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To: Attorney General Grindler, Gary (OAG); Richardson, Margaret (OAG); Delery, Stuart F. (OAG)
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Subject: Cummings Statement on ATF

***Cummings Responds to ATF and DOJ Personnel Announcements
Acting ATF Director and U.S. Attorney Testified that They Did Not Know Details of Operation Fast & Furious,
Higher Officials at DOJ Did Not Authorize Controversial Tactics***

WASHINGTON - Today, the Department of Justice (DOJ) announced that Kenneth Melson, the acting director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be leaving his post to return to DOJ as a senior advisor for forensic science, and Dennis Burke, the U.S. Attorney for the District of Arizona, is resigning his position.

The Committee has been investigating ATF and DOJ's handling of Operation Fast and Furious in Arizona and recently interviewed both Mr. Melson and Mr. Burke. Rep. Elijah Cummings (D-MD), the Ranking Member of the Committee, made the following statement in response to the announcement:

“In their interviews with the Committee, Mr. Melson and Mr. Burke both acknowledged that mistakes were made and that Operation Fast and Furious lacked adequate protections for public safety. Fresh leadership will allow ATF to move forward and focus on its vital mission of enforcing our nation's gun laws.”

Background:

Committee staff interviewed Mr. Melson on July 4, 2011, and Mr. Burke on August 18, 2011. Both testified that they had been unaware of the tactical details of Operation Fast and Furious and had not authorized the tactics employed in the case. In a transcribed interview on July 4, 2011, Acting ATF Director Ken Melson stated that he did not become aware of allegations by ATF line agents until they were disclosed in the media. Acting Director Melson stated that he had been briefed on at least three occasions about Operation Fast and Furious, but that “the general assumption among the people that were briefed on this case was that this was like any other case that ATF has done.”

He stated:

I don't believe that I knew or that [Acting Deputy Director] Billy Hoover knew that they were—that the strategy in the case was to watch people buy the guns and not interdict them at some point. That issue had never been raised. It had never been raised to our level by the whistle blowers in Phoenix that stayed in house down there. The issue was never raised to us by ASAC [Assistant Special Agent-in-Charge George] Gillett who was supervising the case. It unfortunately was never raised to my level by SAC [Special Agent-in-Charge William] Newell who should have known about the case, if he didn't, and recognize the issue that was percolating in his division about the disagreement as to how this was occurring. Nor was it raised to my level by DAD [Deputy Assistant Director William] McMahon who received the briefing papers from [Phoenix Group Supervisor David] Voth and may have had other information on the case. Nor was it given to me by a Deputy Assistant Director in OSII, the intel function, when he briefed this case the one time I wasn't there and he raised an objection to it and saw nothing change.

Acting Director Melson stated that “we give a lot of discretion to our SACs,” and he wished that the line agents had contacted him directly with their complaints. Acting Director Melson stated that when he became fully aware of the number of purchases and the total number of weapons purchased, he remembers his “stomach being in knots.”

ATF officials at other levels provided similar accounts, including Acting Deputy Director William Hoover, Assistant Director for Field Operations Mark Chait, and Deputy Assistant Director William McMahon, who all stated that they

did not learn about the tactics used in the case or about the specific concerns of the line agents until earlier this year.

Mr. Burke testified before the Committee on August 18, 2011, that he had been unaware of the tactical details of Operation Fast and Furious and did not know that agents were not interdicting weapons when they had probable cause to do so. He stated:

I take responsibility. I'm not going to say mistakes were made. I'm going to say we made mistakes. I am the United States Attorney for the District of Arizona. I get to stand up when we have a great case to announce and take all the credit for it regardless of how much work I did on it. So when our office makes mistakes, I need to take responsibility, and this is a case, as reflected by the work of this investigation, it should not have been done the way it was done, and I want to take responsibility for that, and I'm not falling on a sword or trying to cover for anyone else.

I think that's literally how the system operates, which is I'm the chief law enforcement officer, Federal law enforcement officer for the District of Arizona. ATF doesn't report to me, FBI doesn't report to me, DEA doesn't report to me or CBP. With that said, if investigations are conducted in my district and that have gotten to the prosecution stage, I have a responsibility regardless of what I knew or when, I want the record to reflect that I really want to take responsibility for anything that occurred in this case and faults and what we can learn to do better in the future on cases like this.

Mr. Burke also testified that it was never DOJ policy to allow guns to “walk” across the border or to not interdict weapons when there was probable cause to do so:

Q: Did anyone from Main Justice, from the Justice Department headquarters, ever come down and tell you there is in fact a different policy that we are going to allow guns to go across the border in order to build bigger cases?

A: No.

Q: Did anyone ever discuss - from the Department of Justice main headquarters - your supervisors - ever discuss with you or raise to your attention that there was a new policy with respect to interdiction of weapons or surveillance of firearms?

A: No. Not that I can recall at all.

Q: And did anyone ever - from the Department of Justice, Main Justice I will call it, ever tell you that you were authorized to allow weapons to cross the border when you otherwise would have had a legal authority to seize or interdict them because they were a suspected straw purchase or it was suspected that they were being trafficked in a firearms scheme?

A: I have no recollection of ever being told that.

Mr. Burke concluded that the U.S. Attorney's Office in Arizona did not adequately supervise the case and the conduct of the ATF agents in Phoenix. He stated: “There are steps that we should have taken in this investigation with the role of our office that should have been done differently at every level involved.”

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