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ONE HUNDRED TWELFTH CONGRESS

# 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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### Opening Statement

## Ranking Member Elijah E. Cummings Business Meeting on Motion to Hold Attorney General in Contempt

June 20, 2012

Thank you, Mr. Chairman. First and foremost, I believe Congress has a responsibility to conduct vigorous oversight of the Executive Branch. The Constitution requires this from Congress, and the American people expect it from Members who serve on this Committee.

But the Constitution also requires us to recognize the legitimate interests of the Executive Branch, and to avoid unnecessary conflict by seeking reasonable accommodations when possible. In my opinion, the Committee has failed in this fundamental responsibility.

Last night, the Attorney General came to us in good faith. He offered to provide additional internal deliberative documents. He pledged to provide a substantive briefing on the Department's actions. He agreed to a request by Senator Grassley to describe the categories of documents being produced and withheld. He made clear he was willing to provide substantive responses to additional questions. And he even offered to provide documents that are outside the scope of the Committee's subpoena.

All he requested in return was that you—as Chairman of this Committee—give him your good faith commitment that we would move toward resolving this contempt fight. It was a fair and reasonable offer, especially in light of the partisan and inflammatory personal attacks you have made against him throughout this investigation.

For the past year, you have been holding the Attorney General to an impossible standard. You accused him of a “cover-up” for protecting documents he was prohibited by law from producing. You claimed that he “obstructed” the Committee's work by complying with federal statutes passed by both houses of Congress and signed by the President. And earlier this month, you went on national television and called the Attorney General—our nation's chief law enforcement officer—a liar.

At the same time, you refused requests to hold a public hearing with Ken Melson, the former head of ATF—the agency responsible for conducting these operations. This refusal came after Mr. Melson told Committee investigators privately that he never informed senior officials at the Justice Department about gunwalking during Operation Fast and Furious because he was unaware of it himself.

Last night, you flatly rejected the Attorney General's offer. You refused to even commit to working toward a mutually agreeable resolution. Instead, you rushed to a prearranged press conference to announce the failure of the meeting.

It seems clear that you had no interest in resolving this issue, and that the Committee planned to go forward with contempt before we walked into the meeting with the Attorney General.

This is especially disappointing since the Department has already turned over more than 1,000 pages of documents that answer your question. You wanted to know why the Department sent a letter to Senator Grassley initially denying allegations of gunwalking. The documents show that when they were drafting this letter, the Department's legislative affairs office relied on categorical and emphatic denials from the leaders of ATF. These are the same ATF officials you now refuse to call for a public hearing.

This morning, we were informed that the Administration is now asserting executive privilege over the narrow subset of documents that remain at issue. As I understand it, the assertion does not cover everything in this category, such as whistleblower documents, and the Administration has indicated that it remains willing to try to come to a mutual resolution despite its formal legal assertion.

As a Member of Congress, I treat assertions of executive privilege very seriously, and I believe they should be used only sparingly. In this case, it seems clear that the Administration was forced into this position by the Committee's unreasonable insistence on pressing forward with contempt despite the Attorney General's good faith offer.

Mr. Chairman, it did not have to be this way. We could have postponed today's vote, accepted the Attorney General's offer, and worked with the Department to obtain additional documents and information. Instead, by not honoring the Constitution's charge to seek accommodation when possible, the position and prestige of this Committee has been diminished, and that result should concern us all.

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**Contact: Ashley Etienne, Communications Director, (202) 226-5181.**