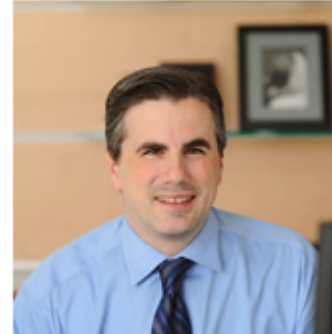


February 3, 2012: This Week's Headlines

- [DOJ Fast and Furious Document Dump: More Evidence Holder Lied to Congress](#)
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DOJ Fast and Furious Document Dump: More Evidence Holder Lied to Congress

In another “document dump” late last Friday evening, the Obama Department of Justice (DOJ) released 500 pages of records, including internal email correspondence, regarding the exploding scandal known as “Fast and Furious,” where the Bureau of Alcohol, Tobacco and Firearms (ATF) allowed guns to “walk” into the hands of Mexican drug cartels, leading to the death of at least one U.S. federal agent.

[NPR](#) detailed one of the key finds:

For the first time, the Justice Department has made public a series of sensitive messages that passed to the highest levels of the agency within hours of an ambush that killed a U.S. border patrol agent along the Southwest border in December 2010, igniting a national scandal over a gun trafficking investigation gone wrong....

The email messages show the former top federal prosecutor in Arizona, Dennis Burke, notifying an aide to Holder via email on Dec. 15, 2010 that agent Brian Terry had been wounded and died. “Tragic,” responds the aide, Monty Wilkinson. “I’ve alerted the AG, the acting Deputy Attorney General...”

Only a few minutes later, Wilkinson emailed again, saying, “Please provide any additional details as they become available to you.”

Burke then delivered another piece of bad news: “The guns found in the desert near the murder [sic] ... officer connect back to the investigation we were going to talk about – they were AK-47s purchased at a Phoenix gun store.”

Are we supposed to believe that Wilkinson “alerted” Holder to the news of Terry’s death, but did not mention

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the more devastating revelation shortly thereafter that the guns linked to the crime were purchased in Phoenix?! This hardly seems credible. You will recall Holder testified before the House Judiciary Committee on May 3, 2011, that he only had known about Fast and Furious for “a few weeks.” However, documents released by CBS News in October 2011 show Holder was receiving weekly briefings on Fast and Furious as far back as July 5, 2010. (See the documents [here](#).) Holder later said he did not understand the question posed to him by the committee and [amended his claim](#), saying he may have known about the gun-running operation for “a couple of months.” But that still doesn’t square with the timeline suggested by the growing heap of credible evidence, which now includes a smoking gun email to Holder’s Deputy Chief of Staff linking Fast and Furious to the Brian Terry murder – all the way back in December 2010.

[Over Gitmo Prisoners](#)– February 02, 2012
[DHS Report Compares Terrorism To “Ordinary Crime,” Omits Islamists](#)– February 01, 2012
[Illegal Immigrants Trash Border Lands With Tons Of Waste](#)— February 01, 2012
[Another D.C. Scandal Fleeces Taxpayers Out Of Millions](#) — January 31, 2012
[New Mexico Won’t Stop Giving Illegal Aliens Driver’s Licenses](#) — January 30, 2012

And yet, we still do not have an investigation of Holder’s alleged perjury. Perhaps it is because he continues to get cover not only from President Obama, but from congressional Democrats as well. On Wednesday, one day before Holder testified again before the House Committee on Government Reform and Oversight, congressional Democrats [rallied around](#) the attorney general releasing a report that places the blame squarely on the shoulders of local ATF agents in Phoenix in an effort to shift the focus from the Obama DOJ. Senate Republican Charles Grassley, who has been helping lead the charge to investigate Fast and Furious, said the report did not “pass the laugh test.” House Committee on Government Reform and Oversight Chairman Darrel Issa (R-CA) did not back down one bit from his previous threats to hold Holder and DOJ officials in contempt of Congress for failing to turn over documents regarding the scandal in what he suggests is a massive cover-up.

Meanwhile, in his congressional testimony on Thursday before Issa’s committee Holder continued to [contemptuously](#) deflect criticism and blame.

While noting that, thus far, no one at the DOJ [has been disciplined](#) for the Fast and Furious scandal, Holder then used his testimony to blame the scandal on Congress for failing to pass more gun control laws. He also suggested the whole Fast and Furious mess was just a political witch hunt. As reported by [The Washington Examiner](#):

Attorney General Eric Holder attributed the difficulty preventing gun-trafficking into Mexico to weak gun controls laws, when he blamed on the U.S. House, with particular reference to the House investigators asking him about Operation Fast and Furious.

“ATF’s ability to stem the flow of guns from the United States into Mexico suffers from a lack of effective enforcement tools,” Holder told the House Oversight and Government Reform Committee today. “Unfortunately, in 2011, a majority of House Members – including all members of the majority on this Committee – voted to keep law enforcement in the dark when individuals purchase multiple semi-automatic rifles, shotguns, and long guns – like AK-47s – in

gun shops in four southwest-border states.”

Holder also suggested that the political partisanship is motivating the investigation. “I am determined to ensure that our shared concerns about these flawed law enforcement operations lead to more than worn-out Washington ‘gotcha’ games and cynical finger pointing,” he said.

This was no “flawed law enforcement operation.” This was an unlawful, dangerous and deadly blunder by the Obama DOJ that has led to the death of one person, and will likely kill many more – by Holder’s own admission. The attorney general must pay for this monstrous scandal with his job. A criminal investigation of his possible perjury is also warranted.

As you know, Judicial Watch has commenced a full investigation into the Fast and Furious scandal, filing Freedom of Information Act requests and related lawsuits. (You can read more about our investigation [here](#).)

Obama Doubles Down on Secrecy Another Judicial Watch secrecy battle gained international attention this week with the publication of a news story in *The Atlantic Wire* regarding JW’s dogged pursuit of the bin Laden death photos. JW [filed a lawsuit](#) to obtain them while the Obama administration continues to cling to the bogus claim that they must be withheld for vague national security reasons. (Meanwhile, as I pointed out last week, the Obama Department of Defense (DOD) evidently had no problem [leaking classified details](#) of the Navy SEAL raid that led to bin Laden’s capture and killing to a Hollywood filmmaker to help make the president look good.)

Here’s what [The Atlantic Wire](#) had to say about our lawsuit and the Obama administration’s latest legal response:

The American public may finally bear witness to some, but probably not all, of the postmortem images of Osama bin Laden taken on the night he was killed in Pakistan. That’s the conclusion of Dan Metcalfe, the former director of the Department of Justice’s Office of Information and Privacy, after reading the government’s response in a lawsuit from activist group Judicial Watch seeking “all photographs and/or video recordings” taken during the raid in Pakistan.

“If you look closely at one small segment of the government’s brief, it in effect concedes that there are reasonably segregable, non-exempt portions of the records that are legally required to be disclosed,” Metcalfe told *The Atlantic Wire*.

Metcalfe, *The Atlantic Wire* notes, has defended the federal government in more than 500 Freedom of Information Act (FOIA) lawsuits in his career. And in his view the Obama administration “overplayed its hand” by making the overly broad assertion that *all* bin Laden images are off limits due to national security claims. And, more importantly, Metcalfe suggests government lawyers left a large loophole in their brief through which some of the bin Laden photos could likely slip.

Here’s why.

The Obama administration notes in its legal response to Judicial Watch’s lawsuit that, “...even if

any sensitive information about specific intelligence methods or specific military operations could be redacted from the records, as Judicial Watch suggests, the remaining material – i.e., post-mortem images of the dead body of the former leader of al-Qi’ada – would still be exempt from disclosure.”

So, in essence, government lawyers admit that “sensitive” information could possibly be segregated. (The FOIA experts interviewed for *The Atlantic Wire* article indicated the federal government could easily “chop up or slice” the images currently being withheld into non-sensitive material.)

Judicial Watch attorneys very carefully, and repeatedly, made reference to the segregability issue in a court [filing](#), noting that the Obama administration defendants “fail to provide any evidence that visuals of tactics, techniques, procedures, or personnel cannot be segregated from the visual of bin Laden’s body.”

According to FOIA law, the government must release all information responsive to a FOIA request that can be segregated from sensitive or classified material. This mandate was reaffirmed by an [executive order](#) signed by President Obama on December 29, 2009.

Nonetheless, when questioned by *Politico* during a White House press conference on January 26, 2012, White House spokesman Jay Carney repeated President Obama’s position on the photos/video sought by Judicial Watch. Here’s the relevant excerpt from the [press conference](#):

Q Thanks, Jay. I just want to ask about the photos of the raid on the Osama bin Laden compound. There have been reports that some of them may be released.

MR. CARNEY: Was that in the British media? (Laughter.)

Q No, that was actually in the Atlantic Wire — thank you. The President had said previously that he does not favor the release of any of these photos. Couldn’t there be portions of the imagery that could or should be released without implicating national security?

MR. CARNEY: I honestly have not seen those reports. The President’s position on the release of images of Osama bin Laden, in particular, was very clearly stated at the time and has not changed. I would have to either refer you to the Defense Department on the broader question of other photos that may exist, and I can take that question as well.

The Obama White House won’t be able to get away with glib references to the British tabloids in court to distract attention from its failure to follow the law. There they must defend their secrecy in light of the dictates of FOIA law. And like the experts interviewed for the Atlantic Wire story, we believe there is no way to defend the Obama administration’s legal position on the bin Laden death photos.

Stay tuned. Our lawyers will file a response to the Obama administration with the Court on February 8.

Federal Court Criticizes Obama DHS on Stealth Amnesty Document FOIA Secrecy

Judicial Watch is locked in [numerous battles](#) with the Obama administration to force the release of government documents on a wide range of scandals, including government bailouts, Fast and Furious, Obamacare and illegal immigration, to name just a few.

In fact, we've filed over 325 Freedom of Information Act (FOIA) requests with the Obama administration so far. And we have filed 44 FOIA lawsuits in federal court against this administration. This number grows by the day. We'd file more, but we only have so many lawyers.

All of this is to say that we know very well the games that Obama administration officials play to keep records secret from the American people- in violation of law. But it's very helpful when a federal court recognizes this gamesmanship as well. And that's what happened last week.

On January 27, the United States District Court for the District of Columbia [issued a ruling](#) criticizing the Obama Department of Homeland Security (DHS) for failing to abide by FOIA law in a Judicial Watch lawsuit seeking records related to the agency's policy of suspending some illegal alien deportations. (By way of review, this scandal involves a new policy by the Obama DHS to "prioritize" deportations, allowing illegal aliens to remain in the United States without fear of removal, including violent criminals.)

We filed our original FOIA request with DHS on August 30, 2010, and filed a subsequent lawsuit on March 23, 2011, after DHS stonewalled the release of records. The Obama administration filed a Motion for Summary Judgment in the lawsuit on August 4, 2011, asking the court to end Judicial Watch's lawsuit.

The decision by U.S. District Judge Colleen Kollar-Kotelly was a bit of a mixed bag. She granted DHS's motion regarding some select records, but also denied the motion in part while chastising the agency for its inadequate explanations as to why it was withholding certain documents. Here are the highlights from her ruling, which you can read in full [here](#).

- Regarding assertions of attorney-client privilege, the Court listed a series of "egregious" examples demonstrating DHS's unwillingness to specify reasons for exempting documents from disclosure and concluded, "In the end, DHS's generalized and non-specific showing fails to satisfy the Court that the attorney-client privilege has been properly invoked in connection with the information withheld from Judicial Watch."
- The Court drew the same conclusion with respect to DHS's assertion of the attorney work-product privilege, which protects materials "prepared in anticipation of litigation or for trial by or for another party or its representative." The Court ruled: "Absent a more particularized showing from DHS, the Court cannot conclude that DHS has applied the appropriate standard in this case..."
- Regarding the deliberative process privilege, which protects "documents reflecting advisory opinions, recommendations and deliberations comprising a part of the process by which governmental decisions and policies are formulated," Judge Kollar-Kotelly wrote, "The Court agrees with Judicial Watch that DHS has failed to provide sufficient

factual context for much of the information withheld under the deliberative process privilege to allow the Court to conclude that the privilege has been properly invoked.”

Now, given the Obama administration’s obfuscation here, Judge Kollar-Kotelly had the ability to force DHS to disclose the records. But she went another route, allowing DHS one “final” opportunity to establish the applicability of these privileges to the information withheld from Judicial Watch.

As an aside, I find it a bit frustrating that private citizens and organizations have to cross every “t” and dot every “i” in FOIA litigation or risk having the hammer thrown down by the courts. Yet the federal government can outright lie, deny, stonewall and play every dirty trick in the book to avoid abiding by the law and still receive more chances to satisfy the court.

Nonetheless, the court’s ruling does clearly show the secrecy gamesmanship of the Obama DHS. And we’re pleased the court would not allow DHS to continue its contempt for FOIA law. We will aggressively continue our legal pursuit of these records.

There is no question that the Obama administration wants to obscure the truth about its lawless illegal alien deportation policy. And the Obama DHS believes it should be able to withhold records from the American people without explanation or justification.

The Obama administration’s campaign to suspend the deportations of most illegal aliens has been subject to intense scrutiny since 2010, when the [press uncovered](#) a United States Citizenship and Immigration Services memo that contemplated various “administrative alternatives” to bypass Congress and implement stealth amnesty for illegal aliens. A subsequent *Houston Chronicle* story exposed an effort by the administration to suspend the deportations of illegal aliens who supposedly have not been [convicted of any “serious” crimes](#).

However, documents previously uncovered by Judicial Watch show that DHS officials misled Congress and the public about the scope of the immigration enforcement policy change, which gave wide latitude to local immigration officials to dismiss illegal alien deportation cases – including the dismissal of charges against illegal alien criminals convicted of violent crimes.

With the “cat out of the bag,” the Obama administration then officially announced that it would effectively halt any enforcement actions (on an alleged “case-by-case” basis) against any illegal alien who has not committed any other “serious” crimes. And then the administration immediately put this plan into action, using Denver, Colorado, and Baltimore, Maryland, as test cases for this dangerous and unlawful policy. According to [The Associated Press](#):

In a trial run of a politically divisive program, U.S. prosecutors in Denver and Baltimore are reviewing thousands of deportation cases to determine which illegal immigrants might stay in the country – perhaps indefinitely – so officials can reduce a huge backlog by focusing mainly on detainees with criminal backgrounds or who are deemed threats to national security.

Federal deportation hearings for noncriminal defendants released from custody were suspended Dec. 5 for the review and resume this week. Similar reviews are planned across the country to

allow U.S. Immigration and Customs Enforcement to focus deportations of illegal immigrants on those with criminal records or those who have been deported previously.

So now you see why our battle over these DHS records is so important. The idea of suspending illegal alien deportations is no longer a theoretical exercise. It is established national policy. Amnesty by Obama administration fiat is here. This is a constitutional crisis that you won't hear about from the liberal media or, frankly, from much of anyone else these days.

And if the Obama administration is willing to release documents to Judicial Watch showing administration officials are lying when they say illegal aliens with criminal records will still be deported under this policy, just imagine the records they're still trying to conceal. We need to know every detail about how and why this policy has been implemented to know best how to stop it.

CPAC 2012

Judicial Watch, one of America's largest conservative grassroots organizations, is taking a leading role in CPAC 2012. If you are going to be in Washington DC for CPAC next week, please join us.

On opening day of CPAC in the Virginia Ballroom on Thursday, February 9 at 9:30 a.m., Judicial Watch will be hosting a press conference event announcing an important effort to help protect the integrity of the 2012 elections.

On Friday join us in the main stage area in the Marriott Ballroom as I moderate the panel discussion "Obamacare: Why It's Unconstitutional and What Conservatives Need to Do" from 1:25-2:10 p.m. (The event immediately follows a scheduled presentation by Gov. Mitt Romney.) Then on Friday evening, Judicial Watch is sponsoring the premiere event at CPAC: the Ronald Reagan Banquet. Wisconsin Gov. Scott Walker is the scheduled keynoter for that special evening. To watch these events via the Internet [click here](#) during the scheduled time.

Saturday afternoon at 1:30 p.m. in the Taft meeting room we will be teaching a seminar on how you, too, can put the Freedom of Information Act to work to uncover government secrets.

Also, please feel free to come visit our information booth at any time in the Exhibition Hall during [CPAC 2012](#).

Until next week,

Tom Fitton
President

<http://www.judicialwatch.org/press-room/weekly-updates/dump-holder/>