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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

FACSIMILE (202) 225-3974

MINORITY (202) 225-5051

<http://oversight.house.gov>

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April 1, 2011

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

Dear Mr. Chairman:

I am writing to memorialize my serious concerns with the unilateral subpoena you issued last night to the Department of Justice, despite my objection. I am providing copies of this letter to all Members of the Committee because they were not informed about the objections raised by the Department of Justice before you issued the subpoena and were not provided an opportunity to deliberate on this significant action by the Committee.

On March 16, 2011, you sent a letter to the Department of Justice requesting a wide range of documents relating to operations by the Bureau of Alcohol, Tobacco, Firearms, and Explosives involving gun trafficking into Mexico. You requested the production of all of these documents in two weeks.¹

Yesterday, the Department of Justice notified the Committee that it was working rapidly to comply with this request and was collecting responsive documents to be produced to the Committee. The Department raised serious concerns, however, about producing certain documents relating to two active, ongoing criminal investigations, one of which has already resulted in a 53 count indictment of at least 20 individuals alleged to have "conspired to purchase hundreds of firearms, including AK-47s, to be illegally exported to Mexico."²

¹ Letter from Chairman Darrell E. Issa to Kenneth Melson, Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives (Mar. 16, 2011) (online at http://oversight.house.gov/images/stories/Other_Documents/2011-03-16_DEI_to_Melson-ATF_-_Mexico_gun_trafficking_due_3-30.pdf).

² Office of the United States Attorney, District of Arizona, *Grand Juries Indict 34 Suspects in Drug and Firearms Trafficking Organization: Multi-Agency Task Force Rounds Up Defendants Accused of Illegal Gun Purchases, Money Laundering, and Conspiracy* (Jan. 25, 2011) (online at www.justice.gov/usao/az/press_releases/2011/PR_01252011_

The Department also raised concerns about producing documents relating to the ongoing criminal investigation into the death of U.S. Border Patrol Agent Brian Terry on December 14, 2010.

Previous Committee chairmen have handled such concerns with great care. For example, during the Department's criminal investigation into fatal shootings by Blackwater contractors in Nisoor Square, Iraq, the Committee worked very carefully with the Department to obtain the information it needed without negatively impacting ongoing prosecutions.³

Last night, however, you issued a unilateral subpoena over the Department's objection, over my objection, and without any knowledge or debate by other Members of our Committee. You took this step without meeting with the Department to determine whether an accommodation might have satisfied both the Committee's legitimate interest in conducting appropriate oversight and the Department's legitimate interest in achieving successful prosecutions.

Today, the Justice Department wrote a letter to you with the following statement:

Yesterday, we informed Committee staff that we intended to produce a number of responsive documents within the next week. As we explained, there are some documents that we would be unable to provide without compromising the Department's ongoing criminal investigation into the death of Agent Brian Terry as well as other investigations and prosecutions, but we would seek to work productively with the Committee to find other ways to be responsive to its needs.⁴

This type of intrusion into ongoing criminal investigations is exactly what I hoped to avoid when I wrote you on January 24, 2011, to request that you honor the historical practice of both Republican and Democratic chairmen of this Committee to obtain (1) the concurrence of the Ranking Minority Member or (2) a Committee vote when issuing controversial subpoenas.⁵

Press%20Conference.pdf); *See also*, Indictment, *United States v. Avila, et. al.*, Case No. 2:11-CR-126-JAT (D. Ariz. Jan. 19, 2011).

³ *See, e.g., Transcript*, Hearing on Private Security Contracting in Iraq and Afghanistan, Committee on Oversight and Government Reform, U.S. House of Representatives (Oct. 2, 2007).

⁴ Letter from Ronald Weich, Assistant Attorney General, U.S. Department of Justice to Chairman Darrell Issa (April 1, 2011).

⁵ Letter from Ranking Member Elijah Cummings to Chairman Darrell Issa, (Jan. 24, 2011) (online at http://democrats.oversight.house.gov/images/stories/2011_0124_Cummings_to_Issa_access_to_records.pdf).

The Honorable Darrell E. Issa
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Compromising the potential prosecution and ultimate conviction of international criminals would be inexcusable. Before taking any further steps, I urge you to join me in meeting with Department officials personally in order to fully understand the potential ramifications of these actions.

Sincerely,



Elijah E. Cummings
Ranking Member

cc: Members, Committee on Oversight and Government Reform