notice, without a hearing,

and they refused to release the court order according to the press reports. And then as of today, the last extension was filed and the government finally admitted that it did not have probable cause for the forfeiture, and the domain name was returned to the Web site owners today.

In short, a blog site which is identical in terms of First Amendment protection to a newspaper or a magazine has the same First Amendment rights was shutdown for an entire year by the government, by our government, with no due process, no contested hearings, no written orders. I just think—if these reports are—that is just an outrageous violation of the First Amendment.

So my question is, I assume that you believe that the First Amendment doesn't allow the government to go in and shut down the press for a year prior to restraint on speech without any kind of due process. I don't—I guess this is a question, do you think that is consistent with the First, Fourth and Fifth amendments to the Constitution. And if the fact—I will give you the article that I just read today. If the facts are as reported in this article what will you do to make sure that the wrongdoers in your Department are no longer in your Department? I mean this is—there has to be a sanction for someone to do such a thing. If we did this to a magazine if we went and locked the doors and put a sign and said "closed" and refused to deal with them for a year, people would be outraged, but since it is a blog, and since it is hip-hop artists. It seems to me, the hip-hop artists have as much right to due process and the First Amendment as any other American, so could you comment on that, Attorney General.

Attorney General HOLDER. I am not familiar with the reason why that domain name was seized or the facts of this case. I will certainly look into that and we will get back to you with whatever information we can. You are right, I mean—what the subject matter is of a particular blog is obviously entitled to First Amendment protections. There maybe other reasons this was received. I just don't know. I can tell you my daughters are watching this hearing, having heard about this hip-hop issue now, I will hear about this from them when I get home.

Mr. LOFGREN. Very good.

Attorney General HOLDER. And if nothing else, I will make sure that I stay in touch with these folks to get you an answer. My daughters will be on me about this one.

Mr. LOFGREN. Well, I wonder if you could give a commitment that if the facts are as we have outlined that you will take appropriate action within your Department to make sure that those who violated the law in the DOJ are dealt with and that this becomes a well-known sanctionable type of activity in your Department.

Attorney General HOLDER. We will certainly look at it, my hope would be that there is a reason, an acceptable reason why these actions have occurred, if they have been accurately described. But to the extent that somebody has acted inappropriately in the Department I will make sure they are held accountable.

Mr. LOFGREN. Thank you, Mr. Chairman.

Mr. SMITH. The gentleman from Arizona, Mr. Franks, is recognized.

Mr. FRANKS. Well, thank you, Mr. Chairman. Thank you, General, for being here. I guess to lay the groundwork here, you understand that perhaps reason that this issue has gotten so much attention is that in the simplicity of the overall project here, it appears that the American government, the American Justice Department—Department of Justice, through their Department subsidiaries, have orchestrated a program to get American gun dealers to sell guns to straw buyers, to then run those guns to Mexico and give them to drug cartels, around 2,000 high powered weapons, with the understanding that that takes grave risk for innocent human life.

I mean at this point, we know at least one of our own agents was killed, and probably 150 or more Mexican citizens were killed. Now that is a pretty scary scenario by itself. But I think the thing that would really concern the American people is why this was all done. On the one hand, if it was just something that was sincere effort that went wrong or just gross incompetence, that is one thing. But Mr. Issa mentioned some internal e-mails that I think were pretty significant, because if the American people learned that the motivations for all of this was somehow to make a case to deprive them of their second amendment rights, to make a case to further the Department's ability to further regulate gun rights within the United States, that would make them very angry, General. So let me just read a couple of e-mails again. I know Mr. Issa has already done this, but I just want to be clear on this so that you understand why some of us are so concerned.

On July 14, 2010 the ATF headquarters received an update on Fast and Furious. And the assistant director Mark Chait e-mailed Bill Newell, the head of ATF's Phoenix office. "Bill, can you see if these if guns were all purchased from the same license gun dealer and at one time? We are looking at antidotal cases to support a demand letter on long gun multiple sales. Thanks."

In other words they were trying to use this tragedy to build a case for the demand letters. Well done, yesterday, Bill in light of our request for demand letter 3, this case could be a strong supporting factor if we determine how many multiple sales of long guns occurred during the course of this case. It appears that the ATF was trying to rely on walked guns orchestrated by the Department to justify its new long gun reporting requirement known as demand letter 3. The people would be very upset if that was true. Now you have already testified that you haven't read these e-mails; is that correct?

Attorney General HOLDER. I am sorry, that I haven't read?

Mr. FRANKS. You already told Mr. Issa that you hadn't actually read these e-mails.

Attorney General HOLDER. That is correct.

Mr. FRANKS. Well, you know, the thing that is difficult for me, General, is that you then told him that it was out of context. And how would you have known that it was out of context if you hadn't read them. What would give you the first indication that they were out of context?

Attorney General HOLDER. Because he read part of the e-mail to me, and I was able to listen to that and understanding what he

said or what he read from the e-mail and knowing what happened here as I——

Mr. FRANKS. I will accept that. But do you read, I know you said that you don't oftentimes read letters from your own staff. Do you read major letters from oversight chairmen like Mr. Issa and Mr. Grassley that come to your office, do you personally read these letters?

Attorney General HOLDER. I can certainly say that over the last few months, everything that Mr. Issa has sent and Senator Grassley has sent, I have read.

Mr. FRANKS. Let me say then to you, on July 12, 2011, which was a letter that they both sent to you, the e-mails I just read to you were attached to the letter.

Attorney General HOLDER. I might not have read the attachments. Understanding something. These things come in, I read these things from Mr. Issa, from Congressman Issa and Senator Grassley, because I take seriously——

Mr. FRANKS. It is hard for me to—anyway, let me skip, ask you one more question here. Mr. Issa also asked if you had given all the pertinent e-mails here and that he noted that none of them had your name on this, none of them. And you said this is—this obviously is probably one of the most significant scandals facing your tenure over at the Justice Department, and not one e-mail, General, was from you? Not one of them?

Attorney General HOLDER. Well, we have produced a really substantial amount of stuff around the February 4 letter, but I just—let me be very clear, that with regard to documents that go beyond that from February 5 on, those materials have not been produced and it is not our intention to produce them following that——

Mr. FRANKS. So the answer to his question would have been no, that you haven't given him all the pertinent e-mails. I guess it is very simple in my mind that either if there are no e-mails from you that have been given to Mr. Issa, if there are none regarding this Committee, then we are left with three options here: Either this is not that big a deal to you, and I know that it is; or somehow you, for particular reasons, don't write e-mails so that there can't be any record; or that you haven't given us those e-mails, that is the only three things I can come up with, there may be other possibilities, I am open to hear it.

Attorney General HOLDER. I made an exception to the way in which the Justice Department has always conducted itself with the provision of these materials around that February 4th letter and acted in a way with regard to all other e-mail material in a way that all other Attorneys General before me have. And on that basis, there are e-mails, materials that we have not and will not produce.

Mr. FRANKS. I understand. Mr. Chairman, my time is up, but I understand, Mr. General, and I appreciate—but that answers the question. And I appreciate that, because without insulting you, that is one of the first clear answers I have gotten today is that you have agreed that you haven't given the Chairman all of the pertinent e-mails, and you are saying you are not going to, at least that is a clear answer for all of us, and with that, I yield back.

Mr. SMITH. Thank you, Mr. Franks. The gentleman from Illinois, Mr. Quigley, is recognized.

Mr. QUIGLEY. Thank you, Mr. Chairman. For those keeping score at home, one side is using this horrible screw-up to justify a policy. The other side is using this horrible screw-up to justify not funding ATF, not giving the ATF a leader, continuing to make tracing difficult of guns, continuing to make releasing statistics difficult, and for allowing continued extraordinarily lax policies for the violators and the purchasers of straw weapons that will be used long, long after this hearing today to purchase weapons to endanger Mexicans and Americans and our DEA agents. Penalties that were described in hearings before this Congress as nothing more than a moving violation.

So Mr. Attorney General, now that I have got the score card up to date. Let me just congratulate you, I can't forget that I am from Chicago, and yet again, yesterday there was a sentencing of an Illinois governor. So we will have two in jail at the same time, four of the last eight governors, two of my last four predecessors in this office went to jail or are going to jail. So I want to commend your office for its work. I just wish we didn't give you so much work to do.

But toward that end, Mr. Sensenbrenner and I did manage to get a bill out of this Committee dealing with repairing honest services, I would like your reaction on where we need to go with that. As you know, the Supreme Court struck down that Act, many provisions of it, and they are a necessary tool. Given where we are in Chicago but across the country, where in your mind do we need to go to deal with official corruption?

Attorney General HOLDER. Well, I thank you for the compliment, it is not something that I should be complimented for, but the men and women in U.S. Attorneys office in Chicago deserve all the credit. Pat Fitzgerald is a great U.S. Attorney, a friend, he has done a wonderful job over a great number of years there and he has a great staff. I also appreciate the efforts that you and Congressman Sensenbrenner have—the efforts that you have made in trying to help us deal with that Supreme Court decision.

The honest services provision in Title XVIII is a vital tool for us to have as we try to fight official corruption cases. A number of cases over the years have been made on the basis of the use of that provision, and to the extent that we can work with Congress to have that provision formed in a way that it can withstand constitutional muster that will help us; it will give us another tool in our arsenal against official corruption, which is a priority for this Administration.

Mr. QUIGLEY. And obviously, the bill has not passed the full House and/or Senate. To the extent that your agency can or will participate in making sure that we do this right as with—we would like this one to stand up for some time, we certainly appreciate your help in that manner.

Attorney General HOLDER. We would be glad to work with you in that regard.

Mr. QUIGLEY. Thank you, Mr. Chairman. And I yield back.

Mr. ISSA [presiding]. The gentleman yields back. We now recognize the gentleman from Texas, Mr. Poe, for 5 minutes.

Mr. POE. Thank you, Mr. Chairman. Mr. General, the way I see the Fast and Furious operation based on all of the information that

I have received, is that United States Government, Justice Department, ATF, we are aware of a situation where guns could be bought in the United States, serious weapons, automatic, semi-automatic, sniper rifles, bought by straw purchasers and were observed by Federal authorities, wanted to watch the guns go to Mexico, go to the drug cartels and see where they ended up.

Here is how it ended up. Two thousand weapons, based upon the information that we have received from your Department, 600 of those weapons are accounted for, the vast majority are not accounted for. We don't know what country they are in and who has got them. But this operation is serious to me because people died with this ill-founded decision. We talk about the two Americans, the two agents, one Brian Terry, Jaimie Zapata in Mexico, the two agents. But at least 200 Mexican nationals died too because of the United States watching these weapons, knowing where they were going and lose those weapons. Mexican government hasn't said a whole lot about this other than at least 200 Mexican nationals. Those Mexicans nationals that were murdered because of our watching this illegal conduct are just as important as the two Americans that were murdered as well. And that is why this is a serious discussion.

You are the Attorney General, you are a lawyer, former judge, prosecutor, you are the head guy in the United States when it comes to the Justice Department and law enforcement. My understanding is you didn't really know about the operation, the memos, you might have gotten the memo, didn't read the memo or didn't read all of the memo, not sure about that. But you are the person in charge of this, and believing that you were unaware of Operation Fast and Furious requires to coin a phrase, a willing suspension of disbelief. It is hard for me to believe that you were unaware of this operation that went to Mexico.

Now my question is very simple, who is the person in the United States Government that made the decision on Operation Fast and Furious to facilitate the guns going to Mexico? Who is that one person?

Attorney General HOLDER. We don't know yet.

Mr. POE. So you don't know who was responsible for the conduct of these thousands of guns going to Mexico? We don't know who that is?

Attorney General HOLDER. We know that the case was opened in the ATF office in Phoenix a month or so before it was opened in the U.S. Attorney's Office in Phoenix. We know that it was given OCDETF status sometime after that, but we do not know as yet who the particular people, person was, to the extent it is a person, in either of those offices that said this is the way in which this operation, this flawed operation should be conducted.

Mr. POE. So we don't know the person that signed off—I mean, I don't know how the Federal Government works, everybody has got to sign off on something, especially something like this. We don't know who that person is yet. Is that what you are telling me?

Attorney General HOLDER. With all due respect, I would be surprised if we are going to see a document that somebody signed off on that said you can let guns walk. I would be surprised if we see something like that.

Mr. POE. Would you agree——

Attorney General HOLDER. I don't know.

Mr. POE. We don't know who was in charge of making that final, it is time to send the guns to the enemy of Mexico, the drug dealers, which is phenomenal to me. It is a violation, I understand, of international law to allow gun trafficking to go between two countries. Do you agree with that?

Attorney General HOLDER. Well, I don't—it would depend. If you look at——

Mr. POE. People in one country are smuggling guns to another country, isn't that a violation of international law?

Attorney General HOLDER. Well, I don't know about international law, but I was going to say if you look at Operation Wide Receiver, if the governments agree that weapons can go from one country to another, I would not think that violates international law.

Mr. POE. If they agree, that is the key.

Attorney General HOLDER. Right.

Mr. POE. Did the Mexican government agree to Operation Fast and Furious?

Attorney General HOLDER. Not the way—not the way—not the way which it was actually carried out.

Mr. POE. The way it turned out?

Attorney General HOLDER. The way it turned out.

Mr. POE. Would you agree it was a reckless? It was a reckless operation on the part of the United States?

Attorney General HOLDER. I think the way it was carried out, I would certainly say it was flawed, reckless, I probably would agree with that. It was done inappropriately and had tragic consequences and is going—as I said in my opening statement, it is going to continue to have tragic consequences.

Mr. POE. More people are going to die probably.

Attorney General HOLDER. Unfortunately, I think that is probably true.

Mr. POE. The person recklessly causes the death of another person under many State laws, including Texas, where some of these guns were bought, it is manslaughter, it is a crime. It is my belief that if the United States government helped facilitate reckless homicide, reckless killing of other people, this is a serious matter. And there may be people in our government, Justice Department, the ATF, that if they helped facilitate reckless conduct that caused the death of an individual in the United States or in Mexico by sending these guns down there, they should be held criminally responsible for that conduct.

Are you going, as far as the Attorney General, to make sure that if criminal violations were committed by anyone in our government, that you are going prosecute those people?

Attorney General HOLDER. Sir, if we find there were criminal violations connected to the conduct of the Fast and Furious, I will commit that those—that we will take those findings seriously and that people will be prosecuted. Now when I said reckless before, I was talking about the way in which the operation itself was conducted. I don't want to cast too wide a net here and say that on the basis of what we know now that there is a basis to conclude that people connected to Fast and Furious either at the ATF in

Phoenix or in the U.S. Attorney's Office in Phoenix would necessarily have the requisite state of mind or done things that would bring them under the ambit.

Mr. POE. Reclaiming my time, that is not what you are saying, that is what I was saying. I was saying——

Mr. SMITH [presiding]. The gentleman's time has expired.

Mr. POE. Thank you very much. And I request unanimous consent to submit further questions to the Attorney General and have answers in writing.

Mr. SMITH. Without objection. Thank you, Mr. Poe.

The gentlewoman from California, Ms. Chu, is recognized.

Ms. CHU. Mr. Attorney General, before I begin with my questions, I would like to thank you for the anti-crime accomplishments in my district of Los Angeles. Earlier this year, the Department took down in 1 day more than 100 members and associates of transnational organization crime groups that were involved in widespread criminal conduct in Los Angeles, Miami and Denver. These were violent and fraud-related crimes, including kidnapping and drug distribution. And also, in recent years, the Department has gone after a San Gabriel Valley-based organization linked to a major ecstasy ring leading to the seizure of over 1.1 million ecstasy tablets.

Your office has also engaged in a massive take down of major methamphetamine and cocaine suppliers in some of the most violent street gangs in Los Angeles and La Puente. So I thank you for all of those efforts. It has truly helped our area.

And I would also like to commend you for the work your department has done in regards to voter rights. Your office has handled 27 new cases this year and opened up 172 investigations in this area. We all know there has been a large number of unprecedented legislation suppressing voter rights. And I am happy to hear that your office is vigilant about not letting that happen.

Can you provide some examples of what the department is doing to ensure that newly enacted State legislative efforts on voter identification are implemented in accordance with the Voter—Voting Rights Act?

Attorney General HOLDER. Well, we have a special role to play under the Voting Rights Act. Our Civil Rights Division, which is ably led by Tom Perez, has been very active in this regard. And to the extent that changes are made in covered jurisdictions, we review those proposed changes. And where we think something runs afoul of the Voting Rights Act, we note that and do not pass on them. Where we think that they are consistent with the Voting Rights Act, we approve them. We have taken, in a number of places, lodged objections to proposals that have been made with regard to changes in voting schemes.

Ms. CHU. And what steps are being taken to ensure that jurisdictions and the public are aware of what is permissible and not permissible with these types of laws?

Attorney General HOLDER. Well, you know, we have tried to—Assistant Attorney General Perez in particular has spent a lot of time on the road, trying to educate people, especially in those areas covered by the Voting Rights Act, about—and we have interacted with State officials as well, to let them know about ways in which things

can be changed consistent with the Voting Rights Act, warned jurisdictions about ways in which changes might be made that might run afoul of the Voting Rights Act.

And then, more generally, to talk to members of the public, as I have tried do, when I have been out there to talk about the Voting Rights Act. As I said, I am going to be talking about this in a speech in the LBJ library next week, I think on Monday or Tuesday.

Ms. CHU. Very good.

Well, I also want to thank you for something else, which is that there is an issue about offensive materials about Muslims that was used in some FBI training. And I know that in the Senate Judiciary meeting last month, you acknowledged that this has stopped. It was when the FBI was conducting counterterrorism training, using materials that included inflammatory statements about Islamic beliefs and offensive stereotypes about Muslims. So, at that Senate Judiciary meeting, you acknowledged that it stopped. And I would like to know what the status is of the situation and the steps that have been taken or any investigation that has been opened up about the use of these biased trainers and materials.

Attorney General HOLDER. Well, the person who was responsible for the use of—I guess using that material is no longer going to be used by the FBI. We have also enhanced our efforts to make sure that we review all the materials that are used in the training of agents, lawyers, personnel within the Department of Justice to make sure that that kind of mistake doesn't happen again. This is something that the FBI Director, the heads of the other law enforcement agencies within the Department, as well as I and the leadership in the Department, are committed to making sure does not happen again. I mean, that was totally inappropriate, and it is a mistake that we will not allow to happen again.

Ms. CHU. Thank you.

I yield back.

Mr. SMITH. Thank you, Ms. Chu.

The gentleman from Utah, Mr. Chaffetz, is recognized.

Mr. CHAFFETZ. Thank you.

And thank you, Mr. Attorney General, for being here. Have you spoken to Secretary Napolitano about Fast and Furious?

Attorney General HOLDER. No.

Mr. CHAFFETZ. Have you spoken with Secretary Clinton about Fast and Furious?

Attorney General HOLDER. No.

Mr. CHAFFETZ. Have you spoken to President Obama about Fast and Furious?

Attorney General HOLDER. I don't think that I have. I see the President——

Mr. CHAFFETZ. That is okay. If you haven't, you haven't.

Have you spoken to the President of Mexico about Fast and Furious?

Attorney General HOLDER. No.

Mr. CHAFFETZ. Have you spoken to the attorney general of Mexico about Fast and Furious?

Attorney General HOLDER. I don't believe so.

Mr. CHAFFETZ. You have routinely argued that you have been oblivious and disengaged in this operation. And I buy that to a large extent.

Attorney General HOLDER. I am not sure I would characterize——

Mr. CHAFFETZ. But we have a dead Border Patrol agent in Agent Terry. We have 2,000 missing guns. We have 200 deaths in Mexico. We had dead government officials in Mexico. We have a Mexican helicopter with troops in it that was shot, three of which are wounded back in May of this year. We have 50-plus Members of Congress calling for your resignation over this, and you have never spoken to any one of these people about this operation?

Attorney General HOLDER. Well, first off, the notion that I am somehow oblivious to this matter is totally belied by these inconvenient things called the facts.

Mr. CHAFFETZ. You took 5 days to go to the Caribbean. You didn't have 15 minutes to call Secretary Clinton, Napolitano, talk to the President, or your counterparts in Mexico?

Attorney General HOLDER. Understand something with regard to Secretary Napolitano, we, our agencies have been in constant touch with each other about this issue because we are engaged, both of us, in the prosecution of the killer of——

Mr. CHAFFETZ. So if you were intimately involved and engaged in this, remember Agent Terry was killed in December, mid-December, and then we had Jaime Zapata, who was killed in Mexico, two officers shot, February 15. On February 16, you and Secretary Napolitano issued a press release that is titled, "Secretary Napolitano and Attorney General Holder form a joint task force to assist Mexico's investigation into yesterday's shooting of two ICE agents in Mexico."

At the very beginning of this press release, Secretary of Homeland Security Janet Napolitano and Attorney General Eric Holder today met to discuss this issue. And how is it that you and Secretary Napolitano said you never even talked or discussed, even brought up or had any discussion about Fast and Furious?

Attorney General HOLDER. The press release that you talk about is not a Fast and Furious matter.

Mr. CHAFFETZ. But——

Attorney General HOLDER. Understand—you have to understand something of the way Washington works here, okay? The reality is that when it comes to matters that are under investigation——

Mr. CHAFFETZ. But the death of Jaime Zapata was highly likely, it was highly likely that that came from Fast and Furious. In fact, from testimony that we took from Agent Forcelli, and I am going to read from this, is from January 8 of 2011, quote, And there was the sense like every other time, even with Ms. Giffords' shooting, there was a state of panic like, oh, my God, let's hope this is not a weapon from that case. And the shooting of Mr. Zapata down in Mexico, I know that again, that state of panic that they had like, please, let this not come back.

So the agents on the ground were so concerned that this is going to happen. You and Secretary Napolitano have a discussion, and there is no discussion about even the possibility of Fast and Furious?

Attorney General HOLDER. There is—the meaningful conversations that happen between DHS and DOJ happen at lower levels, between investigators.

Mr. CHAFFETZ. But when you and—what did you and Secretary Napolitano talk about if you didn't talk about Fast and Furious, and it is the day after Jaime Zapata, and you were very quick to issue press releases?

Attorney General HOLDER. You are making an assumption that that in fact is a Fast and Furious case. I am not sure that——

Mr. CHAFFETZ. We didn't know at the time. You didn't know at the time. I didn't know. Nobody knew at the time. Isn't it a reasonable assumption to suggest that it may have been guns from Fast and Furious that happened, that caused that death?

Attorney General HOLDER. Given the fact that there are over the course of the last 5 years 64,000 weapons that have gone from the United States to Mexico——

Mr. CHAFFETZ. I have a hard time believing, Mr. Attorney General, with all due respect, my time is short, twice the President of the United States has gone before the American people and said that you had nothing to do with this, you weren't involved in it, you weren't engaged in it. Yet you said you have never spoken to the President. How is it that he would know you haven't been—weren't involved in this, and he can make such a claim if you have never even spoken to him about it?

Attorney General HOLDER. Well, the President gets information from the Justice Department in a variety of ways. We interact with the White House Counsel's Office very frequently. I don't know exactly what the flow of information is within the White House, but he can find out about my state of involvement in matters connected to the Justice Department without speaking directly to me.

Mr. CHAFFETZ. Let me move onto—you have access to, obviously, the e-mails of Dennis Burke. On Wednesday, November 24, 2010, he sent an e-mail that said, "Some of the weapons bought by these clowns in Arizona have been directly traced to murders of elected officials in Mexico by the cartels. So Katie bar the door when we unveil this baby." How is it that you have never had a discussion with your counterpart in Mexico about this?

In fact, in a Los Angeles Times article, dated September 19 of this year, quote, At no time did we know or were we made aware that there might have been arms trafficking permitted. In no way would we have allowed it because it is an attack on the safety of Mexicans. It goes on in the article, actually the paragraph before, And to this date she said U.S. officials have not briefed her on the operation gone awry, nor have they apologized.

What is unacceptable is that you and everybody in your organization, according to you the higher-ups, know about this investigation. You don't have 15 minutes to pick up the phone. And we have still never talked to these people in order to solve this problem because, as you say, it is going to go on for some time.

Attorney General HOLDER. We have taken steps, I have taken steps to solve this problem in that I ordered an examination of this to determine exactly what happened. I have issued directives that this should never happen again. We have put in place measures at ATF so that this kind of thing won't happen again.

What Todd Jones has done with regard to the reforms that he has put in place I think are going to be extremely effective. And I have made personnel changes with regard to——

Mr. CHAFFETZ. You haven't fired anybody. Nobody has been fired.

Mr. SMITH. The gentleman's time has expired.

Does the gentleman want to respond to the last question?

Attorney General HOLDER. I just was trying to say that I have made personnel changes with regard to the agencies that have been involved. And these are initial determinations that I have made. It is not all that I am possibly going to do. There is an impatience here, and in some ways, I understand it, but the reality is that you have to do these things on the basis of evidence, on the basis of findings that are factually grounded. And when I am in that position, I will take the appropriate actions. But I want to assure you and the American people that people will be held accountable for the mistakes that were made in Fast and Furious.

Mr. ISSA. Mr. Chairman, point of inquiry.

Mr. SMITH. Thank you, Mr. Chaffetz.

Who seeks to be recognized?

The gentleman from California.

Mr. ISSA. A point of inquiry. Do political appointees of the Presidents and the Attorney General serve at the pleasure of the President or the Attorney General, or do they need to have to be fired for cause?

Mr. SMITH. That is not actually a parliamentary inquiry——

Mr. ISSA. But I am sure inquiring.

Mr. SMITH [continuing]. Though it may be a legitimate question. The Judiciary Committee will recess until immediately after this series of votes. We expect that to be about 2:30.

[Recess.]

Mr. SMITH. The Judiciary Committee will come to order.

Before we resume our questioning, I would like to welcome the newest Member of the Committee, Jared Polis, from the Second District of Colorado. Congressman Polis was just appointed yesterday to fill a vacancy on the Committee. And we are happy to welcome him back. He was on the Committee for several years and is back on now.

He also serves on the Rules Committee and the House Democratic Steering and Policy Committee. And at our next meeting, we will go into even more details about Mr. Polis. But we welcome him today.

And will be recognizing you immediately for questions.

Mr. POLIS. Thank you so much, Mr. Chairman.

I would like to draw your attention, Mr. Attorney General, to the issues surrounding the regulation of medical marijuana.

I wanted to first clarify, there is a memo dated October 19, 2009, from David Ogden. I am sure you are familiar with that memo. The contents of that memo is advisory to the States is still in force. Is that correct? That is still a current memo?

Attorney General HOLDER. Yes.

Mr. POLIS. Okay. Thank you. And one of the issues that was later clarified in a memo by James Cole is what we are talking about when we are talking about caregivers, who your memo in-

structs should not be an enforcement priority. The Colorado Constitution in Article XIV happens to have a definition of caregiver. It is further refined in our Colorado statutes. And I wanted to see whether I can get your assurance that our definition of caregiver in our State's Constitution will be given some deference by the U.S. Attorney General's Office.

Attorney General HOLDER. I am not familiar with the provision. But what we said in the memo we still intend, which is that given the limited resources that we have, and if there are States that have medical marijuana provisions, and if you take into account the Cole memo, if in fact people are not using the policy decision that we have made to use marijuana in a way that is not consistent with the State statute, we will not use our limited resources in that way. And so I don't know—I assume that—I just don't know about that provision.

Mr. POLIS. And again, in the case of Colorado, we do have definitions of some of the terms in your documents in our Constitution. And I would hope that the U.S. Attorney General for the State would look at that.

Now, as you know, the Department of Justice recently announced a crackdown in California. Now, part of the issue there, it is my understanding, they did not have a functional State-level regulatory authority. Colorado does have an extensive State regulatory and licensing system for medical marijuana. And I would like to ask whether our State regulation, our thoughtful State regulation, passed with strong bipartisan majorities in both Chambers of our legislature, provide any additional protection to Colorado from Federal intervention.

Attorney General HOLDER. Again, I am not familiar with it, but I would have to look at it. But again, our thought was that where a State has taken a position, it has passed a law and people are acting in conformity with the law—not abusing the law, but acting in conformity with it—and again given our limited resources, that would not be an enforcement priority for the Justice Department.

Mr. POLIS. Thank you. I am grateful for that clarification.

One of the issues that many of the legal, regulated medical marijuana shops and dispensaries shops in Colorado brought to my attention is their inability to open bank accounts at most FDIC institutions. That makes the industry harder for the State to track, to tax, to regulate, and in fact makes it prone to robberies because it becomes a cash business as well. Is there any intention of the Department of Justice to prosecute bankers for doing business with licensed and regulated medical marijuana providers in the States?

Attorney General HOLDER. Again, I would think, consistent with the notion that how we use our limited resources, again, if the bankers, the people seeking to make the deposits are acting in conformity with State law, that would not, again, be an enforcement priority for the Justice Department.

Mr. POLIS. Thank you.

Moving onto another issue with regards to Internet piracy, as you know the Judiciary Committee recently held hearings on SOPA, Stop Online Piracy Act. I had many concerns with this bill, including an overly broad definition of infringement. As you know, there is a lot of content on the Internet. In fact, as example, on

YouTube alone, there's 100 hours of video that is uploaded every minute. Many of this, many of the videos that have been uploaded contain some type of rights infringement, with no intent for commercial gain.

I ask with the substantial new powers that would be granted to the Attorney General's Office under SOPA, what type of resources would the Department of Justice need to handle the hundreds of millions of prosecutions that would be necessary and indicated under SOPA?

Attorney General HOLDER. Well, I think that you have to look at what powers we would be granted and then how we would use our resources. Not every matter, though it might be a technical violation of a statute, is something that we are going to use our resources going against. I mean, if there is a YouTube upload of something that is not intended for commercial use and we don't think there is any great harm, that is not the kind of thing we are going to be going after.

Mr. POLIS. So it is fair to say, given otherwise the absence of tens or hundreds of billions of resources to go after everybody, there would be selective enforcement of the Stop Online Piracy Act from the Attorney General's Office?

Attorney General HOLDER. Well, selective enforcement, as a prosecutor you get a little nervous saying that phrase. But there would be an appropriate use of our resources, taking into account what the harm is, and always with the thought that what we are trying to do is to protect the abuse of copyrighted material.

Mr. POLIS. I thank the gentleman.

And just note that with regard to the selective enforcement, there is not currently criteria in the bill, so that would be at the discretion of your office to decide what type of selective enforcement of that law and the new powers would be given to the Attorney General under that would entail.

And I yield back the balance of my time.

Mr. SMITH. Thank you, Mr. Polis.

The gentleman from South Carolina, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Holder, Assistant Attorney General Ronald Weich wrote a letter to a Member of Congress, February 2011, a letter which was demonstrably false. Your Department withdrew that letter 10 months later. When did you learn that that letter was false?

Attorney General HOLDER. Well, I would not characterize the letter as false. I would say it contained inaccuracies.

Mr. GOWDY. Well, Mr. Attorney General, it contained material demonstrably false statements. Agreed?

Attorney General HOLDER. No.

Mr. GOWDY. You don't think they were demonstrably false when you represented ATF makes an effort to interdict all weapons going to Mexico? You don't think that is demonstrably false?

Attorney General HOLDER. Not in the way you used the word.

Mr. GOWDY. How do you know what way I used the word?

Attorney General HOLDER. I am listening to you.

Mr. GOWDY. Is it false? Can I demonstrate that it is false?

Attorney General HOLDER. Well, you said materially false. You are using legal terms there. You are a lawyer. So now we are in

that realm. And you said materially false. And that is a fundamentally different thing from——

Mr. GOWDY. All right. Do you think it was demonstrably false?

Attorney General HOLDER. I would say that it was inaccurate.

Mr. GOWDY. All right. When did you learn it was inaccurate, demonstrably false?

Attorney General HOLDER. You know, I am not sure, but I had concerns about it early enough that in spite of the expression on February 4, I ordered that investigation on February the 28. And it was an evolving process. As time went on, more and more information became available. And it became more and more clear that that letter contained inaccurate information.

Mr. GOWDY. Well, it strikes me that if a statement that false were made to a judge, you would have withdrawn that statement, that brief, that memo, that filing the moment that you learned it was false. And I am just curious why there is not the same regard for this branch of government that there would be for the judicial branch of government.

Attorney General HOLDER. If you look at what happened over the course of months between the time of the letter until it was formally withdrawn, there were a number of instances where we indicated that we had concerns about what was in the letter, in testimony that Mr. Weich gave, at one point I believe, he said we were not—I don't remember the exact expression that he used, but he indicated there that we had concerns. In a letter that I sent I guess in October, I indicated there were problems with Fast and Furious which was inconsistent with what the letter said. There were a number of things that happened between February 4 and I guess December or November, whenever it is that we actually withdrew it.

Mr. GOWDY. Let's go back to February 4, because there are at least four senior DOJ officials who knew or should have known that letter was false at the time it was delivered. Your chief of staff, Gary Grindler, saw a map of Mexico where guns were being recovered. He was debriefed on Fast and Furious. He knew that cash was being paid for the weapons in Arizona. Lanny Breuer, you will concede, knew for a fact that gun walking was taking place in February of 2011. Agreed?

Attorney General HOLDER. No.

Mr. GOWDY. You disagree that Lanny Breuer, despite the fact that he has admitted it, knew that gun walking was taking place by ATF. Mr. Attorney General, there are e-mails where he admitted it in October of 2010.

Attorney General HOLDER. Okay, now Congressman, you have to be careful here. He said that he knew about gun walking in Operation Wide Receiver.

Mr. GOWDY. Right. Which is why it is very important Mr. Weich didn't say Fast and Furious in his letter to Senator Grassley. I see where you are going with that. He didn't make a distinction on Fast and Furious.

Attorney General HOLDER. I am just trying to be careful here.

Mr. GOWDY. And I want to be careful, too.

Attorney General HOLDER. You don't want to conflate things.

Mr. GOWDY. I am not conflating.

Attorney General HOLDER. Okay.

Mr. GOWDY. Did Lanny Breuer know that ATF engaged in gun walking in February of 2011.

Attorney General HOLDER. He knew they had engaged in gun walking in the Fast—in the Wide Receiver operation.

Mr. GOWDY. So the answer to that question would be yes. Lanny Breuer knew that any statement that ATF makes every effort to interdict guns and not allow them to go to Mexico, he knew that statement would have been false.

Attorney General HOLDER. He said that he made a mistake in not connecting that which he knew about Wide Receiver and didn't apply that knowledge to what happened in Fast and Furious.

Mr. GOWDY. What about Jason Weinstein and James Trusty? This is their e-mail exchange: It is a tricky case given the number of guns of that have walked. That is October 2010. Trusty responds, It is not going to be any surprise that a bunch of U.S. guns are being used in Mexico, so I am not sure how much grief we get for gun walking. These aren't AUSAs in Arizona. These aren't rogue ATF agents. These are senior DOJ officials. And I cannot believe that they just learned recently that a demonstrably false letter had been mailed to a Member of Congress. Why not correct it the moment you realized that it was wrong?

Attorney General HOLDER. Well, they admit that they made mistakes with regard to what their level of knowledge was and what they should have done in the preparation of the letter. They relied on people who they thought had the best knowledge in Arizona and did not bring into their calculation information that they had previously had about the gun walking that had occurred in that prior operation.

Mr. GOWDY. Mr. Attorney General, you brought several law enforcement officials with you today. And I salute their service. It just strikes me—and I am quite confident I will get this question when I go back home—when law enforcement officers lie to lawyers, they go to jail. When lawyers lie to Congress, they seem to get promoted. There is a Border Patrol agent who is on his way to Federal prison right now on a 1001 conviction. What consequences can we expect because of false statements made to Congress?

Mr. SMITH. The gentleman's time has expired.

And if the Attorney General will respond to the question.

Attorney General HOLDER. As I said, there is an Inspector General investigation that is underway. I will look at the results of that investigation.

But I will also be looking to see what happened with regard to the creation of that letter, if there is any more information that I can glean on my own, before making determinations as to how people will be held accountable for the mistakes that they made.

In taking into account in making that determination, what roles have they played in the Department, what good things have they done. I mean, one cannot look at these mistakes, I think, in isolation. One has to look at the totality of the person's service to the Department and then, on that basis, make a determination as to what the appropriate sanction will be. And that is what I will do.

Mr. GOWDY. Mr. Chairman, I would ask unanimous consent for 15 seconds just so I can follow up on one point.

Mr. SMITH. The gentleman continues to be recognized for 15 seconds.

Mr. GOWDY. Mr. Attorney General, it just seems to me that the policy is now going to be let's get the least knowledgeable person that we can to write the letter. I found the exchange between you and Chairman Sensenbrenner to be interesting on mens rea. The defense is that Mr. Weich didn't know what he didn't know, so we are going to get the least knowledgeable person in the Department of Justice to write the letters to Members of Congress. Is that what we can expect from now on?

Attorney General HOLDER. No. What you can expect from this Department of Justice, as long as I am the Attorney General, is that we will do our best to get you accurate information as quickly as we can.

And I actually think that one of the problems with regard to the Fast and Furious response is that we were rushed. If people—although if you look at, you know, that e-mail, all those e-mails that we sent around, you see people are really interacting with one another, trying to find information. But I think there was a time pressure there that, frankly, they should not have allowed in the process. They should have taken more time, sent a placeholder response or something like that, and if it took 2 weeks to get a response back to Congress, that would have been better than I think the 4 or 5 days that it took. I think that is certainly one of the problems. And there was a lesson learned.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Gowdy.

The gentleman from Florida, Mr. Deutch, is recognized.

Mr. DEUTCH. Thank you, Mr. Chairman.

General Holder, welcome, thank you for spending the day with us. Thank you for your candid responses.

I would note that sometimes facts get in the way of political theatrics. And I appreciate your willingness to share facts with us today.

I would like to just revisit this discussion by taking a step back for a minute, General. Can you, since we have delved into the weeds, can we back up for a second? When did you learn about Operation Fast and Furious?

Attorney General HOLDER. Sometime in the beginning of the year. It would have been I think after I got those letters from Senator Grassley on January the 31st. And at some point after that, I think sometime in February, I first learned about Operation Fast and Furious.

Mr. DEUTCH. And what did you tell the U.S. Attorney's Offices? What notice did you send them when you learned of this?

Attorney General HOLDER. After I ordered the Inspector General investigation, in March, I sent a directive to all of the U.S. Attorney's Offices that gun walking was not acceptable, not an acceptable technique or tactic, that it was contrary to DOJ policy. I had the Deputy Attorney General send that out to all of the U.S. Attorneys.

Mr. DEUTCH. And that was after you ordered the investigation. And tell me about the investigation that you were ordering.

Attorney General HOLDER. The order for the investigation was on February 28. I thought that I was getting conflicting information from people within the Department of Justice and what I was reading in the media and, frankly, what Congress was bringing to my attention. And it just seemed to me that I needed to have—find a mechanism to finally resolve what these conflicting positions, and as a result, I ordered—I asked the Inspector General to engage in this investigation.

Mr. DEUTCH. And what is the time frame of that investigation?

Attorney General HOLDER. I am not sure. They are—I know, they are feverishly working on it. When it will actually be completed, I don't know.

Mr. DEUTCH. I appreciate that.

There are 64,000 guns in Mexico is the number that I understand. Ninety-five percent of the weapons recovered from murders in Mexico, 95 percent, were traced to the United States. Tens of thousands of weapons were traced to the United States. It is—this discussion is vitally important, but I think it is equally important for us to broaden the discussion to one of how to address the fact that there are still tens of thousands of weapons that are winding up in Mexico from our border.

Can you speak, General, to the actions the Congress can take in order to help stem that flow of guns?

Attorney General HOLDER. Well, I think, certainly, if Congress were supportive of our funding requests to help ATF with these teams that we would like to send to the border—we tried to send 14 at one point. I think we only sent seven or eight because of funding problems, these ATF teams that have an ability to monitor the trafficking of weapons into Mexico. That would be helpful.

There is a trafficking statute, if Congress would pass—consider and pass that, I think that could help us as well. Support for that regulation that we put in place that deals with long guns and the sale of them over the course of, you know, a 5-day period. All of these things I think would be helpful. And a more protracted dialogue about what the nature of the problem is, which is a national security threat to the United States. You know, it is not only the executive branch that has ideas that I think could be useful. I am sure there are great ideas in Congress as well. And to the extent that we can identify them, work on them, and do so in a way that is respectful of and consistent with the Second Amendment, I think that would be very useful.

Mr. DEUTCH. I agree. I also would suggest, General, that it is worth broadening this debate to within our own borders as well.

I think it is worth noting that 100,000 people a year in America are shot in gun violence; 32,000 died from gun violence last year; 20,000 American children and teens are shot every year involving gun violence. Every day in America 270 people in America, 47 of them children and teens, are shot. And every day, 87 people die from gun violence in this country.

This is a very important hearing. And this is an important discussion about this operation and the investigation that you have started.

I think, unfortunately, the debate that we are not having often enough here is one about gun violence in this country, is one that

acknowledges the fact that law enforcement officers in our country now need to carry assault weapons themselves in order to match the firepower of the criminals who carry assault weapons. There was a survey done of about two dozen police departments by the International Association of Chiefs of Police that since 2004, all of the agencies have either added assault weapons to patrol units or replaced existing weapons with military-style assault rifles. Military-style assault weapons are now necessary. They are needed by our police officers because assault weapons are flowing freely within our own borders.

And while this discussion is important, we live in a country where the assault weapon ban has expired, and we see assault weapons now flowing through the streets, causing our law enforcement to have to carry assault weapons.

The gun show loophole continues to exist. And it is about time, and I say this only rhetorically, I don't ask for your response, General, but it is about time that we focus as a Congress on the steps that we need to take to decrease gun violence in this country and to get these assault weapons, that are created for the sole purpose of killing people, off of our streets one and for all.

I very much appreciate your being here, and I appreciate this exchange, General. Thanks so much for coming.

Attorney General HOLDER. Thank you.

Mr. SMITH. Thank you, Mr. Deutch.

The gentleman from Florida, Mr. Ross, is recognized.

Mr. ROSS. Thank you, Mr. Chairman.

And Mr. Attorney General, I thank you for being here. I know it has been a rather long day for all of us. I just want to clarify your understanding of your being here today, because there was some confusion I think at the beginning. Is it your understanding that you are here under oath, that you are under penalties of perjury as to your testimony?

Attorney General HOLDER. I am here to tell the truth, sure.

Mr. ROSS. Okay. So you believe that you are here under oath. Is that your understanding?

Attorney General HOLDER. I am not sure I am technically under oath, but I have an obligation to tell the truth. I don't need to swear an oath; I am here to tell the truth.

Mr. ROSS. Thank you. I hope so. Thank you.

Attorney General HOLDER. I am going to tell the truth.

Mr. ROSS. I want you to tell the truth. Because I want to ask you a little bit about your management style.

Attorney General HOLDER. All right.

Mr. ROSS. You know, it looks as though that you have not really been reading any of the memos that you get on Fast and Furious. In fact, I think that your Chief of Staff Ken Ohlson has testified before the Senate Judiciary Committee that he also did not read the memos sent to your attention regarding Fast and Furious. And I am just curious, why would that be? You learn about this operation sometime after the first of the year this year, and yet it has been going on for a year. You are the number one law enforcement officer in this country. And yet you don't know what is going on. That would make me upset if I was in your position. Does it not you?

Attorney General HOLDER. You have to understand these memos that you are talking about are weekly reports that come to the Office of the Attorney General, the Office of the Deputy Attorney General. And they are statements by the various components of what is going on in them. If you look at the very things that we have submitted to Congress that show what actually dealt with Fast and Furious in those weekly reports, they don't indicate anything about these bad tactics.

Mr. ROSS. Okay.

Attorney General HOLDER. It talks only about Fast and Furious as if——

Mr. ROSS. But somewhere in the line, somewhere in the line of authority, you have been—you are not new to this. You were in the Office of Public Integrity, what, for 12 years?

Attorney General HOLDER. Public Integrity Section.

Mr. ROSS. Yeah, Public Integrity Section for 12 years. You were Deputy Attorney General for 3 years. None of this structure is new to you. And yet there is somebody below you, and not your chief of staff, because he didn't read the memos, but there is somebody who is reading these memos. Why are they not reporting to you?

Attorney General HOLDER. Because if you read the memos, read them, if you will read the memos you will see—and they are not memos, they are these excerpts—if you read these excerpts about Fast and Furious, all it says is that Fast and Furious essentially is going fine——

Mr. ROSS. But did you know what Fast and Furious was at that time? Did you know that it was akin to Wide Receiver but not the same?

Attorney General HOLDER. No.

Mr. ROSS. Did you know what Fast and Furious was at all at that time?

Attorney General HOLDER. No, I didn't know about Fast and Furious until about February of this year.

Mr. ROSS. Shouldn't you have known?

Attorney General HOLDER. No, because Fast and Furious is an operation, a regional operation. There are all kinds of operations going on right now in the Justice Department about which I know nothing because of the way in which the Department of Justice is structured. They are handled by——

Mr. ROSS. Who specifically would have been reading those memos? Do you know by name who specifically would have been reading——

Attorney General HOLDER. People on my staff.

Mr. ROSS. Who are their names?

Attorney General HOLDER. The people—whoever had the portfolio for ATF with regard to their weekly memos, NDIC with regard to their weekly memos. Those are the people on my staff who would have had that responsibility, making the initial determination as to whether or not there was information contained in those reports that should be brought to my attention.

Mr. ROSS. Would you agree that one of the most fundamental principles of leadership is that you can delegate authority but you cannot delegate responsibility?

Attorney General HOLDER. Okay. That sounds about right.

Mr. ROSS. And would you be willing then to say that you are responsible for Fast and Furious operation?

Attorney General HOLDER. As I said, I am ultimately responsible for everything that happens in the Justice Department.

Mr. ROSS. Do you have any remorse for what happened with Agent Terry?

Attorney General HOLDER. Of course, I do.

Mr. ROSS. Have you spoken to their family? Have you apologized to their family?

Attorney General HOLDER. I have had contact with the family that I am not going into. The nature of my interaction with them is between me and them, and I will leave to them how they want to, if they want to, reveal that. People on my staff, in addition to me, are in constant touch with the Terry family.

Mr. ROSS. But you have not apologized to them, as I understand it.

Attorney General HOLDER. I will say that I have expressed my feelings to them, and I am going to leave——

Mr. ROSS. You are the number one law enforcement officer in this country, and a law enforcement officer has died as a result of a botched operation. Don't you feel some sense of remorse that you ought to apologize to the family?

Attorney General HOLDER. I feel great remorse, great regret, and I have expressed this to the Terry family. I am not going to reveal to you in this setting the nature of the interaction——

Mr. ROSS. Just real briefly. And I——

Attorney General HOLDER [continuing]. The nature of the interaction that I have had with the Terry family. I am not going to do this in front of the media. I am not going do it in front of a Congressional——

Mr. ROSS. But you haven't apologized. That is all I wanted to establish. Now, you also testified in your opening statement that, as you state here, that used inflammatory and inappropriate rhetoric about particular one tragedy that occurred near the Southwest border in an effort to score political points. Do you feel that somebody is trying to score political points with this incident?

Attorney General HOLDER. With the Fast and Furious incident?

Mr. ROSS. Yes.

Attorney General HOLDER. Well, let's just say that some people have not let facts get in the way of——

Mr. ROSS. And you are here with clean hands to say that. Correct?

Attorney General HOLDER. Excuse me?

Mr. ROSS. You are here with clean hands to say that. Because in your opening statement, you also allege, or you assert that, for example, earlier this year the majority of House Members voted to keep law enforcement in the dark when individuals purchase multiple semi-automatic rifles and shotguns. Mr. Attorney General, it seems to me that you are trying score as many political points as you are asserting that somebody else has done in this operation. And I find that rather offensive.

Attorney General HOLDER. What I have said there is factually accurate. I don't have any problem with people, you know, criticizing me or the Department as long as what you say is factually

based. That is fine. I mean I understand that. I am a big guy. I have been in Washington for a long time.

The concern I have is where things are thrown at the Department generally, and me personally, that are not factually based. That is where I draw the distinction.

Mr. ROSS. I see my time is up. I yield back.

Mr. SMITH. Thank you, Mr. Ross.

The gentleman Puerto Rico, Mr. Pierluisi, is recognized.

Mr. PIERLUISI. Thank you, Mr. Chairman.

Thank you, General. I am sorry I haven't been able to be here as long as I wished. I had a parallel hearing I couldn't excuse myself from.

But the first thing that comes to my mind is that I should commend you, because the little time I have been here, I have been watching you. And I keep seeing that you keep saying, as I have said, as I have said, as I have said. And that leads me to believe that you have been asked so many questions, similar questions, and you have had the candor, the demeanor, the patience to deal with them.

And that is what we should be expecting, and we expect from the Attorney General. And so that is why I thank you, and I commend you.

Attorney General HOLDER. Thank you.

Mr. PIERLUISI. Stay like that, though, because this hasn't finished.

But I have a couple of questions, a couple of comments. First, I am personally concerned about the gun shows and, obviously, the straw purchasers. And putting aside this Fast and Furious operation, which you have already denounced, and you put a stop to it as soon as you learned of it, what else are you doing to deal with the straw purchases and the gun shows that seem to be, you know, like totally unregulated and so on?

Attorney General HOLDER. Well, we have tried to make a priority the fight against gun violence. And we try to approach it in a variety of ways, by being aggressive in going after those who traffic in firearms, to go after those people, convicted felons, for instance, who should not have access to weapons, to try to come up with ways in which we keep guns out of the hands of felons. And that is really important, because if you look at the number of police officers who have been shot and, unfortunately, died over the last couple of years, the vast majority of them have been shot by people who were felons and who should not have had access to weapons. And so we do a whole variety of things to try keep guns out of hands of people who should not have them.

Mr. PIERLUISI. That is good.

One thing that bugs me is that for 5 and a half years, we haven't had a permanent director at ATF. Yet I see lots of vacancies there. I see them in Puerto Rico, my district, my place; 45 percent of the slots are vacant, even though we have a huge crime issue and illegal gun issue. Is that affecting the level of resources that ATF has? I mean, is this lack of a permanent director affecting its mission, its ability to meet its mission?

Attorney General HOLDER. I do think so. I think that internally an organization runs better when a person who is seen as the per-

manent head, the Senate-confirmed head is in charge. I think people respond better, although I think Todd Jones is doing a great job as the acting person now.

But beyond that, a person who is Senate confirmed has the ability in the budget process to lobby for his or her organization in a way that a person who is doing it in an acting capacity cannot. You just have more heft within the Administration, in dealing with Congress, if you are the confirmed head. And I think because ATF has been so long without a confirmed head, it has not had the ability to argue as forcefully, as effectively as maybe some of the other components within the Department for resources.

Mr. PIERLUISI. Going back a bit to this Operation Fast and Furious, I am the first one who recognizes that Congress has every right to do oversight on this issue and investigate and so on. And I know you do, too.

But one thing that comes to my mind is that the moment you learned of it and you did not get the right answers from your troops, that is when you said, I am referring this to Inspector General. And as far as I know, the Inspector General doesn't report to you, has wide discretion. Her objectivity hasn't been questioned. So this is in the proper hands. And is there an investigation ongoing at the moment? And what is—and another question I have is isn't that your modus operandi? When you see any potential irregularity in your Department, isn't the Inspector General the place you go to to try correct it? And then if there is going to be referrals, administrative actions, then they happen?

Attorney General HOLDER. Yeah. I think that was—I thought that was the appropriate thing to do. I continue to think it is the appropriate thing to do, to have an independent Inspector General look at this situation, this flawed operation, and share with me and with the rest of the world what her conclusions will be.

The Inspector General in the Justice Department has I think a deserved reputation for independence. There were a lot of investigations that were done by the IG during the Bush administration that I think generated a lot of attention and I think were indicative of the kind of independence that the IG is capable of doing when it was making determinations about the Justice Department in which the office sits. I am confident that with regard to this matter, the IG will be able to independently review this, as I described, flawed operation and come up with some facts upon which I can take further action.

Mr. PIERLUISI. Thank you.

Mr. Chairman, I ask unanimous consent for 15 more seconds.

Mr. SMITH. The gentleman is recognized for another 15 seconds.

Mr. PIERLUISI. Before I stop, my time has expired, I want to mention to you, Attorney General, that I have requested that ONDCP Director Gil Kerlikowske, the drug czar, craft what I call a Caribbean Border Initiative, something similar to the Southwestern Border Initiative. And the reason is straightforward. We are in a crisis in the Caribbean. Homicides at the worst possible level. More than half of the homicides in Puerto Rico are drug related. The situation merits particular attention, a similar initiative to the one you have in the Southwest. I hope I will count on your support.

Attorney General HOLDER. The point you make is a very good one. The Administration has what is called the Caribbean Basin Security Initiative that is in place to deal with the island nations in the Caribbean and the problems that they are facing. I was in the Caribbean for 4 days, I guess 2 or 3 weeks ago, where I met with four heads of state, a variety of attorneys general and interior ministers to talk about—I was in the Dominican Republic. I was in Barbados. And I was in Trinidad. And I met with, as I said, those groups of people to deal with the situation that they are talking about. And as Mexico is becoming more successful, drugs are now starting to flow through the Caribbean Nations both to the United States and then through Africa into Europe.

Mr. PIERLUISI. And there are two American territories, Puerto Rico and the Virgin Islands right here.

Attorney General HOLDER. That is very true. And the problem is one we have to confront. This is a national security issue that we have to confront.

Mr. SMITH. Thank you, Mr. Pierluisi.

The gentlewoman from Florida, Ms. Adams, is recognized.

Mrs. ADAMS. Thank you, Mr. Chairman.

Mr. Holder, I am going to ask you some questions, and I think they are pretty easy yes or no questions. Let's see if we can go that route. Are you aware of a 1994 implementation DOJ was responsible——

Attorney General HOLDER. I am sorry, I can't hear you too well.

Mrs. ADAMS. 1994, there was an implementation, DOJ was responsible for the implementation of CALEA standards for law enforcement. Are you aware of that?

Attorney General HOLDER. I am note sure of the year, but I certainly remember CALEA, yeah.

Mrs. ADAMS. Does your agency operate under CALEA standards, or do you just implement them for law enforcement agencies across the country?

Attorney General HOLDER. I am not sure, do we operate under them?

Mrs. ADAMS. Yes. I mean do you have that type of—are you accredited? I mean, you accredit other agencies. Are you following the same type of accreditation, guidelines as agencies throughout our Nation?

Attorney General HOLDER. I assume that we do, yes.

Mrs. ADAMS. You assume. So then you would agree that supervisory personnel are accountable for those people and in the performance of the people underneath them. Correct?

Attorney General HOLDER. Yeah. As a general rule, sure, yes.

Mrs. ADAMS. You know, I listened intently because I am one of those law enforcement officers. I am not a lawyer or anything else. And I also have a husband on the wall over in Judiciary Square. I have a lot of friends on that wall also. So I am going to come at it a different area.

I take issue with you saying that we are trying make political points with Officer Terry's death. To me it is personal. Okay? It is not political. One of our officers were killed with weapons that were allowed to walk. That should never have happened. I have worked in undercover. We never would allow weapons to walk.

Now, I have heard you say if we get this provision that would—the long guns then it would help. The problem is under Fast and Furious, it wouldn't have helped, would it? Those weapons still would have walked, wouldn't they? Under Fast and Furious, would they have walked or not.

Attorney General HOLDER. Yeah, but——

Mrs. ADAMS. Yes.

Attorney General HOLDER. One does not necessarily preclude the other. I mean, the fact is that under Fast and Furious, a flawed operation, and about which I have not tried to defend the conduct——

Mrs. ADAMS. Correct. I understand that. But under that system, would they not have walked?

Attorney General HOLDER. In the larger picture, there is no question that the implementation of that long gun rule will decrease the possibility that we will have further tragedies.

Mrs. ADAMS. Mr. Attorney General, what my question was, under Fast and Furious, those weapons still would have walked, would they not? Yes or no?

Attorney General HOLDER. You don't dictate. The weapons went into the flow of commerce because of mistaken decisions that were made by people in the Justice Department.

Mrs. ADAMS. Let's talk about those decisions. Let's talk about those decisions. Here we have an operation you get memos on, but no one, not you nor your chief of staff is reading those memos. Somewhere along the lines, somebody has to know something because this is an operation that is not just within our borders; it is crossing international borders. So what rises to the level that the Attorney General of our United States needs to know? What is it that you need to know about that rises to that level that you have an operation crossing international borders? You now say that you didn't find out about it until after the fact, and after inquiries happened, after Mr. Terry—Officer Terry's death. What is it that would rise to the level that you would have to sign off on? Since going across international borders isn't one of them, could you tell me what would be?

Attorney General HOLDER. Well, first of all, you are referring to these as memos. They were weekly reports.

Mrs. ADAMS. Well, any operation. Is there an operation that would rise to the level that would need your sign off?

Attorney General HOLDER. Sure, there are things that I have to sign off on.

Mrs. ADAMS. But not this one, the one that crossed international borders.

Attorney General HOLDER. No.

Mr. ISSA. Would the gentlelady yield briefly?

Attorney General HOLDER. Can I answer the question first? One has to understand, and I would urge you, if you have not done this, to look at these weekly reports, and to look at exactly what it was——

Mrs. ADAMS. Mr. Holder, I understand you had weekly reports. And I have got a couple more questions. I want to make sure I get them in. But I am asking you, and I ask you what would rise to the level for you to have to sign off on it? Because this apparently

did not. You said you had weekly reports that you didn't review and your chief didn't review. That is the question I asked, and you said there is, so I am waiting to hear. But while I wait for that answer, let me ask you another question. Because one of my colleagues asked you about your e-mails. And you went straight to your work e-mail, hardly anybody has that. I am going to ask you a very direct question. You have a personal e-mail account. Did you at any time, at any time, e-mail on your personal account with Larry Breuer or Lanny Breuer and Gary Grindler in regards to Fast and Furious ever?

Attorney General HOLDER. Ever?

Mrs. ADAMS. Yes or no.

Mr. SMITH. The gentlewoman is recognized for an additional minute so the Attorney General can respond to her questions.

Attorney General HOLDER. I don't know. I can tell you that I——

Mrs. ADAMS. Would you check and get back with us? If you need some help, I am sure that your agency personnel can get into those computers.

Attorney General HOLDER. Well, with regard to provision of e-mails, I thought I had made it clear that after February the 4th, it is not our intention to provide e-mail information, consistent with the way in which the Justice Department has always conducted itself.

The exception that I made, that I made in the hope that the Justice Department would be seen as transparent, was to go against that tradition and to make available deliberative material around the February 4 letter.

Mrs. ADAMS. So, again, as in when you were here before and I asked you about a totally different issue, you were saying that you refused to provide that information. Is that correct?

Attorney General HOLDER. I didn't hear you—you were talking at the same time I was talking. And please, she can have more time. I don't want to cut off your time. I just didn't hear the question.

Mrs. ADAMS. Previously, in another Committee, when you were here earlier, I asked you another question. You said you would not answer that question. Now you are saying that you won't provide those e-mails because that is not consistent with whatever policy was previous. I am asking you if there is clean hands here, will you provide those e-mails to this Committee?

Attorney General HOLDER. As I said——

Mrs. ADAMS. Yes or no?

Attorney General HOLDER. I am going to act in a way that is consistent with the all Attorneys General before me.

Mrs. ADAMS. That is not my question, Attorney General. You know, with due respect, that was not my question. I asked you, with clean hands, would you supply those e-mails, whether it is work related or personal e-mails, as they apply to anything that had to do with Fast and Furious?

Attorney General HOLDER. And as I said——

Mrs. ADAMS. To this Committee? Yes or no?

Attorney General HOLDER. As I said, with regard to the Justice Department as a whole——

Mrs. ADAMS. I yield back, Mr. Chair. I am not going to get an answer.

Attorney General HOLDER. As I said, with respect to the Justice Department as a whole, and I am certainly a member of the Justice Department, we will not provide memos after February the 4th. And that is a way in which we are——

Mrs. ADAMS. With regards to e-mails. I didn't ask memos. I said e-mails.

Attorney General HOLDER. Emails, memos, consistent with the way in which the Department of Justice has always conducted itself in its interaction——

Mrs. ADAMS. What about prior to February 4?

Mr. SMITH. The gentlewoman's time has expired.

The answer was no, is that correct, Mr. Attorney General.

Attorney General HOLDER. No, but consistent with the way in which the Justice Department has always conducted itself. This is not something that I am making up in terms of new policy.

Mr. SMITH. I know. But you used the word "not." I took "not" to be no.

Attorney General HOLDER. Oh, I said no. I am saying no, but again, consistent with DOJ policy.

Mr. ISSA. Mr. Chairman?

Mr. SMITH. Thank you, Mrs. Adams.

The gentleman from Arizona, Mr. Quayle, is recognized.

Mr. QUAYLE. Thank you, Mr. Chairman.

And thank you, Attorney General Holder, for being here.

I want to kind of go back to the February 4 letter as well that Mr. Gowdy was talking about earlier, because when we were looking over some of the e-mails between DOJ, ATF, and the U.S. Attorney's Office in Phoenix, and trying to kind of parse the language of how they were going to respond to Senator Grassley's letter——

Attorney General HOLDER. I am not hearing you very well on that mike.

Mr. QUAYLE. Is that better?

Attorney General HOLDER. Okay.

Mr. QUAYLE. Okay. One of the things, just parsing the language and figuring out how to respond properly to Senator Grassley in the letter, for me, it kind of looked like you were starting—that group was starting to move into a not a coverup mode, but a mode that really is more intent on language rather than providing a straightforward response. At any time, wouldn't it have been easier, because the letter was actually addressed to the director, Acting Director Melson, wouldn't it have been easier, and do you know or if anybody else knows if Acting Director Melson actually just said, hey, why don't I go in to Senator Grassley, talk to him, brief him, brief his staff on what the operation is all about rather than relying on somebody who did not have the requisite information to draft a letter that turned out to be factually inaccurate that you later had to withdraw?

Attorney General HOLDER. Well, I think a couple things there. Acting Director Melson actually did come to the Committee headed by Chairman Issa on his own——

Mr. QUAYLE. But that was well after the letter.

Attorney General HOLDER. That is fine. That is fine. That is true. But he went in there and spoke to them on his own after—before we had scheduled an appointment with him. So he did that on his own. But with regard to the formation or the formation of that letter, ATF was intimately involved. If you look at the e-mails, you will see that you have people from ATF at a high level here in Washington, as well as ATF people in the field who were involved in the interaction, the back and forth of that e-mail traffic trying to get accurate information to send back to that congressional inquiry.

Mr. QUAYLE. And I would just say sometimes, it is just easier to just have a short briefing. And I don't know if—did the acting director offer to go and meet with Senator Grassley at that time, and then was he rebuffed and told not do that?

Attorney General HOLDER. No.

Mr. QUAYLE. He was not?

Attorney General HOLDER. No. I think what we were doing was responding to a letter that was sent to us and that expected a letter back in response.

Mr. QUAYLE. Well, it did say briefing. I am just curious, because I thought that would probably be the most efficient use of time and resources, rather than the back and forth of making sure that we have the language right.

Attorney General HOLDER. My guess would be that having the Director show up would be the person who would have to get briefed in order to do that exchange of information. It is probably better to have the people who were lower down and closer to the facts be the ones who were involved. If you look at the e-mails, you will see that that was the case.

Mr. QUAYLE. In talking about that letter, do you know when was the last time that the Department of Justice actually had to withdraw a letter that it sent to Congress?

Attorney General HOLDER. I don't know.

Mr. QUAYLE. So is it a rare thing or is it——

Attorney General HOLDER. Sure it is a rare thing.

Mr. QUAYLE. It is a pretty rare thing. I mean, I know that Mr. Gowdy already addressed this issue, but what sort of policies have you put in place, or structural reforms have you put in place so that something like the factually, grossly factually inaccurate letter that was sent to Congress doesn't happen again? And if it does, that the Department of Justice will act more swiftly in withdrawing that letter so that the Members of Congress can have accurate information?

Attorney General HOLDER. Well, I think we have learned lessons here. And we have had requests for information regarding Fast and Furious since that time that, frankly, we have taken more time to respond to. We have sent interim responses to indicate that we are in the process of looking at information, gathering information to make sure that what we send is in fact accurate.

I mean, you got to understand something. It is rare, as you said, and it is something about which I have great regret. This is not something I want to have happen on my watch. But I want to make sure that it doesn't happen again. People who are in the Department who were involved in that process and have observed it

I think have all been sensitized in a way that perhaps we were not before, which is not to say that people were cavalier, but that I think we need to up our game and be even more careful than we had been in the past.

Mr. QUAYLE. Okay. Have you put into place other structural reforms to make sure that—I mean, you have stated the Fast and Furious was just an abject failure and had fundamental flaws—that are put into place so that something like Fast and Furious does not happen again?

Attorney General HOLDER. Yeah. I think that if you will look at all of the things that have been done at ATF, there is for instance now a protocol that has to be followed at ATF when gun trafficking is observed or when you are doing gun trafficking investigations. You cannot lose sight of guns. You have to make a decision about when an arrest is going to occur. What happened in Fast and Furious under the new regulations, and assuming that they are followed, it could not happen. In addition, I have sent out, through the Deputy Attorney General, an edict that makes very clear that gun walking is simply an unacceptable practice.

Mr. QUAYLE. I know that you are aware of this, but there is a number of Members of Congress that have called for your resignation over this. So I just want to know, will you be resigning over—because of the fallout from Fast and Furious?

Attorney General HOLDER. I have no intention of resigning. I am the Attorney General who put an end to these misguided tactics that were used in Fast and Furious when I found out about them. I am also the Attorney General who called on the Acting Inspector General to investigate this matter. I am also the Attorney General—no, you know——

Mr. SMITH. The gentleman's time has expired.

Mr. QUAYLE. Could I ask unanimous consent for 15 more seconds?

Mr. SMITH. The gentleman is recognized for an additional 15 seconds.

Attorney General HOLDER. More time is fine. If I could finish my answer.

Mr. QUAYLE. I was just asking you just a yes or no, and that is fine. But do you think that Mr. Breuer, Mr. Grindler should resign or be removed from their posts?

Attorney General HOLDER. On the basis of the information that I have now, no.

Mr. QUAYLE. What about Mr. Weinstein or Mr. Siskel, if we are going down another level? I know Mr. Siskel is over at the White House Counsel, but do you think that they should resign or be removed from their posts?

Attorney General HOLDER. On the basis of the information I have now, no.

Mr. QUAYLE. Okay. Thank you.

Mr. SMITH. Should anyone resign?

Attorney General HOLDER. Again, on the basis of the information I have at this point, no. Now, there have been resignations that have occurred. Let's not think that nothing has happened here since Fast and Furious was exposed. Resignations have occurred. People have been moved in terms of personnel actions. And as I in-

dicated, I guess in one of my responses to somebody, the personnel actions that I have ordered are initial ones, and I will be monitoring the situation to see if there are other things that I should be doing.

Mr. SMITH. Thank you.

Thank you, Mr. Quayle.

The gentleman from Arkansas, Mr. Griffin.

Mr. GRIFFIN. Thank you, Mr. Chairman. Thank you, General Holder for being here today, I just want to follow up on a few points my colleagues have touched on today. First of all, I want to talk a little bit about Ms. Adams' point that she was making, and that is, certainly I worked at main Justice, I worked in the criminal division with Assistant Attorney General Chertoff. I understand how much paper comes across your desk and everyone else's desk. I understand that time is limited and you have to do the best you can to process a lot of information, I get that. But I think Ms. Adams raises a good point, and that is, at what point do you believe the assistant Attorney General, or someone else, had or has an obligation to, particularly in your case, with Lanny Breuer, because you have a close relationship, or a longstanding relationship with him, at what point is there an obligation for one of these senior officials to raise something like this to your level? I understand that they are in briefings and you can't read them all.

There is a lot of stuff that my staff puts in my inbox, but they know that if it is something really urgent, they don't stick it in my in box, they call me, they come in my office, they get in my face and say, hey, this is very important.

So this is not just an operation, or this was not just an operation. This was, in fact, an international operation if taken—if looked at broadly, because the consequences of these firearms going across a border, and that was part of the plan. So my question would be, at what point is someone expected to raise something like this knowing that if it were maybe Canada or the U.K. Or some other country where we were trying to let guns walk. We certainly would, I would think, we would want to inform them or work with them. Help me understand what your perspective is on that, because at some level, at some level, someone has to walk into your office and say, this should not be occurring.

I want to give you one more fact on that, Mr. Breuer indicated that when he learned about gun walking in early 2010 instead of calling the head of the ATF, or telling you, he just asked two of his deputies to raise concerns with folks at the ATF. And so in light of what has happened, who and when should they come to you about something like this?

Attorney General HOLDER. I think that is a very legitimate question. And Lanny Breuer has indicated that the information that he obtained about Operation Wide Receiver and the gun walking that happened there, or the failure of the mission to stop the flow of guns into Mexico, that is something that he should have brought to my attention, to the attention of the Deputy Attorney General. I think that is the kind of information that, in fact, should be. If we had an instance where you had evidence of gun walking, either the assistant—whoever had possession of that information, the Assistant Attorney General, people in my staff, that is the kind of in-

formation that should have been brought to my attention. As Mr. Breuer indicated, he said that he made a mistake in not doing so.

Mr. GRIFFIN. Are there set policies on that now?

Attorney General HOLDER. I am not sure there are set policies as much, you know, you have to look at this information and you have got to know what are the kinds of things that are routine and need not be brought to somebody's attention, that which is important.

Mr. GRIFFIN. I am limited on time so I am going to try to move quickly. I would just suggest that regardless of what other issues might arise at the Department of Justice, you might want to put gun walking on a list somewhere as something that raises flags.

The other question—I see my time is running out. I want to go back to what Mr. Lungren asked about earlier, he referred to a CBS article that talked about using antidotal cases to support a demand letter on long gun multiple sales, basically using a situation created by the government to support a policy argument folks in the government want to make. And your response was that that was somehow unrelated, or it was so far back in time that maybe it was unconnected. What exactly was your response on that to Mr. Lungren?

Attorney General HOLDER. The statement, the notion that somehow this operation was used to justify the request for that regulation is simply not accurate. It did not happen that way. The operation was conducted separate and apart from any desire to have this long gun regulation, that is simply not there. So that just didn't happen.

Mr. GRIFFIN. Mr. Chairman, I ask unanimous consent for 30 more seconds.

Mr. SMITH. The gentleman is recognized without objection for another 30 more seconds.

Mr. GRIFFIN. I look further down in that CBS news article and it says, "On January 4 of 2011," because the quote referenced earlier was July of 2010—"on January 4, 2011, as ATF prepared a press conference to announce arrests in Fast and Furious, Newell saw it as another time to address multiple sale on long gun issue." And the next day he e-mailed—Chait e-mailed Newell, "Bill, well done yesterday. In light of our request for demand letter 3, this case could be a strong supporting factor, if we could determine how many multiple sales of long guns occurred during the course of this case.

I know I am running out of time. I just ask you to take another look at that. You may not have intended it, I don't know what was going on over there, but clearly, some folks had what happened in Fast and Furious, they had that in mind as something to use to support a policy that people in this Administration are advocating for. So I just ask you to take a second look at that, this is an article on CBS News Web site yesterday. Thank you, thank you, Mr. Chairman, and thank you for being here.

Attorney General HOLDER. Clearly an attempt to use Fast and Furious as a way to bolster the request for that long gun regulation would have been foolhardy given the flawed way in which Fast and Furious was carried out.

Mr. SMITH. Thank you, Mr. Griffin. The very patient gentleman from Nevada, Mr. Amodei is recognized.

Mr. AMODEI. Thank you, Mr. Chairman, and thank you General Holder for your patience, too. How would you describe your leadership style?

Attorney General HOLDER. I am sorry?

Mr. AMODEI. How would you describe your leadership style?

Attorney General HOLDER. I think I am a person who delegates pretty well. I think I set goals that I expect people to meet. I am not a micromanager, I hire good people, I invest them with the authority to carry out that which I expect them to do. Try to give them the resources they need in order to do their jobs. And I would think that on the basis of what I—being immodest here, what I have been able to do over the last couple years, 2½ years, whatever it has been at the Justice Department, I think I have done a good job in managing the Justice Department.

Mr. AMODEI. Do you lead from the front?

Attorney General HOLDER. I'm sorry?

Mr. AMODEI. Do you lead from the front?

Attorney General HOLDER. Yeah, I think I do. I don't ask anything of the people who work for me that I would not be willing to do myself. I work hard, I work long hours, as do they.

Mr. AMODEI. Thank you. Mr. Chairman, I would like to yield the balance of my time to my colleague from South Carolina.

Mr. SMITH. The gentleman from South Carolina, Mr. Gowdy has the balance of the time.

Mr. GOWDY. I thank the gentleman. Mr. Holder there were a series of wiretap applications made to the Department of Justice in Fast and Furious. Do you recall how many?

Attorney General HOLDER. No.

Mr. GOWDY. Several. Would you disagree with that?

Attorney General HOLDER. I am sorry?

Mr. GOWDY. Several?

Attorney General HOLDER. I don't know how many, but I have to say that with regards to discussions of wiretaps there is a limited amount of information that I am going to be able to share in this forum.

Mr. GOWDY. Right. And I am not going to ask you thinking that is going to get you in trouble with a Federal judge.

Attorney General HOLDER. Please don't.

Mr. GOWDY. Those applications are voluminous, they are long and they are factual predicates to support the application for a wiretap, correct?

Attorney General HOLDER. Speaking just generally and not—I won't get in any trouble, speaking generally, that is accurate.

Mr. GOWDY. Are you convinced there is no discussion of gun walking in any of those T-33 applications?

Attorney General HOLDER. Again, I can't get into the specifics.

Mr. GOWDY. Have you read them?

Attorney General HOLDER. I have not read them.

Mr. GOWDY. Who approves them? Whose division is that? Is that the criminal division?

Attorney General HOLDER. That is the criminal division.

Mr. GOWDY. That would be Mr. Breuer?

Attorney General HOLDER. No, he only approves the roving wiretaps.

Mr. GOWDY. Is he the head of the criminal division?

Attorney General HOLDER. Right but there are no roving wiretaps in Operation Fast and Furious.

Mr. GOWDY. But there are several wiretaps, wiretaps that have long factual predicate supporting the application.

Attorney General HOLDER. I not seen them but I make that assumption.

Mr. GOWDY. You haven't read them, so you can't say whether or not yet another Department of Justice official would have been put on notice that gun walking was part of Fast and Furious.

Attorney General HOLDER. I can't say that, but you cannot say it either.

Mr. GOWDY. No, I can't.

Attorney General HOLDER. You can't say the converse.

Mr. GOWDY. No, I can't. Who does Mr. Weich report to?

Attorney General HOLDER. Who does Mr.——

Mr. GOWDY. Weich.

Attorney General HOLDER. Ron Weich?

Mr. GOWDY. Yeah.

Attorney General HOLDER. I guess on the Justice Department chart probably through the Deputy Attorney General to me.

Mr. GOWDY. What I am trying to get at, your defense of your friend Lanny Breuer, I guess at some level is admirable, I just don't understand it. It took me a minute to get you to admit that he knew that guns were being walked and there are scores of e-mails where he admitted it. He assigned a prosecutor to Fast and Furious. This is someone who, on his own Web site, boasts of being one of the best 100 lawyers in America. He knew that guns were being walked; he assigned a prosecutor to Fast and Furious; he forwarded an e-mail to his home computer of a draft of Mr. Weich's letter, and he is going to stick around, Mr. Attorney General?

Attorney General HOLDER. Well, you are saying things. See you are doing what I asked you to not before and that is conflating things. He said—I said he knew about and he admitted he knew about gun walking when it came to Operation Wide Receiver. Shortly after.

Mr. GOWDY. Mr. Holder, the letter is very specific. ATF makes every effort to interdict weapons that have been purchased illegally, and prevent their transportation to Mexico, is that true or false?

Attorney General HOLDER. That is not accurate, but Mr. Breuer didn't—as he indicated, he said he did not have anything do did with the creation.

Mr. GOWDY. He forwarded this letter, a draft to his home computer. It does not take a long walk to get that he forwarded it to his home computer to read it.

Attorney General HOLDER. I am only going by what Mr. Breuer has testified to, which is that he did not think that he reviewed the letter—reviewed the drafts before they went out. That is what he testified to.

Mr. GOWDY. But you agree with me——

Mr. ISSA. Mr. Chairman.

Mr. PIERLUISI. Regular order, Mr. Chairman. The witness should be allowed to finish.

Mr. ISSA. Would the gentleman from Nevada be willing to further yield?

Mr. SMITH. The gentleman from South Carolina has the time.

Mr. GOWDY. I will be happy to yield to the gentleman from California.

Mr. ISSA. I thank the gentleman. Mr. Attorney General, if there were seven wiretaps and they were all approved under the criminal justice committee, the criminal division, certainly we would hope that between now and the time you next appear, you would read them as would Lanny Breuer in detail since he approved them through his minions.

Attorney General HOLDER. Well——

Mr. ISSA. Let me just go through one thing that I have to ask you, yesterday——

Attorney General HOLDER. Understand something——

Mr. ISSA [continuing]. We became aware, Mr. Attorney General——

Attorney General HOLDER. Please.

Mr. PIERLUISI. Mr. Chairman, regular order. The time has expired.

Mr. ISSA. Mr. Attorney General, I didn't ask you a question, I simply said I would like you to be aware.

Mr. SMITH. The gentleman from California has the time. The gentleman from California is granted an extra 1 minute to allow the AG to respond.

Mr. ISSA. There was no question. Here is the question——

Attorney General HOLDER. No——

Mr. ISSA. Yesterday, Mr. Attorney General, we became aware of the e-mail between——

Mr. PIERLUISI. Mr. Chairman.

Mr. ISSA.—Lanny Breuer and his deputy Jason Weinstein, about Fast and Furious in March time frame that they exist. Some of these, actually all of these, have been withheld from the Committee. Will you agree to turn over those communications in the March time frame between Lanny Breuer and his deputy, Jason Weinstein?

Attorney General HOLDER. March of what year?

Mr. ISSA. 2011.

Attorney General HOLDER. As I have indicated we are not going to be turning over materials after February——

Mr. ISSA. Are you aware that you are, in fact, by doing so, in the fact that we already issued from the Oversight Committee a subpoena, you are standing in contempt of Congress unless you have a valid reason that you express it, that you provide logs which you refused to provide for the other information, otherwise you will leave the Committee no choice but to seek contempt for your failure to deliver, or to cite a constitutional exemption.

Mr. SMITH. The gentleman's time has expired, the Attorney General will be allowed to respond.

Attorney General HOLDER. We will respond in a way that is consistent with the way in which the Justice Department has always responded to those kinds of——

Mr. ISSA. That is not the question, Mr. Attorney General.

Attorney General HOLDER. Can I——

Mr. PIERLUISI. Regular order, Mr. Chairman.

Mr. SMITH. Please proceed, Mr. Attorney General.

Attorney General HOLDER. We will respond in a way that other Attorneys General have, other justices.

Mr. ISSA. John Mitchell responded that way too.

Mr. PIERLUISI. Regular order, Mr. Chairman.

Attorney General HOLDER. Was that called for? Mr. Chairman?

Mr. PIERLUISI. He should be allowed to——

Mr. SMITH. The gentleman from South Carolina has the time, but I am going allow the Attorney General. Do you have any further response to that question?

Mr. ISSA. To the question, Mr. Chairman, about whether or not he understood that it was in fact an act of contempt unless they recited a constitutional exemption and still had a responsibility to provide us logs, both of which they are refusing to do in testimony here today.

Mr. SMITH. The gentleman from South Carolina's time has again expired. Do you have a final response, Mr. Attorney General?

Attorney General HOLDER. Ms. Adams asked me about—Congresswoman Adams asked me about political points. The reference to John Mitchell, let's think about that, think about that, at some point—as they said in the McCarthy hearings at some point, have you no shame? But in any case, I will say that with regard to—we have made our point clear how we will respond. With regard to the question of wiretap information, Mr. Gowdy knows there is only so much I will be able to say about wiretap information. So reading it should not lead anybody to believe that I am going to be free, unless I—you want to get me in real trouble with a Federal judge about what's contained in a wiretapping.

Ms. ADAMS. Mr. Chair.

Mr. SMITH. I thank you, Mr. Attorney General. Mr. Attorney General, thank you for your testimony today. Without objection, all Members will have 5 legislative days to submit additional written questions for the witness or additional materials for the record. I ask unanimous consent that the gentleman from Colorado, Mr. Polis, be assigned to the Subcommittee on Courts, Commercial and Administrative Law and the Subcommittee on Crime, Terrorism and Homeland Security. Is there an objection? If not, so ordered. The hearing is adjourned.

[Whereupon, at 4:05 p.m., the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Chairman, Committee on the Judiciary

Attorney General Eric Holder appeared before the House Judiciary Committee last May and we appreciate his willingness to appear today to address many issues, including questions about his previous testimony.

While I am pleased to welcome back Attorney General Holder, I am disappointed in the Department's repeated refusal to cooperate with this Committee's oversight requests.

This lack of cooperation is evident in the Department's handling of inquiries related to the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF's) Operation Fast and Furious, and the death of Border Patrol Agent Brian Terry in December 2010.

Operation Fast and Furious intentionally allowed straw buyers for criminal organizations to purchase hundreds of guns so that the ATF could track them across the U.S.-Mexico border. But Fast and Furious had a fatal flaw. Once purchased, there was no attempt to follow the firearms. Instead, the guns were allowed to cross over into Mexico without any coordination with Mexican authorities or any attempt to track the firearms.

Tragically, two of the guns were found at the scene of the shooting death of Customs and Border Patrol Agent Brian Terry. And by the Department's own admission, hundreds of guns remain unaccounted for.

It's been a year since the death of Agent Terry. Yet, many questions remain as to how such a reckless and dangerous law enforcement program was allowed to operate under the Justice Department.

And inconsistent statements from Department officials about who knew what and when have only raised more concerns.

I am also disappointed in how the Department has responded to my oversight requests regarding Justice Kagan's involvement in health care legislation or related litigation while she served as United States Solicitor General.

Despite claims from Obama administration officials that then-Solicitor General Kagan was "walled off"[1] from discussions regarding the President's health care law, recently released e-mails indicate there may be more to the story.

On March 21, 2010, an e-mail from the Deputy Solicitor General forwarded to Solicitor General Kagan contained information about a meeting at the White House on the health care law and asked: "I think you should go, no? I will regardless but feel this is litigation of singular importance."[2] Solicitor General Kagan responded by asking him for his phone number.

We also know from the e-mails that she personally supported the legislation's passage. In a March 21, 2010, exchange with a Justice Department colleague discussing the health care legislation, Ms. Kagan exclaims, "I hear they have the votes, Larry!! Simply amazing."[3]

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[1] E-mail from Principal Deputy Solicitor General Neal Katyal to Solicitor General Elena Kagan (Jun 15, 2010).

[2] E-mail from Principal Deputy Solicitor General Neal Katyal to Solicitor General Elena Kagan (Mar. 21, 2010).

[3] E-mail from Principal Deputy Solicitor General Neal Katyal to Justice Department Counselor Lawrence Tribe (Mar. 21, 2010).

These e-mails reveal inconsistencies with the administration's claims that then-Solicitor General Kagan was walled off from this issue.

To help clear up any confusion, I wrote the Justice Department to get additional documents and conduct staff interviews. It took nearly four months before the Department sent a one page response that denied my request.

The Department did not assert any legal privilege over the requested information but simply refused to comply with the request. That is not a sufficient answer.

Health care legislation was passed by the Senate on December 24, 2009. On January 8, 2010, Ms. Kagan told the Deputy Solicitor General that she "definitely would like the Office of the Solicitor General to be involved in"[4] preparations to defend against challenges to the pending health care proposals.[5]

Ms. Kagan found out she was being considered for a potential Supreme Court vacancy on March 5, 2010.[6] So the issue is how involved was she in health care discussions between January 8 and March 5. Just as President Nixon had an eighteen and a half minute gap, does Ms. Kagan have a two month gap?

The Office of the Solicitor General is responsible for defending the positions of the federal government in litigation before the Supreme Court. So it was the duty of then Solicitor General Kagan to participate in meetings and discussions regarding the legal defense strategy for the President's health care proposal.

It would have been a surprising departure from her responsibilities for Solicitor General Kagan not to advise the Administration on the health care bill.

But if the Department continues to assert that she was "walled off from day one"[7] from discussions, then they should be willing to provide Congress and the public with documentation to prove that statement.

The law clearly states that Justices must recuse themselves if they "participated as counsel, advisor or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case"[8] while they worked in a government capacity.

The public has a right to know the extent of Justice Kagan's involvement with this legislation as well as any previously stated legal opinions about the legislation while she served as Solicitor General.

The NFL would not allow a team to officiate its own game. If Justice Kagan was part of the Administration's team that put the health care mandate into play, she should not officiate when it comes before the Supreme Court.

If the Department has nothing to hide, why not provide Congress with the requested information? The continued refusal to cooperate with legitimate oversight inquiries only heightens concerns that she might have a conflict of interest.

President Obama has promised an "open and transparent government."[9] Unfortunately, we often see a closed and secretive Justice Department.

I know all members of the Committee look forward to asking questions on these and other issues.

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[4] E-mail from Principal Deputy Solicitor General Neal Katyal to Brian Hauck, Senior Counsel to Associate Attorney General Thomas Perrelli (Jan. 8, 2010).

[5] Health care passed the House on March 21, 2010, and was signed into law on March 23, 2010.

[6] *The Nomination of Elena Kagan to be an Associate Justice of the Supreme Court of the United States Before the S. Comm. on the Judiciary,* 111th Cong. (2010) (written response of Elena Kagan to Supplemental questions from Senators Jeff Sessions, Orrin Hatch, Charles Grassley, Jon Kyl, Lindsey Graham, John Cornyn and Tom Coburn)

[7] E-mail from Principal Deputy Solicitor General Neal Katyal to Solicitor General Elena Kagan (Jun 15, 2010).

[8] 28 U.S.C. 455(b)(3).

[9] Steven VanRoekel & Aneesh Chopra, *Data.gov Goes Global,* WHITEHOUSE.GOV (Dec. 5, 2011) available at, http://www.whitehouse.gov/blog/2011/12/05/datagov-goes-global.

Response to Post-Hearing Questions from Judith C. Appelbaum, Acting Assistant Attorney, General, Office of Legislative Affairs, U.S. Department of Justice

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

JUN 05 2012

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of Attorney General Eric Holder before the Committee on December 8, 2011. We hope that this information is of assistance to the Committee.

Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

Judith C. Appelbaum
Acting Assistant Attorney General

Enclosure

cc: The Honorable John Conyers, Jr.
Ranking Member

Questions for the Record
Attorney General Eric H. Holder, Jr.
Committee on the Judiciary
U.S. House of Representatives
December 8, 2011

QUESTIONS POSED BY REPRESENTATIVE CHABOT

1. **Mr. Attorney General Holder, Under the International Traffic in Arms Regulations (ITAR) it is a violation if the Arms Export Control Act (AECA) to "conspire to export, import, re-export or *cause to be exported*" any covered defense article without first obtaining written approval from the State Department.**

   A. **First, Did the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) violate the Arms Export Control Act?**

We are unaware of evidence that ATF agents violated the Arms Export Control Act. That said, the Attorney General has made clear that the tactics used in Fast and Furious and in similar operations in the prior Administration like Wide Receiver, Hernandez and Medrano, should not have been used and must not be used again. In February 2011, the Attorney General asked the Department's Office of the Inspector General to conduct a review, and he instructed the Deputy Attorney General in early March 2011 to direct that such tactics not be used.

   B. **In Fast and Furious, ATF encouraged gun dealers to continue to sell guns to known straw purchasers and the straw purchasers smuggled the guns over the border. If, as correspondence suggests, Federal Firearms Licensees would not have sold firearms to straw purchasers but for ATF's request, then did ATF cause these guns to be exported?**

Please see response to question 1(A), above.

2. **Mr. Holder, would you agree that permitting thousands of weapons into a sovereign nation- one that is, I might add, an ally of the United States- without that nation's express permission has the potential to seriously undermine our critical relationship with that country? How would your office respond if Mexico were arming gangs in Americans cities with thousands of assault rifles to "try to get the big fish?"**

Response:

As indicated above, the tactics used in Operation Fast and Furious and in similar operations in the prior Administration like Wide Receiver, Hernandez and Medrano, were inappropriate. That is why, soon after allegations of inappropriate tactics in Operation Fast and Furious came to light, the Attorney General instructed the Deputy Attorney General to direct that such tactics not be used.

QUESTIONS POSED BY REPRESENTATIVE ISSA

3. **On December 2, 2011, the Department of Justice formally withdrew its February 4, 2011 letter to Senator Grassley.**

   When was the last time the Department of Justice withdrew a letter it had previously sent to Congress? Please provide the date of the letter and its recipient.

The Department has only rarely withdrawn information it provided to Congress. It did so, for example, in connection with the replacement of certain United States Attorneys during the prior Administration. In all instances, the Department takes seriously its obligation to provide Congress with accurate information. After it became clear that the Department's February 4, 2011 letter to Senator Grassley contained inaccurate information, the Department appropriately withdrew that letter. Further, the Department provided the Committee with 1,364 pages of highly deliberative material in order to accommodate the Committee's interest in understanding how the inaccurate information came to be included in the February 4, 2011 letter. This extraordinary accommodation represented an exception to the Department's longstanding position across Administrations of both political parties with respect to deliberative material generated in the course of responding to congressional oversight. Finally, as detailed in a letter to the Committee from Deputy Attorney General Cole dated January 27, 2012, the Department has taken additional steps to ensure that Congress receives accurate information in response to its requests.

4. **In your testimony, you stated: I sent a directive to all of the U.S. Attorneys Offices that gun walking was not – not an acceptable technique o[r] tactic; that it was contrary to DOJ policy – and I had the Deputy Attorney General send that out to all of the U.S. attorneys.**

   To what specific Department of Justice policy is gun walking contrary? Please provide a copy of the policy or memorandum, including the date on which it first became Department policy.

As noted above, in early March 2011, the Attorney General instructed the Deputy Attorney General to issue a directive that the tactics used in Operation Fast and Furious and in operations in the prior Administration, like Wide Receiver, Hernandez and Medrano, should not be used again. The prior ATF policy was reflected in ATF Order 3310.4B, dated February 2, 1989. Copies of the Deputy Attorney General's directive and the ATF Order have been provided to the Committee.

5. **In your testimony, you did not provide an answer when asked if you ever exchanged e-mails with Lanny Breuer or Gary Grindler using your personal e-mail account regarding Fast and Furious:**

Q: I'm going to ask you a very direct question. You have a personal e-mail account. Did you at any time -- at any time -- e-mail on your personal account with Larry Breuer -- or Lanny Breuer and Gary Grindler in regards to Fast and Furious ever?
A: Ever?
Q: Yes...
A: I don't know. I can tell you that I didn't know...

A. Have you ever exchanged e-mail with Gary Grindler or Lanny Breuer regarding Fast and Furious using your personal e-mail account?

The Department is in the process of producing or making available documents responsive to Congressional requests consistent with longstanding Department policies. 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 have or will produce or make them available for review.

B. Have you ever exchanged e-mail with Gary Grindler or Lanny Breuer regarding Fast and Furious using your Department of Justice e-mail account?

Please see response to question 5(A), above.

C. Please provide a detailed account of violence in the State of Texas that has been connected to Operation Fast and Furious. Has the Bureau of Alcohol, Tobacco, Firearms and Explosives and/or the Department of Justice authorized operations similar to Operation Fast and Furious in the State of Texas?

On September 9, 2011, the Department sent a letter to Chairman Issa and Senator Grassley explaining the circumstances in which firearms associated with Operation Fast and Furious were recovered in relation to a crime of violence. The crimes of violence discussed in that letter did not occur in the State of Texas. We are advised that, since that date, ATF is not aware of additional instances in which a firearm associated with Operation Fast and Furious was traced and coded as recovered in connection with a crime of violence in the United States.

Following the public revelation of inappropriate tactics used in Fast and Furious, the Department endeavored to identify ATF operations in which similar tactics were used. The Department thereafter notified the Committee of the additional operations it had identified, including some that occurred during the prior Administration. As we have noted, after the Attorney General learned of the inappropriate tactics used in Operation Fast and Furious, he instructed the Deputy Attorney General to issue a directive that those tactics not be used anywhere in the country, including in Texas.

D. Have any weapons recovered at the crime scene where ICE Special Agent Jaime Zapata was murdered been traced back to the United States and/or Operation Fast and Furious? If so, have any of those weapons been determined to be the murder weapon?

We are advised that ATF is unaware of a link between the tragic murder of ICE Special Agent Jaime Zapata and weapons sold in Arizona as part of Operation Fast and Furious. It would be inappropriate to comment further at this time because the investigation into Special Agent Zapata's murder is ongoing. The Department is committed to bringing those responsible for his murder to justice.

E. Are there any extradition proceedings currently underway to bring suspects arrested in connection with the murder of ICE Special Agent Jaime Zapata to the United States to stand trial?

It is a matter of public record that one person has been extradited from Mexico and charged in connection with Special Agent Zapata's murder. *See United States v. Julian Zapata Espinoza*, No. 11-cv-00111-RCL (D.D.C.). It would be inappropriate to comment further at this time because the investigation into Special Agent Zapata's murder is ongoing.

6. Recently, the Office of Legal Counsel (OLC) at the Department of Justice issued an opinion to settle a dispute between the United States Postal Service (USPS) and the Office of Personnel Management regarding USPS's decision to stop making statutorily required Federal Employee Retirement System payments for its employees. Please provide a full, unredacted copy of OLC's opinion in this dispute.

Please see the following link for the requested OLC opinion:
http://www.justice.gov/olc/2011/postal-service-fers-opinion.pdf

QUESTIONS POSED BY REPRESENTATIVE AMODEI

7. **Another concern I have about these Mexican drug cartels is their involvement in human trafficking, particularly the trafficking of minors to the United States for sex-related activities. This is a major problem in Nevada. According to your own FBI agent Joseph Dickey, since 2003, over 1,000 children have been rescued in the Las Vegas area alone. From 2002 to 2006, one local organization reported serving over 3,000 trafficked minors. While more than 1,496 minors were prosecuted for prostitution-related charges from 1994-2007, only 10 johns were charged during that time.**

What, if any, oversight have you provided for or direction have you given to your staff to pursue human trafficking investigations and enforcement? And specifically human trafficking of minors, including sex trafficking of minors? How many lawyers are assigned to these cases? What are you doing to pursue the trafficking rings that are victimizing these children? What are you doing to pursue the "johns?" Does your office prosecute child sex-trafficking victims or do you instead treat them as children in need of protection?

In 2010, the Attorney General spoke at the National Conference on Human Trafficking in Arlington, Virginia, at which he stated that "combating the entrapment, abuse, and exploitation of trafficking victims is one of this Justice Department's highest priorities." That remains the case today.

During the last several years, we have taken significant steps to increase our efforts to combat the domestic prostitution of children. In May 2011, we enhanced our efforts to protect children from commercial sexual exploitation by expanding Project Safe Childhood (PSC) to cover all federal child sexual exploitation crimes, including the domestic prostitution of children. Before this expansion, PSC had been limited to technology-facilitated child sexual exploitation crimes. As part of PSC's expansion, United States Attorneys around the country were asked to assess the threats posed by the additional crimes PSC now covers, such as the domestic prostitution of children, and to develop strategic plans on how best to address these crimes with their local PSC coalitions. Those efforts are now underway.

Each United States Attorney's Office has at least one attorney, its PSC Coordinator, who is responsible for handling federal child exploitation cases, including cases involving the commercial sexual exploitation of children. Moreover, the Criminal Division's Child Exploitation and Obscenity Section (CEOS) has 16 trial attorneys who also prosecute child exploitation cases, including cases involving the domestic prostitution of children.

The Department is committed to actively pursuing traffickers who victimize our children through prostitution. Among other things, the FBI's Crimes Against Children Unit manages the Innocence Lost National Initiative, which is aimed at addressing the domestic sex trafficking of children. According to the FBI, in the eight years since its inception, the initiative has resulted in the development of 44 dedicated task forces and working groups throughout the U.S. involving

federal, state, and local law enforcement agencies working in tandem with U.S. Attorney's Offices. According to the FBI, as of January 2012, these groups have worked successfully to rescue more than 1,900 children, and to convict over 900 pimps, madams, and their associates who exploited children through prostitution. These convictions have resulted in lengthy sentences, including multiple life sentences, as well as the seizure of real property, vehicles, and monetary assets.

The Department is also committed to prosecuting those who purchase or attempt to purchase sex with a minor when the evidence demonstrates that they knowingly procured a child in order to engage in a commercial sex act with him or her. For example, in Operation Guardian Angel, an undercover operation conducted in the Western District of Missouri by the Human Trafficking Rescue Project, a joint task force of the Independence, Mo., Police Department, the FBI, the Department of Homeland Security's Immigration and Customs Enforcement, and the Kansas City, Mo., Police Department, offenders responded to advertisements placed on the Internet clearly stating that the prostitutes were "little girls" and were "young." When the offenders showed up and paid for a child prostitute, they were arrested and then prosecuted in federal court for the attempted commercial sex trafficking of a child.

We agree with you that child victims of prostitution are victims in need of protection, not offenders in need of punishment. We thus take a victim-centered approach in our investigations and prosecutions of domestic child prostitution cases, with a focus on assisting the victims in obtaining appropriate services that will help them recover from the brutal victimization they have suffered. That said, the Department has not adopted a fixed protocol, and prosecutors are encouraged to evaluate each case on an individual basis and according to its merits.

8. What current statistics can you give me about Department human trafficking enforcement across the country? And in Nevada?

Have you been able to quantify the trafficking problem itself in Nevada? If so, what have you found? Have you broken those numbers down by type of trafficking? By type of victim? By city?

If so, please provide that breakdown to me. If you do not have any statistics on the problem or on the enforcement of federal trafficking laws, why not?

In FY 2011, DOJ's Civil Rights Division and U.S. Attorney's Offices (USAOs) charged a record number of defendants with adult sex trafficking and forced labor crimes. . DOJ's Civil Rights Division and USAOs together brought 42 forced labor and adult sex trafficking prosecutions in 2011, charged 118 defendants, and secured 70 convictions. Of these 70 convictions, 35 were predominantly for sex trafficking and 35 predominantly labor trafficking, although some cases involved both. The 118 defendants charged represents a 19% increase over the number of defendants charged in such cases during the previous year, and the highest number ever charged in a single year. These numbers do not include child sex trafficking cases. The combined number of federal trafficking convictions totaled 151, including cases involving forced labor, sex trafficking of adults, and sex trafficking of minors, compared to 141 such convictions

obtained in 2010. We will include additional data in the forthcoming Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons for FY 2011 (the Attorney General's annual TIP report). The Attorney General's annual TIP report contains many statistics relating to the enforcement of the federal Trafficking Victims Protection Act (TVPA), including the numbers and types of criminal cases filed, defendants charged, and defendants convicted. The most recent report covers FY 2010 and is available at http://www.justice.gov/ag/publications.htm. Regarding cases specific to Nevada, DOJ filed 1 human-trafficking related case in Nevada against 1 defendant in FY 2010. In FY 2011, DOJ filed 3 human-trafficking related cases against 5 defendants. I note as well that an anti-human-trafficking task force operates in Nevada. The Southern Nevada Human Trafficking Task Force consists of local and federal law enforcement agencies, non-governmental victim service providers, and other partners.

9. What additional resources do you need and what future plans will you make to crack down on this issue, particularly in Nevada?

As the Attorney General recently reported in his Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons for Fiscal Year 2010, the Department's anti-trafficking efforts resulted in a record number of human trafficking prosecutions that year. In FY 2011, the Department – with fewer resources – charged more defendants with forced labor and adult sex trafficking crimes than ever before. We recognize, however, that our work is ongoing and that we must look for every available means to increase the impact of our efforts. To that end, the Department is involved in, and in many cases leads, dozens of task forces across the country. These task forces include representatives from the Department of Justice, usually from a local United States Attorney's Office, along with other federal agencies, state and local law enforcement, and non-governmental victim service providers.

In Nevada, the Department has established the Southern Nevada Human Trafficking Task Force, based in Las Vegas. The Department also continues to fund a victim service organization, the Salvation Army of Las Vegas, to work with the task force.

In addition, to further enhance our efforts, in 2011, the Department launched the Human Trafficking Enhanced Enforcement Initiative, which is designed to better coordinate federal criminal investigations and prosecutions of human trafficking offenses. As part of this initiative, the Departments of Justice, Homeland Security, and Labor formed Pilot Anti-Trafficking Coordination Teams in a small number of competitively-selected Pilot districts to focus on developing federal criminal human-trafficking investigations and prosecutions, bringing traffickers to justice, and dismantling human trafficking networks.

A 2007 Government Accountability Office report stressed that human trafficking task forces need comprehensive technical assistance, and the Department has responded. The Department's Office for Victims of Crime (OVC) and Bureau of Justice Assistance (BJA) support training and technical assistance for human trafficking task forces across the nation. At the core of these efforts is conveying the importance of coordination and collaboration. The

Department's work involves working closely with the community and known experts in the human trafficking field (both law enforcement and victim services) to conduct a community needs assessment, provide on-site technical assistance, facilitate a meeting of task force stakeholders, and offer follow-up support to the task force, as needed. Additionally, OVC's Training and Technical Assistance Center is accepting training and technical assistance requests communities interested in starting anti-human trafficking task forces. The training and technical assistance builds on "lessons learned" from OJP funded task forces (including law enforcement agencies and victim service providers) and encourages a victim-centered approach to identifying, rescuing and serving trafficking victims and holding human traffickers accountable.

In January 2011, OVC and BJA released the *Anti-Human Trafficking Task Force Strategy and Operations e-Guide* (https://www.ovcttac.gov/TaskForceGuide/EGuide). Based on input and existing resources from the field, the e-guide provides critical guidance for starting new trafficking task forces and strengthening existing ones. It also features creative tools, examples and best practices, as well as links to tools, trainings, and other resources. The E-Guide and other training and technical assistance are informed by a planning committee of federal agency representatives, victim service providers and law enforcement officials involved in human trafficking work.

The Department also continues to advance the U.S.-Mexico Human Trafficking Bilateral Enforcement Initiative, in collaboration with the Department of Homeland Security and Mexican law enforcement counterparts, to develop high-impact bilateral investigations and prosecutions to dismantle international human trafficking networks, resulting in landmark convictions in coordinated prosecutions under both U.S. and Mexican law.

10. In your opinion, is additional federal legislation required to effectively combat the trafficking problem? If so, what would you recommend?

The Department believes that the anti-trafficking tools provided by the TVPA, as subsequently revised, are highly sophisticated and well-tailored, and enable us to meet the unique challenges inherent in combating human trafficking. Since the passage of the TVPA in 2000, and with the training each year of an increasing number of law enforcement officers, prosecutors, victim service providers, and others, our investigation and prosecution of human trafficking cases has steadily and significantly increased. Indeed, in FY 2011, the Department indicted more defendants on human trafficking charges than ever before. The Department does not have a view at this time regarding the need for additional federal legislation.

QUESTIONS POSED BY REPRESENTATIVE SCOTT

11. What steps does the Department of Justice plan to take to increase its focus on investigating and prosecuting mortgage fraud, health care fraud (against private and public plans), and wrongdoing perpetrated at the highest levels of Wall Street financial firms?

The Department of Justice is devoting significant resources to investigating and prosecuting mortgage fraud, health care fraud, and fraud within the financial services industry. The Department's efforts have seen significant results: in just the last year, the Department has obtained sentences in major investment fraud cases of sixty and forty-five years; sentences of fifty, thirty-five and twenty years in Medicare fraud cases; and a sentence of thirty years against the chairman of the nation's largest privately held non-depository mortgage company in a securities and bank fraud case. We have also obtained sentences of eleven and ten years in insider trading cases on Wall Street.

The Department of Justice is committed to holding accountable those who have engaged in illegal practices in originating and securitizing loans in the mortgage industry. As President Obama announced on January 24, 2012, during his State of the Union Address, the Justice Department is joining forces with state attorneys' general and other federal agencies to combat fraud and other such misconduct by creating the Residential Mortgage Backed Securities Working Group. The Residential Mortgage Backed Securities Working Group, a part of the Financial Fraud Enforcement Task Force, is a multi-district, multi-jurisdictional, multi-agency effort at bringing to bear all appropriate resources to get at the heart of the causes of our financial crisis.

The President's announcement was followed shortly thereafter by the Department's February 9, 2012, announcement of the $25 billion settlement with the largest mortgage servicers in the country. It was an historic settlement, both in the size and scope of the relief. As part of the joint federal-state agreement, the servicers will collectively dedicate $20 billion toward various forms of financial relief to borrowers. The agreement also requires the servicers to implement comprehensive new mortgage loan servicing standards, which will prevent the foreclosure abuses of the past. These new standards address violations such as use of "robo-signed" affidavits in foreclosure proceedings; deceptive practices in the offering of loan modifications; failures to offer non-foreclosure alternatives before foreclosing on borrowers with federally insured mortgages; and filing improper documentation in federal bankruptcy court. The agreement will also provide enhanced protections for service members that go beyond those required by the Servicemembers Civil Relief Act (SCRA). Notably, the agreement does not prevent the government from punishing wrongful securitization conduct that will be the focus of the new Residential Mortgage-Backed Securities Working Group discussed above.

Similarly, on December 21, 2011, the Department announced the largest fair lending settlement in history, a $335 million agreement with Bank of America resolving claims that its Countrywide unit discriminated against African-American and Hispanic borrowers.

As we have said, this renewed approach builds on years of vigorous enforcement. In just the last few years, the Department has convicted over 1,500 individuals around the country who engaged in numerous mortgage fraud schemes. These cases run the gamut from origination fraud, to appraisal fraud, to foreclosure rescue fraud, and to loss mitigation fraud. We have prosecuted individuals and companies at every stage of the mortgage process, from beginning to end.

In the area of bank fraud and securities fraud, in June 2011, Lee Farkas, Chairman of Taylor Bean & Whitaker (TBW), which was one of the largest mortgage lending companies in the country, was sentenced to 30 years in prison for his role in a more than $2.9 billion fraud scheme relating to the fraudulent sale and purchase of mortgages and mortgage-backed securities. This fraud scheme contributed to the failure not only of TBW but also of Colonial Bank, one of the twenty-five largest banks in the United States.

We have also prosecuted numerous investment fraud schemes involving losses to countless innocent and vulnerable investors across the country, many of whom lost their life savings to these schemes. These schemes resulted in hundreds of millions of dollars in losses, and in some instances, even billions of dollars in losses.

The Department has also continued to aggressively investigate and successfully prosecute insider trading rings on Wall Street. These schemes threaten the integrity of our markets. Since October 2009, 59 people have been convicted for insider trading arising from a series of related investigations.

The Department has also achieved remarkable results in the effort to combat fraud against government health care programs. In May of 2009, the Attorney General and Health and Human Services Secretary Kathleen Sebelius announced the creation of the Health Care Fraud Prevention and Enforcement Action Team (HEAT) and renewed their commitment to fighting health care fraud as a Cabinet-level priority. Since then, Medicare Fraud Strike Forces have charged more than 880 defendants with seeking to defraud Medicare of more than $2.9 billion taxpayer dollars. In the four and a half years since they were created, Medicare Fraud Strike Forces have charged more than 1,300 defendants with seeking to defraud Medicare of approximately $4 billion taxpayer dollars. Also since HEAT was created, the Civil Division and U.S. Attorney's Offices have recovered more than $8.82 billion in settlements, judgments, fines, restitution and forfeiture in health care fraud matters pursued under the False Claims Act and the Food, Drug and Cosmetic Act. This past fiscal year marked the second year in a row that more than $2 billion was recovered in civil health care fraud matters brought under the False Claims Act. Since the False Claims Act was significantly amended in 1986 through FY 2011, DOJ's Civil Division and U.S. Attorney's Offices have recovered more than $21 billion in matters alleging fraud against government health care programs.

Finally, as part of the President's FY 2013 budget, the Department is requesting program increases totaling $55 million for economic fraud enforcement efforts, approximately an 8 percent increase over FY 2012. This increase will support additional FBI agents, criminal prosecutors, civil litigators, in-house investigators, forensic accountants, paralegals, and other support positions to ultimately improve the Department's capacity to investigate and prosecute allegations of financial and mortgage fraud. This national initiative also includes resources for

programs that increase efficiency and productivity to help the financial management, case tracking, and workload data that drive investigations. The additional resources will be allocated in areas of the country where the greatest need has been demonstrated. The Department will take steps toward implementing this initiative in FY 2012 by using existing resources to place special emphasis on financial and mortgage fraud investigations and cases in districts where the greatest needs are demonstrated.

12. How has the Department of Justice used funds authorized to combat identity theft under the Identity Theft Penalty Enhancement Act (Public Law 108-275)?

The Department of Justice did not request, and Congress did not approve, specific appropriations in the amounts and years authorized by the Act. *See* Pub. L. No. 108-275, § 6 (July 15, 2004) ("In addition to any other sums authorized to be appropriated for this purpose, there is authorized to be appropriated to the Department of Justice, for the investigation and prosecution of identity theft and related credit card and other fraud cases constituting felony violations of law, $2,000,000 for fiscal year 2005 and $2,000,000 for each of the 4 succeeding fiscal years."). Using available funds from other appropriations, the Department, through U.S. Attorney's Offices and the Criminal and Tax Divisions, vigorously pursues appropriate cases of identity theft. Among many examples, on January 11 and 24, 2012, in the Middle District of Alabama, two tax preparers pleaded guilty to conspiracy to defraud the government and aggravated identity theft for fraudulently inflating tax refunds by placing false information on their clients' tax returns. They also filed tax returns in the names and Social Security numbers of individuals who did not know about, and did not authorize, the filing of tax returns on their behalf. In this case – which the Tax Division prosecuted – both defendants admitted that their offenses involved over $1 million in tax loss and more than 50 victims of identity theft.

On January 9, 2012, in the District of New Jersey, the leader of a fraud ring that engaged in identity theft and financial crimes which led to charges against 54 individuals pleaded guilty to a criminal information charging him with conspiracy to unlawfully produce identification documents and false identification documents, conspiracy to commit wire fraud affecting financial institutions and bank fraud, aggravated identity theft, money laundering, and conspiracy to defraud the Internal Revenue Service. The criminal organization, headquartered in Bergen County, New Jersey, obtained, brokered, and sold identity documents to customers for the purpose of committing credit card fraud, bank fraud and tax fraud. In total, the defendant defrauded various credit card companies, banks, and lenders out of approximately $4 million. He and his co-conspirators also claimed more than $182,000 in tax refunds from the Internal Revenue Service through the filing of false and fictitious tax returns and accompanying documents.

In addition, on September 14, 2011, the U.S. District Court for the Eastern District of Virginia sentenced a defendant to 14 years' imprisonment for operating an online business that sold counterfeit credit cards encoded with stolen account information. In this case – which the Criminal Division's Computer Crime and Intellectual Property Section prosecuted together with the U.S. Attorney's Office – U.S. Secret Service agents uncovered a counterfeit credit card manufacturing operation and nearly 21,000 stolen credit card numbers and related information in

the defendant's computers and email accounts. According to court documents, credit card companies have identified thousands of fraudulent transactions using the card numbers found in the defendant's possession, totaling more than $3 million.

13. What steps is the Department of Justice taking to combat Organized Retail Theft?

The Department currently plays a central role in coordinating information-sharing and cooperation with the private sector on organized retail theft. The FBI, through its Organized Retail Theft program, specifically focuses on the most significant retail theft cases involving the interstate transportation of stolen property, working closely with major retailers across the country to promote the sharing of intelligence.

The Department of Justice, through the U.S. Attorney's Offices, vigorously pursues organized retail theft cases. For example, on January 11, 2012, the U.S. District Court for the Northern District of Illinois sentenced a defendant to 78 months' imprisonment and ordered the defendant to pay restitution totaling $640,810 for directing a fraud scheme in which he sold stolen merchandise valued at more than $1 million over the Internet. According to court documents, between the spring of 2006 and September 2009, the defendant sold approximately 79,300 items over eBay and Amazon for approximately $4.6 million, with virtually all of the merchandise having been stolen from retailers and valued at more than $1 million. Evidence in the case showed that the defendant purchased goods that he knew were stolen from organized retail theft crews and sometimes directed these theft crews to bring him specific merchandise, which he purchased for amounts far below their retail or wholesale value.

On July 22, 2011, two Chinese nationals were arrested on federal charges in the Central District of California stemming from their role in a retail theft ring that used counterfeit credit cards to buy high-end electronics from Wal-Mart stores throughout the Los Angeles area. According to court documents, the theft ring was active for at least a year. The investigation revealed that the defendants used counterfeit credit cards produced in China, along with stolen credit card information, to purchase expensive high-end electronics from Wal-Mart stores throughout Southern California. The electronics included iPods, laptop computers, cameras and Nintendo Gameboys. The indictment notes that when one of the defendants was arrested earlier in 2011, he was in possession of a list of Wal-Mart stores, along with credit card numbers belonging to nearly 200 credit card holders in the U.S. and overseas. ICE estimated that the ring was responsible for close to a half million dollars in financial losses.

In January 2011, six individuals were arrested in the Middle District of North Carolina for their alleged roles in a conspiracy to steal baby formula from retail stores in several southern states. According to the federal criminal complaint, from November 2009 to December 2010, the defendants stole baby formula from retail stores in North Carolina, South Carolina, Kentucky, Georgia, Tennessee, and Virginia. The stolen product was collected in rented storage units in the High Point/Thomasville, North Carolina area and then transported in bulk to a grocery store in Union City, New Jersey.

In October 2010, the U.S. Attorney's Office for the Northern District of California announced the guilty pleas of 15 defendants in two criminal organizations for their roles in a large-scale fencing operation to buy and sell over-the-counter health and beauty products and to launder the proceeds through complex financial transactions. The lead defendants in that case agreed to the entry of a money judgment against them in the amount of $14,257,302 (which represents the gross proceeds the organization received from distributors who purchased stolen property during the period covered by the indictment) and the forfeiture of real property; five vehicles; approximately $165,000 in cash; nine diamonds, twelve gold bars, and other assorted watches and jewelry seized on the day the defendants were arrested; and the funds in ten bank accounts, totaling $81,502.93. The defendants admitted that one defendant and his family used a local San Jose business as a front for their illegal enterprise.

14. On December 3, the Washington Post printed an article that reported significant and persistent problems within the Office of the Pardon Attorney. You testified when you were confirmed that you would study the problems with the clemency advisory process and fix them. Please let us know what you have found and what changes you have made or plan to make.

The Department takes seriously the concerns raised in the Washington Post article concerning the pardon process. We have begun to investigate the statistical analysis referred to in the article, and will continue to do so. It bears noting that the statistical analysis did not account for a number of important criteria that are considered when evaluating a pardon petition, such as an applicant's candor throughout the pardon process, remorse and atonement for his or her crimes, acceptance of responsibility for the conduct, post-conviction character and reputation in his or her community, including community service, and the nature and seriousness of the underlying offense.

Further, several changes have occurred since 2008, including the adoption of a diversity policy for the Office of the Pardon Attorney and the addition of a Spanish language section to its website. Office personnel are also working on a "Frequently Asked Questions" section for the website to ensure that clemency petitioners and their families understand that applications for executive clemency are evaluated solely on merit and that counsel need not be retained, or support of elected representatives secured, in order for applications to be considered. These changes reflect the Department's commitment to the integrity of the executive clemency process, and to the equal and fair evaluation of all applicants.

15. It has been reported that the pardon attorney no longer assigns commutation cases to staff attorneys, and does not write a recommendation in the large majority of these cases.

A. How does this fulfill the Department's responsibility to advise the president about the merits of each case?

The numbers of applications submitted for executive clemency in the forms of presidential pardon and commutation of sentence have increased dramatically in recent years, requiring the Pardon Attorney to make judicious use of his office's resources. The Pardon Attorney, assisted by a staff attorney and three paralegals, personally reviews each application for commutation of sentence and supervises the appropriate investigation of each case.

The assertion that a recommendation is not prepared in the large majority of commutation cases is incorrect. All commutation cases are forwarded to the White House with a specific recommendation for disposition, developed after careful consideration by the Pardon Attorney and review by the Deputy Attorney General, to assist the President in the responsible exercise of his clemency authority. The length of a given recommendation and the amount of detail included therein depend on the merit and complexity of the particular case.

B. Doesn't this make the commutation process meaningless for most applicants?

No. As explained below, the evaluation of petitions for commutation of sentence follows a rigorous process designed to assess applicants based solely on the merits of their applications.

C. How can the pardon attorney himself conduct a meaningful review of thousands of commutation petitions?

To ensure that each commutation application receives meaningful consideration, the Pardon Attorney is assisted in the commutation review process by both a staff attorney and several paralegals.

D. Even if most of these should be denied, if no one is really looking at them, how do you know each one is without merit?

Each commutation application received is considered carefully and thoroughly. Indeed, the Department of Justice Inspector General recently conducted a detailed audit of the processing of executive clemency applications and concluded, among other things, that the Office of the Pardon Attorney employs a reasonable approach to investigate the merits of clemency applications and develop its recommendations.

E. We can all agree that no system is perfect. The legal system is no exception. There are mistakes. The Constitution gives the president a role in fixing such mistakes. How does this procedure help the president do that?

Requests for executive clemency have multiple layers of review, investigation, and recommendation. As previously indicated, requests are first directed to the Office of the Pardon Attorney, where the Pardon Attorney and his staff consider the application and review court documents, including the presentence investigation report, and, when appropriate, opinions of the trial and appellate courts. When a case is identified as appearing to have merit or to raise issues of fact that require further explication, the Pardon Attorney requests the United States

Attorney of the district of conviction and the sentencing judge to provide comments and recommendations on the clemency request.

After careful consideration, recommendations as to disposition of the petitions are prepared by the Pardon Attorney and his staff and transmitted to the Office of the Deputy Attorney General, where they are closely reviewed. Ultimately, the Deputy Attorney General executes a recommendation regarding each commutation case, and these recommendations are forwarded to the Office of the White House Counsel for consideration and decision by the President.

F. How does the pardon office identify the rare exception that deserves a closer look? Political support? Media attention? If so, is that the best way – the most fair way -- to make these decisions?

Media attention and political support do not play a role in the investigation or review of applications for executive clemency. The standards for considering commutation petitions are readily available to the public on the Office of the Pardon Attorney's website and include factors such as disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government by the petitioner, as well as other equitable factors that may be present in a given case. Weighing the totality of circumstances, the Office of the Pardon Attorney, the Deputy Attorney General, and the White House Counsel work to identify meritorious cases.

16. In 2008, then-candidate Barack Obama promised that "if you get a federal grant, you can't use that grant money to proselytize the people you help and you can't discriminate against them—or against the people you hire—on the basis of their religion." Yet, the Administration has failed to take any concrete steps thus far to restore anti-discrimination protections and end policies put in place by the George W. Bush Administration that permit the federal government to subsidize employment discrimination on the basis of religion.

Instead, when this Administration launched its version of the "faith-based initiative," Administration officials explained that the issue of hiring discrimination on the basis of religion in taxpayer-funded social service contracts and grants would be reviewed on a case-by-case basis by the Justice Department.

In June, [Mr. Nadler] asked Tom Perez, Assistant Attorney General for the Civil Rights Division, about this "case-by-case" review process. Mr. Perez stated that the Civil Rights Division was not leading the effort in the Justice Department and that he could not recall who in the Department was.

A. If the Civil Rights Division is not responsible for this review, what component within the Department is responsible?

In response to the June 29, 2007, opinion of the Office of Legal Counsel entitled *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act*, commonly referred to as the "World Vision opinion," DOJ's Office of Justice Programs (OJP) developed a policy that allows for a case-by-case review of applicants seeking a similar exemption. Under the policy, a religious organization that applies for funding and requests an exemption under the Religious Freedom Restoration Act to enable it to prefer coreligionists in employment, notwithstanding a statutory prohibition on religious employment discrimination, is required to submit documentation to the DOJ grant-making component from which it has applied for funds, either OJP or the Department's Office on Violence Against Women (OVW), certifying to each of the following statements:

a) The Applicant will offer all federally-funded services to all qualified beneficiaries without regard for the religious or non-religious beliefs of those individuals, consistent with the requirements of 28 C.F.R. Part 38, Equal Treatment for Faith-Based Organizations;

b) Any activities of the Applicant that contain inherently religious content will be kept separate in time or location from any services supported by direct federal funding, and, if provided under such conditions, will be offered only on a voluntary basis, consistent with the requirements of 28 C.F.R. Part 38; and,

c) The Applicant is a religious organization that sincerely believes that providing the services in question is an expression of its religious beliefs; that employing individuals of a particular religion is important to its religious exercise; and that having to abandon its religious hiring practice in order to receive the federal funding would substantially burden its religious exercise.

B. Could you describe the Department's case-by-case review process?

Please see response to 16(A), above.

C. What are the standards applied to each case in determining whether discrimination is permissible?

Please see response to 16(A), above.

D. Are there any past incidents where the "case-by-case" review has been used? What were the outcomes of those cases?

Neither OJP nor OVW received requests for exemptions to the prohibition on employment discrimination in FY 2009, the first grant year of the Obama Administration.

For FY 2008, there were eight faith-based organizations that submitted certificates of exemption to OJP, and that continued to receive funding in FY 2009.

E. What is the procedure for other agencies to work with the Department of Justice to address issues of religious hiring discrimination through the "case-by-case" process?

As with any other legal question posed to the Justice Department by other executive branch agencies, the agency should initially contact the Department's Office of Legal Counsel, which will consider the matter and respond appropriately.

F. Have there been any discussions with President Obama and other White House officials regarding this "case-by-case" review?

As a general matter, the Department of Justice does not disclose internal Administration discussions.

QUESTIONS POSED BY REPRESENTATIVE CHU

17. **On August 24, 2011, the Associated Press published an investigative article describing intelligence gathering by the NYPD, through collaboration with the CIA, of the Muslim community. This surveillance included targeting mosques, student groups, restaurants and even motorists in both New York City and outside the NYPD's jurisdiction. Several members of Congress and a number of community and civil rights groups have requested that Department of Justice open an investigation into the NYPD because its unlawful profiling violates both the Constitution and federal law. What is the status of these requests? When will DOJ make a determination on whether or not to open an investigation into this matter?**

The Department takes its responsibility to enforce civil rights laws addressing constitutional violations by law enforcement officers and agencies very seriously, including patterns and practices of constitutional violations resulting from policing practices. The Department is reviewing the requests to investigate the allegations of unconstitutional surveillance by the NYPD.

18. A. **What is DOJ doing in order to ensure that states are in compliance with Section 203 of the Voting Rights Act? Four additional states will require Asian Pacific American Language translation of ballots in the upcoming elections. What is DOJ doing to ensure that newly covered jurisdictions are aware of legal responsibilities under the law? In addition are there any assurance that these jurisdictions will comply during the upcoming primaries and elections?**

The Department is committed to the vigorous enforcement of the language minority provisions of the Voting Rights Act (Act), including Sections 203, 4(e) and 4(f)(4). Toward that end, the Department has established an active enforcement program, which includes monitoring and outreach designed to ensure full compliance with those provisions.

On October 13, 2011, the Bureau of the Census issued its decennial determinations as to which political subdivisions met the statutory criteria established by the coverage formulae contained in Section 203. Those jurisdictions are thereby required to provide the minority language assistance prescribed by the Act. In this cycle, the Census Bureau determined that 248 counties and other political jurisdictions in 25 states are required to provide language assistance, in dozens of minority languages. A total of 35 jurisdictions now are covered by Section 203 for the first time. Another 19 jurisdictions that already were covered by Section 203 are now required to provide language assistance in additional languages. The minority languages qualifying for assistance in jurisdictions newly covered by the Act included Spanish; Asian Indian and Bangladeshi; Filipino; Chinese; Vietnamese; Alaskan Native languages such as Inupiat and Yupik; and American Indian languages such as Choctaw, Yuma, and Hopi.

The Department had long anticipated the release of these determinations. The Civil Rights Division's Voting Section had plans in place to notify jurisdictions, particularly those newly-covered under Section 203, of the determinations and offer assistance as they develop their language assistance programs to meet their obligations.

In October and November of 2011, immediately following the Census Bureau's announcement, the Voting Section wrote to every jurisdiction covered by Section 203 of the Act to explain the nature of its obligations to provide language minority assistance. These letters necessarily were tailored to take into account each jurisdiction's unique statutory coverage and other circumstances. For example, different letters were sent to jurisdictions depending on whether their coverage by Section 203 was new or established; whether they also were covered by the language minority provisions of Section 4(f)(4) of the Act; or whether there were special circumstances arising from the particular coverage formula that applied to them. Each state that contained a covered jurisdiction received a separate letter as well. Finally, a number of jurisdictions that were no longer covered by Section 203 but have continuing minority language assistance obligations under Section 4(f)(4) received letters reminding them of their remaining statutory responsibilities.

The primary focus of the Department's outreach efforts, however, was to follow-up with the 54 jurisdictions that either were newly covered or covered for an additional language. Department attorneys contacted those jurisdictions by telephone to determine their needs and whether they were likely to comply voluntarily with their obligations under the Act. Department attorneys are planning a series of in-person meetings with the relevant officials and community leaders from those jurisdictions that need or want further assistance.

In the event that a jurisdiction fails in its efforts to establish an effective minority language program, the Department remains fully committed to taking all necessary measures to bring it into full compliance, including, where appropriate, the commencement of litigation.

B. What has DOJ done to ensure language minority voters are not discriminated against or denied the right to vote because of their limited language proficiency?

Aside from the Department's programmatic efforts relating to the Section 203 determinations released by the Census Bureau in October 2011, the Department has an ongoing and long-term commitment to ensure compliance with the language minority provisions of the Voting Rights Act.

The Department has provided current, practical guidance to local election officials on how to supply the language minority assistance required by the Act. The Attorney General has published guidelines entitled "Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups," 28 C.F.R. Part 55, which are available on the Justice Department's website. The Department most recently updated these guidelines in 2011. The Department has contacted and met with state and local election officials and minority community members in covered jurisdictions to address their concerns and questions and to explain the law. Department representatives have made presentations concerning the language minority

provisions of the Voting Rights Act at a number of conferences attended by state and local election officials and other stakeholders.

Of course, the Department also has continued to perform its traditional enforcement role. It has pursued a number of investigations where jurisdictions appear to be failing to comply with Section 203 and related provisions. The Department has monitored press reports and complaints from local minority groups. If a covered jurisdiction is not complying with the law, the Department can offer a range of assistance to bring it into compliance. But where such efforts are unavailing, the Department has sought, and will continue to seek, judicial enforcement. Recently enforcement actions include Lorain County, Ohio (2011); Alameda County, California (2011); Cuyahoga County, Ohio (2010)), and Riverside County, California (2010). *See also* http://www.justice.gov/crt/about/vot/litigation/caselist.php#sec203cases ("Cases Raising Claims Under the Language Minority Provisions of the Voting Rights Act"). Finally, the Department will continue to monitor elections where appropriate for compliance with the minority language provisions of the Voting Rights Act.

C. Has DOJ investigated any potential Section 2 cases on behalf of language minority voters due to discrimination?

The Department has pending Section 2 investigations of various election practices and procedures, including methods of election, on behalf of language minority voters. The Department cannot discuss ongoing investigations.

The Department has, in a number of cases, investigated and litigated claims for violations of Section 2 of the Voting Rights Act on behalf of language minority voters in conjunction with claims involving violations of the language minority provisions of the Act. The Department's website lists a number of cases asserting both kinds of claims.

See http://www.justice.gov/crt/about/vot/litigation/caselist.php#sec203cases ("Cases Raising Claims Under the Language Minority Provisions of the Voting Rights Act").

19. How is DOJ ensuring that federal agencies will comply with Executive Order 13166 which calls upon relevant federal agencies to create and implement guiding principles to improve access to federally conducted and federally assisted programs for persons of Limited English Proficiency?

The Federal Coordination and Compliance Section of the Civil Rights Division within the U.S. Department of Justice leads government-wide efforts to improve language access to federal and federally-assisted programs, as required by Title VI of the Civil Rights Act of 1964 and Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*.

As part of its effort to ensure that federal agencies comply with EO 13166, the Civil Rights Division created and leads an Interagency Working Group on Limited English Proficiency (LEP). Comprised of representatives from dozens of federal agencies, the Working

Group's core mission is to build awareness of the need and methods to ensure that LEP persons have meaningful access to important federal and federally-assisted programs and to ensure implementation of language access requirements in a consistent and effective manner across agencies. Working Group members share promising practices, create and help to implement tools or other forms of technical assistance, identify common enforcement issues, and exchange ideas for ensuring high-quality and cost-effective language assistance services.

On February 17, 2011, the Attorney General issued a Memorandum to federal agencies regarding the government's renewed commitment to language access obligations under Executive Order 13166. The Attorney General's Memorandum directed each federal agency to develop and implement a system by which LEP persons can meaningfully access the agency's services. The Memorandum requested that federal agencies undertake several actions, including:

- Conducting an inventory of languages most frequently encountered by the federal agency and identifying the primary channels of contact with LEP community members;
- Ensuring that agency staff can identify LEP contact situations and take the necessary steps to provide meaningful access;
- When developing hiring criteria, assessing the need for non-English language proficiency for particular positions in the agency;
- For written translations, standardizing terminology, and streamlining processes for obtaining community feedback on the accuracy and quality of agency language assistance services; and,
- Establishing a Language Access Working Group that is responsible for implementing EO 13166.

In addition, for agencies providing federal financial assistance that had not previously drafted guidance for recipients of federal financial assistance, the Attorney General asked that these federal agencies draft such guidance for review and approval by the Civil Rights Division. These requirements are currently in the process of being implemented.

In addition to directing other federal agencies to renew their commitment to full compliance with EO 13166, the Attorney General also has sought to ensure internal DOJ compliance with the Order. In a Memorandum to the heads of every DOJ component regarding language access obligations, the Attorney General outlined the Department's efforts to ensure that all DOJ components have the ability to communicate effectively with LEP individuals with whom they have contact. In order to comply with the expectations in this Memorandum, each of the approximately forty DOJ components is currently engaged in language access program planning to overcome language barriers across all of the Department's programs and activities. Once all plans are reviewed and finalized, the DOJ Language Access Working Group will monitor the implementation and ongoing assessment of component and Departmental language access plans.

20. DOJ's existing guidance on racial profiling ("DOJ Guidance"), issued in 2003, outlines provisions to ban the practice of profiling. The guidance includes broad

exceptions for national security and border integrity; but neither applies to profiling based on religion and national origin; nor to state and law enforcement agencies. It also lacks a meaningful enforcement mechanism. This is problematic because a significant amount of racial profiling is religiously or nationality based. Additionally there needs to be some type of enforcement mechanism to discourage the act of racial profiling. I am aware that DOJ has been engaged in a review of its guidance for a few years. But thus far there has been no modifications or updates. I would like to know when will this review be completed and will it address these concerns with its current language? What is the probability that it will address some of the concerns I've laid out in this paragraph?

As the Attorney General has noted previously, he believes profiling is problematic, both because it is generally an ineffective law enforcement technique and because of its negative impact on the communities affected. At the Attorney General's request, the Department has created a working group to undertake a review of the June 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. That review necessarily implicates a broad array of civil rights, law enforcement, and national security interests across the federal government and requires careful consideration of a multitude of concerns, including those that you have raised. Although it is not possible to say for certain when the review of the 2003 Guidance will be completed, the review is ongoing, and the Attorney General looks forward to receiving the working group's recommendations as soon as it completes its thorough evaluation.

21. A. **Recent FBI hate crimes statistics issued last month from the FBI show that incidents against Muslims increased a staggering 50% between 2009 and 2010. In light of these statistics, what will DOJ do to address this stark uptick in anti-Muslim incidents?**

The Hate Crime Statistics Act requires the FBI to collect crime statistics voluntarily submitted by state and local law enforcement agencies. The FBI is aware of both the increase in anti-Muslim crimes and the increase in hate crimes generally. To provide perspective, in 2009 6,604 hate crimes were reported, of which 125 (1.9 per cent) were anti-Muslim crimes. In 2010 6,628 hate crimes were reported, of which 160 (2.4 per cent) were anti-Muslim crimes.

The FBI continues to explore ways to decrease hate crimes and hate incidents. The investigations and successful prosecution of hate-crime perpetrators are key elements in the government's effort to deter these crimes and protect their potential victims. In addition, each of the FBI's 56 field offices has a robust Community Outreach Program. As an extension of the FBI's counterterrorism efforts, the Community Outreach Coordinators build and maintain relationships in their Muslim communities, often placing the FBI in direct contact with Muslim community leaders. This maximizes the likelihood that anti-Muslim hate crimes will be reported, which improves both the accuracy of that reporting and the opportunity to successfully investigate these crimes and bring the perpetrators to justice.

B. **Several advocacy organizations submitted a letter to your office in January 2011 to voice their concerns about the rise of hate crimes against Sikh, Arab,**

and Hindu communities. The letter, to which there has yet to be a response, called for the FBI to begin documenting and tracking the number of hate crimes committed against the above mentioned communities. How does the FBI intend to respond to this request?

By letter dated January 13, 2011, the Sikh Coalition addressed concerns regarding hate crime reporting to Attorney General Holder. By letter dated February 25, 2011, Thomas E. Perez, Assistant Attorney General of the Department's Civil Rights Division, replied to the inquiry on Attorney General Holder's behalf. Those letters are attached.

The FBI's Uniform Crime Report (UCR) program collects hate crime data in accordance with the Hate Crime Statistics Act of 1990, as amended, and in compliance with the standards for race and ethnicity designations established by the Office of Management and Budget. The current Hate Crime Incident Report Form collects "Anti-Islamic (Muslim)" data under the category of "religious bias motivation." We recognize the possible value of establishing separate categories for "anti-Arab," "anti-Sikh," and "anti-Hindu," but there is no current consensus on how to define these terms (for example, should they be based on geography, culture, religion, or native language?). Absent a consensus on these definitions within the law enforcement community, or the establishment of definitions through legislation or executive guidance, it is premature to seek the requested revision of the reporting categories.

QUESTIONS POSED BY REPRESENTATIVE POLIS

22. I want to commend the Obama Administration and the Department of Justice in particular for its work to advance LGBT equality. I am extremely pleased that President Obama and you have rightly refused to defend the constitutionality of DOMA, the federal law banning recognition of same-sex marriage, in court and have already filed briefs on behalf of gay plaintiffs challenging DOMA. I am also pleased that the Department is using its tools to enforce students' rights under the Equal Protection Clause and Title IX of the Civil Rights Act of 1964 to address bullying and discrimination against LGBT students. I know the Department shares my deep concerns over the prevalence of bullying and discrimination against LGBT youth in our schools. Numerous studies have demonstrated that discrimination in schools contributes to high rates of absenteeism, dropouts, health and safety risks and outcomes, and academic underachievement among LGBT youth. Sadly, there is no federal law prohibiting bullying and discrimination based on sexual orientation or gender identity in our public schools. To combat this severe problem, I have introduced the Student Non-Discrimination Act, along with Senator Franken in the Senate. Now, I know Attorney General Holder, you said at a Senate hearing held a month ago that you hoped that the Administration would soon support this bill. So I ask you now, does the Administration support this bill?

The Administration is pleased to support the Student Non-Discrimination Act, which is an important piece of legislation aimed at ensuring that all of our students have the same right to go to school in an environment free of discrimination and harassment, and we look forward to working with Congress as this bill moves forward in the process.

23. Mr. Attorney General, too many LGBT American citizens in Puerto Rico live in fear of bias-motivated violence because of their sexual orientation or gender identity; in the past year, at least six transgender persons have been murdered. Although this violence may be part of the heightened level of violence currently confronting Puerto Rico, it is nonetheless disturbing and merits specific attention. The Civil Rights Division recently completed a comprehensive review of the Puerto Rico police department which found serious problems throughout the department which date back many years. Given the prevalence of anti-LGBT violence in Puerto Rico and the existence of federal authority under the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, what steps is the Department taking to address this urgent issue?

In September 2011, DOJ's Civil Rights Division announced the results of a comprehensive civil rights investigation of the Puerto Rico Police Department, the second largest law enforcement agency in the country. The Division found a pattern or practice of unlawful conduct by officers involving use of excessive force, use of unreasonable force to suppress protected First Amendment rights, and unconstitutional searches and seizures. The investigation also uncovered other evidence that PRPD frequently fails to police sex crimes and incidents of

domestic violence, and that PRPD engages in discriminatory policing practices that target individuals of Dominican descent. As part of the investigation, the Division expressed concern with the record pace of murders in Puerto Rico and other violent incidents involving Puerto Rico's LGBT community. The Division is currently working with Puerto Rico and community stakeholders to develop a comprehensive reform plan to address the violations and areas of concern, including measures to improve the Police Department's policies, training, supervision, and accountability systems. In addition, in January 2012, a number of Department officials from the Civil Rights Division, the FBI and the Community Relations Service, met with transgender advocates, including the head of a transgender organization in Puerto Rico, to discuss the violence against transgender individuals that has occurred there.

The Division believes that addressing the serious deficiencies noted in the civil rights investigation also will assist Puerto Rico in addressing its public safety challenges. Public safety depends heavily on the trust and cooperation of the community, which in turn depends on constitutional police practices. The Division's previous efforts in working with police departments strongly suggest that by addressing the concerns raised in the civil rights investigation, Puerto Rico will not only meet its constitutional obligations, but also reduce crime, improve public safety and increase public confidence.

The Department of Justice is committed to helping Puerto Rico address its public safety needs through the civil rights investigation and other efforts. For example, the Department is working to provide training and technical assistance to improve the investigative capacity of law enforcement agencies in Puerto Rico. Since 2009, the Department has invested over $100 million in grants in Puerto Rico, of which over $18 million supports the hiring of law enforcement officers and technology support, more than $35 million supports programs combating violence against women, and more than $55 million supports programs including those aimed at reducing crime, curtailing underage drinking, improving forensic science and medical examiner services, reducing juvenile offending, and enhancing victim services and juvenile justice programs. The Department is committed to continuing this support.

24. Mr. Attorney General, it's been more than two years since the enactment of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA). I want to thank you for your tremendous leadership in finally getting the legislation passed – after more than a decade of delay. I know the Department is involved in training and outreach on the attributes of the new law.

A. How many state and local officials have now been trained on the new tools and jurisdiction of the HCPA?

The Department has organized and led training conferences throughout the country at which over a thousand law enforcement officers and community stakeholders have been trained on the law, its implementation and the identification, investigation and prosecution of hate crimes.

B. How many cases has the Department filed – and how many investigations are underway?

The Department has filed seven cases under the criminal provision of the HCPA, 18 U.S.C. § 249. The cases that have been resolved have resulted in the convictions of seven defendants. As of January 1, 2012, 278 hate crime cases were pending investigation by the FBI.

C. Have any of the cases involved any of the new categories under the Act – sexual orientation, gender, gender identity, or disability?

In *United States v. Beebe, et al.*, three defendants were convicted for their role in a racially-motivated assault on a 22-year-old man of Navajo descent with a developmental disability. The Department presently has a number of open investigations of hate crimes involving a number of the categories under the Shepard-Byrd Act, including the new categories. In addition, it is important to note that the success of the new law is not measured solely by the number of federal prosecutions that are brought, but rather by the overall response by federal, state and local law enforcement working together. Since the enactment of the new law, the Department has coordinated with state and local law enforcement in response to hate crimes under the new categories, and, in a number of cases, state prosecutors have charged defendants in cases involving hate crimes based on sexual orientation or gender identity under their own state hate crimes law.

Also, as you know, one important element of the HCPA is the new hate crime data collection requirements for the FBI under the Hate Crime Statistics Act – crimes directed at individuals on the basis of their gender or gender identity, and crime directed against juveniles and committed by juveniles.

D. How soon will the FBI be able to begin collecting and reporting that critical data?

Response:

Based on the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, the FBI's Uniform Crime Reporting (UCR) Program has proposed changes to the hate crime data that is collected. These changes are currently under review by the Office of Management and Budget and will be forwarded to law enforcement agencies and UCR State Program Managers for implementation once that approval is obtained.

While we cannot provide a firm implementation date at this point in the process, we anticipate that in approximately January 2013 we will begin the collection of additional data regarding biases of gender (anti-male and anti-female) and gender identity (anti-transgender and anti-gender nonconforming), as well as the number of juvenile victims and offenders. That time frame will coincide with the completion of the UCR Redevelopment Project, which is currently underway and is designed to streamline the process of data collection and reporting.

Sikh Coalition
the voice of a people

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January 13, 2011

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Including Sikhs in Hate Crime Incident Reporting

Dear Attorney General Holder:

I am writing on behalf of the Sikh Coalition, the largest Sikh civil rights organization in the United States. We met last September during a discussion with interfaith groups about the need to respond vigorously to post-9/11 bigotry, and we deeply appreciate your support in this regard. Consistent with the spirit of that meeting, I am writing today to request formal tracking of hate crimes suffered by Sikhs on the enclosed *Hate Crime Incident Form* (Form 1-699).

By its own terms, Form 1-699 is designed to "assist the [Federal Bureau of Investigation] in compiling timely, **comprehensive**, and **accurate** data regarding the incidence and prevalence of hate crime throughout the [n]ation." Although our organization has documented several hundred bias attacks against Sikhs since September 11, 2001, it is our understanding that most of these incidents are officially classified as anti-Islamic (Muslim) hate crimes. When a discrete community is acutely susceptible to hate violence in the United States, it is critically important for federal authorities to devise means of tracking hate violence against the affected community. On this ground, we believe that failing to record hate crimes against Sikhs necessarily undermines our collective interest in compiling data which are comprehensive and accurate.

As a practical matter, the inclusion of Sikhs on Form 1-699 will encourage law enforcement agencies nationwide to develop stronger relationships with the Sikh communities they serve. Because Sikhs remain largely unknown to law enforcement officials, members of our community are susceptible to ethno-religious profiling and routinely denied opportunities to serve as law enforcement officers. Along these lines, Form 1-699 treats Sikh Americans as if they do not exist. The inclusion of Sikhs on Form 1-699, on the other hand, will be a catalyst for dialogue between Sikhs and law enforcement agencies nationwide and motivate Sikhs in the United States to report hate crimes. In the fullness of time, we hope that stronger working relationships between Sikhs and law enforcement agencies will allow Sikhs to overcome the discriminatory barriers that are too often imposed on them by law enforcement agencies around the nation.

In light of the foregoing concerns, we would appreciate an opportunity to meet with you and your colleagues for further discussion. We applaud efforts by the Department of Justice to vindicate civil rights and vigorously prosecute hate crimes, and we look forward to continuing our partnership with your agency.

Respectfully yours,



Rajdeep Singh
Director of Law and Policy
(202) 747-4944 | rajdeep@sikhcoalition.org

Enclosure

cc: Mr. Eric Treene, Special Counsel for Religious Discrimination, Civil Rights Division
Ms. Emily M. Loeb, Counsel to the Assistant Attorney General, Civil Rights Division
Mr. Gregory E. Scarbro, Unit Chief, Crime Statistics Management Unit
Ms. Kristi Donahue, Hate Crime Coordinator, Crime Statistics Management Unit
Ms. Gloria Chan, Executive Director, Congressional Asian Pacific American Caucus

ATTACHMENT C **HATE CRIME INCIDENT REPORT**

Agency Name _____ ORI

Incident No. Date of Incident ___/___/___ (Month Day Year)

Offense *(Enter an offense code and number of victims for each bias-motivated offense.)*

#1 Offense - # of victims #3 Offense - # of victims
#2 Offense - # of victims #4 Offense - # of victims

01 Murder, 02 Forcible Rape, 03 Robbery, 04 Aggravated Assault, 05 Burglary, 06 Larceny-Theft, 07 Motor Vehicle Theft, 08 Arson, 09 Simple Assault, 10 Intimidation, 11 Destruction/Damage/ Vandalism

Location *(Check one for Offense #1.)*

01 ☐ Air/Bus/Train Terminal
02 ☐ Bank/Savings and Loan
03 ☐ Bar/Night Club
04 ☐ Church/Synagogue/Temple
05 ☐ Commercial/Office Building
06 ☐ Construction Site
07 ☐ Convenience Store
08 ☐ Department/Discount Store
09 ☐ Drug Store/Dr.'s Office/Hospital
10 ☐ Field/Woods
11 ☐ Government/Public Building
12 ☐ Grocery/Supermarket
13 ☐ Highway/Road/Alley/Street
14 ☐ Hotel/Motel/etc.
15 ☐ Jail/Prison
16 ☐ Lake/Waterway
17 ☐ Liquor Store
18 ☐ Parking Lot/Garage
19 ☐ Rental Storage Facility
20 ☐ Residence/Home
21 ☐ Restaurant
22 ☐ School/College
23 ☐ Service/Gas Station
24 ☐ Specialty Store (TV, Fur, etc.)
25 ☐ Other/Unknown
27 ☐ Abandoned/Condemned Structure
38 ☐ Amusement Park
39 ☐ Arena/Stadium/Fairgrounds/Coliseum
40 ☐ ATM Separate from Bank
41 ☐ Auto Dealership New/Used
42 ☐ Camp/Campground
44 ☐ Daycare Facility
45 ☐ Dock/Wharf/Freight/Modal Terminal
46 ☐ Farm Facility
47 ☐ Gambling Facility/Casino
48 ☐ Industrial Site
49 ☐ Military Installation
50 ☐ Park/Playground
51 ☐ Rest Area
52 ☐ School-College/University
53 ☐ School-Elementary/Secondary
54 ☐ Shelter-Mission/Homeless
55 ☐ Shopping Mall
56 ☐ Tribal Lands
57 ☐ Community Center

Enter a Location for each offense having a different location than Offense #1:
#2 #3 #4

Bias Motivation *(Check one for Offense #1.)*

Race
11 ☐ Anti-White
12 ☐ Anti-Black or African American
13 ☐ Anti-American Indian or Alaska Native
14 ☐ Anti-Asian
15 ☐ Anti-Multiple Races, Group
16 ☐ Anti-Native Hawaiian or Other Pacific Islander

Religion
21 ☐ Anti-Jewish
22 ☐ Anti-Catholic
23 ☐ Anti-Protestant
24 ☐ Anti-Islamic (Muslim)
25 ☐ Anti-Other Religion
26 ☐ Anti-Multiple Religions, Group
27 ☐ Anti-Atheism/Agnosticism

Gender
61 ☐ Anti-Male
62 ☐ Anti-Female

Gender Identity
71 ☐ Anti-Transgender
72 ☐ Anti-Gender Non-Conforming

Ethnicity
32 ☐ Anti-Hispanic or Latino
33 ☐ Anti-Not Hispanic or Latino

Disability
51 ☐ Anti-Physical Disability
52 ☐ Anti-Mental Disability

Sexual Orientation
41 ☐ Anti-Gay
42 ☐ Anti-Lesbian
43 ☐ Anti-LGBT (mixed group)
44 ☐ Anti-Heterosexual
45 ☐ Anti-Bisexual

Enter a Bias Motivation for each offense having a different bias motivation than offense #1:
#2 #3 #4

Victim Type *(Check all applicable victim types for each offense listed above.)* *If Individual,* ☐ Adult ☐ Juvenile

	Offense #1	Offense #2	Offense #3	Offense #4
1 Individual*	☐	☐	☐	☐
2 Business	☐	☐	☐	☐
3 Financial Institution	☐	☐	☐	☐
4 Government	☐	☐	☐	☐
5 Religious Organization	☐	☐	☐	☐
6 Society/Public	■	■	■	■
7 Other	☐	☐	☐	☐
8 Unknown	☐	☐	☐	☐

*Indicate the total number of individuals (persons) who were victims in the incide

Total Number of Offenders ☐☐ *(Use "00" for Unknown Offender.)*

Race/Ethnicity of Offender(s) as a Group *(Check one race and one ethnicity.)*

Race
1 ☐ White
2 ☐ Black or African American
3 ☐ American Indian or Alaska Native
4 ☐ Asian
5 ☐ Multiple Races, Group
6 ☐ Unknown
7 ☐ Native Hawaiian or Other Pacific Islander

Ethnicity
H ☐ Hispanic or Latino
N ☐ Not Hispanic or Latino
M ☐ Multiple Ethnicity's, Group
U ☐ Unknown

INSTRUCTIONS FOR PREPARING *QUARTERLY HATE CRIME REPORT* AND *HATE CRIME INCIDENT REPORT*

This report is authorized by Title 28, Section 534, U.S. Code, and the Hate Crime Statistics Act of 1990. Even though you are not required to respond, your cooperation in using this form to report hate crimes known to law enforcement during the quarter will assist the FBI in compiling timely, comprehensive, and accurate data regarding the incidence and prevalence of hate crime throughout the Nation. Please submit this report quarterly, by the 15th day after the close of the quarter, and any questions to the FBI, Criminal Justice Information Services Division, Attention: Uniform Crime Reports/Module E-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; telephone 304-625-4830, facsimile 304-625-3566. Under the Paperwork Reduction Act, you are not required to complete this form unless it contains a valid OMB control number. The form takes approximately 7 minutes to complete. Instructions for preparing the form appear below.

GENERAL

This report is separate from and in addition to the routine Summary UCR submission. In hate crime reporting, there is no Hierarchy Rule. Offense data (not just arrest data) for Intimidation and Destruction/Damage/Vandalism of Property should be reported. On this form, all reportable bias-motivated offenses should be included regardless of whether arrests have taken place. Please refer to the publication Hate Crime Data Collection Guidelines for additional information.

QUARTERLY HATE CRIME REPORT

At the end of each calendar quarter, each reporting agency should submit a single *Quarterly Hate Crime Report*, together with an individual *Incident Report* for each bias-motivated incident identified during the quarter (if any). If no hate crimes occurred during the quarter, the agency should submit only the *Quarterly Hate Crime Report*.

The *Quarterly Hate Crime Report* should be used to identify your agency, to state the number of bias-motivated incidents being reported for the calendar quarter, and to delete any incidents previously reported that have been determined during the reporting period not to have been motivated by bias.

HATE CRIME INCIDENT REPORT

The *Incident Report* should be used to report a bias-motivated incident or to adjust information in a previously reported incident. Include additional information on separate paper if you feel it will add clarity to the report.

Provide the Agency Name, Originating Agency Identifier (ORI), and Date of Incident.

INCIDENT NUMBER: Provide an identifying incident number, preferably your case or file number.

UCR OFFENSE: Provide codes for all offenses within the incident determined to be bias motivated and the number of victims for each offense. In multiple offense incidents, report only those offenses determined to be bias motivated.

LOCATION: Provide the most appropriate location of each bias-motivated offense.

BIAS MOTIVATION: Provide the nature of the bias motivation for each bias-motivated offense.

VICTIM TYPE: Provide the type of victim(s) identified within the incident. Where the type of victim is Individual, indicate the total number of individuals (persons) who were victims in the incident, the total number of adult victims, and the total number of juvenile victims. Society/Public is applicable only in the National Incident-Based Reporting System (NIBRS).

TOTAL NUMBER OF OFFENDERS: Provide the number of offenders, the total number of adult offenders, and the total number of juvenile offenders. Incidents involving multiple offenders must not be coded as Unknown Offender. Indicate an Unknown Offender when nothing is known about the offender including the offender's race. When the Race of Offender(s) has been identified, indicate at least one offender.

RACE/ETHNICITY OF OFFENDER(S) AS A GROUP: Provide the race/ethnicity of the offender(s) as a group. If the number of offenders is entered as Unknown Offender, then the offender's race/ethnicity must also be indicated as Unknown.

U. S. Department of Justice

Civil Rights Division

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

FEB 25 2011

Mr. Rajdeep Singh
Director of Law and Policy
The Sikh Coalition
40 Exchange Place, Suite 728
New York, NY 10005-2769

Dear Mr. Singh:

This responds to your letter to the Attorney General dated January 13, 2011, requesting a meeting to discuss formal tracking of hate crimes suffered by Sikhs using your enclosed *Hate Crime Incident Form* (Form 1-699).

The Criminal Section enforces the federal criminal civil rights statutes pertaining to incidents of official misconduct and violent bias-motivated crimes. As we discussed when we met with you at the February 9, 2011, meeting of various community groups, the Criminal Justice Information Systems Committees of the International Association of Chiefs of Police (IACP), the National Sheriffs' Association (NSA) and the National Crime Information Center Advisory Policy Board (APB) provide oversight of the Uniform Crime Reporting (UCR) Program. We recognize the concerns raised regarding form 1-699, however, the current version of the form reflects the items that were approved for data collection through the UCR Program oversight process.

We hope this information is helpful. Please do not hesitate to contact the Department if we may be of assistance with this, or any other matter.

Sincerely,

Tom Perez

Thomas E. Perez
Assistant Attorney General