

Senate Committee on the Judiciary

Hearing on “Holding Criminals Accountable: Extending Criminal Jurisdiction to Government Contractors and Employees Abroad”

Questions for the Record

From Senator Charles Grassley

Questions for Assistant Attorney General Breuer:

(1) Resource allocations for Investigative Units:

In addition to extending federal criminal jurisdiction to contractors and employees overseas, the Civilian Extraterritorial Jurisdiction Act (“CEJA”) of 2010, introduced in the 111th Congress, directed the Attorney General to assign personnel and resources through Investigative Units for Contractor and Employee Oversight to investigate allegations of criminal offenses by federal contractors and employees. The bill also authorizes “such sums to the Attorney General as are necessary to carry out the Act.”

- How much taxpayer money does the Department of Justice believe is necessary annually to accomplish the creation of the “Investigative Units” outlined in the bill?
- If CEJA became law with the authorization listing “such sums...necessary to carry out the Act” what would the Department request in additional financial resources to implement CEJA annually?
- Considering the fiscal constraints the federal government currently faces, including the current federal hiring freeze, if Congress failed to appropriate additional monies to create the Investigative Units, would the Justice Department still create the new Investigative Units?
- If so, do you anticipate reducing the budgets for other divisions within DOJ to pay for these new units, and if so, can you describe what divisions? Absent additional funding, which budgets would you cut at the Department in order to create these new investigative units?

(2) Intelligence Carve-Out

CEJA as introduced in the 111th Congress did not include a carve-out or safe harbor for activities of the Intelligence Community or contractors employed by the Intelligence Community. Your written testimony states, “It is essential that any legislation include a statutory carve-out to ensure that the legislation does not impose criminal liability on authorized intelligence activities of the United States Government. The absence of the explicit exemption for authorize intelligence activities conducted abroad would negatively impact the United States’ ability to conduct such activities.” (Emphasis added).

- What restrictions should be placed on an intelligence carve-out? Should it be a blanket carve-out for all activities of the Intelligence Community?
- What is your definition of an “authorized” intelligence activity?

(3) Classified Information Procedures Act (CIPA)

In your testimony you stated that the Classified Information Procedures Act, may not be adequate to protect national security information, regarding cases involving the Military Extraterritorial Jurisdictions Act.

- Based on that statement, then you have to agree that the Classified Information Procedures Act is also not adequate to protect national security information in Civilian Extraterritorial Jurisdiction Act cases, correct? If not, what is the difference or distinction?
- Should any proposed CEJA legislation also include reforms to the Classified Information Procedures Act? If so, what reforms should Congress include? If not, why not in light of your statement that CIPA “may not be adequate to protect national security information and also establish to a jury beyond a reasonable doubt that a defendant is subject to MEJA.”

(4) Knowledge of Operation Fast and Furious

- When and how did you first become aware of Operation Fast and Furious, either by name or as a large weapons trafficking case in Phoenix?
- When and how did you first become aware that the ATF implemented a strategy of allowing straw purchasers to continue to operate rather than interdicting weapons at the first opportunity?

(5) Mexico City Meeting

According to ATF whistleblowers, in the summer of 2010 you spoke at a briefing in Mexico City about an investigation the ATF was conducting showed promise to generate some positive results. Those present at the meeting interpreted your statements to refer to Operation Fast and Furious, which was being run out of the Phoenix Field Office.

- Did you speak about a Phoenix ATF investigation at a briefing in Mexico City anytime in 2010?
- Were you aware of any concerns by ATF personnel in Mexico about the numbers of guns being recovered in relation to a Phoenix ATF case? If so, please explain in detail.

(6) Title III Affidavits

As you know, documents show that individuals in your office approved applications for Title III affidavits in Operation Fast and Furious. Due to the details of the investigation provided within them, those affidavits would likely have made it clear that the ATF was not arresting these straw

buyers immediately, despite evidence that they were transferring firearms to criminals and traffickers.

- Do you believe that your office reads Title III affidavit applications carefully and in their entirety before approving them?
- If there were questionable investigative techniques evident in an affidavit application, do you believe your office would bring it to your attention before signing off under your name?
- Did you personally review the affidavits or receive any briefings on this case? If yes, were you concerned by any aspect of the case? If no, who did approve the affidavits related to Operation Fast and Furious?
- Have you since reviewed the affidavits? If not, why not? If so, do any of the facts raise concerns about the failure to interdict illegally purchased weapons at the first opportunity?

(7) Communication about ATF Cases

- Did you have any discussions with Ambassador Carlos Pascual about an ATF case out of Phoenix?
- If so, when did those discussions take place? Please describe them in detail.
- Prior to the public controversy, did you have any discussions with anyone at ATF or DOJ about Operation Fast and Furious, any similar Phoenix cases, or the strategy of allowing straw purchasers to continue to operate?
 - If so, when did those discussions take place? Please describe them in detail.