



Written by [Alex Newman](#) on January 21, 2012

Top “Fast & Furious” Official Pleads the Fifth; Refuses to Testify

The chief of the Criminal Division of the U.S. Attorney’s Office in Arizona, Patrick Cunningham (left), was [issued a subpoena](#) last week by the House Oversight and Government Reform Committee. He was supposed to offer insight into his role in the [Obama administration program](#) that sent thousands of high-powered weapons — many of which have been used in murders, including several implicated in the slayings of federal agents — to violent drug cartels in Mexico.



But while Cunningham maintains his innocence, he will not be cooperating with the congressional investigation, his lawyer said in a letter to Congress. "As a professional courtesy, and to avoid needless preparation by the Committee and its staff for a deposition next week, I am writing to advise you that my client is going to assert his constitutional privilege not to be compelled to be a witness against himself," wrote Cunningham’s attorney in the response.

Cunningham’s lawyers said their client was simply caught in the middle of a battle between the executive and legislative branches. The highest U.S. criminal prosecutor in Arizona also claimed through his attorney that he was unfairly being made into a scapegoat by the Obama administration. But the full extent of Cunningham’s involvement remains unclear.

Cunningham was originally scheduled to testify before the House Committee voluntarily last week. After he refused, however, Congress issued a subpoena forcing him to attend. Congressmen appeared fed up with the administration’s efforts to stifle the investigation.

“Senior Justice Department officials have recently told the Committee that you relayed inaccurate and misleading information to the Department in preparation for its initial response to Congress,” Committee Chairman Darrell Issa (R-Calif.) wrote in a letter to Cunningham informing him of the order. The document also accused the U.S. Attorney for Arizona of playing an “outsized role” in the deadly gun-running program.

Attorney General Eric Holder and President Obama both admitted after the scandal exploded that the gun-running tactics were highly inappropriate. But Cunningham apparently refused to distance himself from the operation. And Issa was not happy about it.



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"These officials told us that even after Congress began investigating Fast and Furious, you continued to insist that no unacceptable tactics were used," Issa added in his letter ordering Cunningham to testify. The embattled prosecutor has also been accused of involvement in supplying inaccurate information to Congress.

But instead of taking the opportunity to clear his name, Cunningham's lawyers sent the controversial response stating that their client would plead the Fifth — refusing to offer anything other than his name and title in testimony. Congress and analysts were reportedly stunned. Rep. Issa even said the only valid reason Cunningham would have to resort to the Fifth Amendment was to protect himself from future criminal prosecution.

"The assertion of the fifth amendment by a senior Justice official is a significant indictment of the Department's integrity in Operation Fast and Furious," Issa said in a [statement](#) after receiving the refusal from Cunningham's lawyers. "This is the first time anyone has asserted their fifth amendment right in this investigation and [it] heightens concerns that the Justice Department's motivation for refusing to hand over subpoenaed materials is a desire to shield responsible officials from criminal charges and other embarrassment."

Rep. Issa, who has been leading the investigation in the House, also said the reaction was consistent with what he had already learned. The former head of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (still known as ATF), Rep. Issa noted, told his committee that the Obama administration was handling its response to the scandal in a way designed to protect its political appointees.

"Coming a year after revelations about reckless conduct in Operation Fast and Furious were first brought to light, the assertion of the fifth amendment also raises questions about whether President Obama and Attorney General Holder have made a serious and adequate response to allegations raised by whistleblowers," Rep. Issa noted in the statement. "Did Attorney General Holder really not know a senior Justice Department official fears criminal prosecution or is this just another example of him hiding important facts? The committee will continue to demand answers."

Lawyers quoted in the media cautioned that someone's pleading the Fifth to avoid self-incrimination does not necessarily mean that person committed a crime. And with the increasingly charged atmosphere surrounding the Fast and Furious scandal — Congressmen have accused Holder of perjury and being an "accessory to murder" — it may be that Cunningham fears being falsely accused and prosecuted.

At least one Arizona attorney cited by the *Tucson Citizen* newspaper suggested offering the embattled prosecutor immunity in exchange for his testimony. But experts said Congress might not be willing to do that because it could affect future efforts to criminally prosecute officials responsible for the blood-soaked gun-trafficking scandal.

The Obama administration claimed that the various weapons-running schemes operated by the federal government were intended to track the guns and eventually arrest criminals. However, after the scandal broke, documents emerged [showing](#) what many prominent experts suspected all along: the federal government was actually engaged in a plot to undermine the Second Amendment protection of Americans' right to keep and bear arms.

Several reports and statements have emerged over the last year indicating that there may have been even more to the story than that. According to some analysts and individuals close to the operations, the CIA was actually [involved in arming and protecting certain drug cartels](#) in an effort to meddle in the



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internal affairs of Mexico.

Meanwhile, top officials — including [President Obama and Attorney General Eric Holder](#) — have been [caught lying about the scheme](#) on key points from the beginning. The lies, some made under oath, have led to growing calls by members of Congress and the public for Holder to resign or be fired. So far, however, he has refused to step down, [lashing out](#) at the media instead.

Even as the Fast and Furious scandal continues to grow, the Drug Enforcement Administration (DEA) is now under [congressional scrutiny for laundering](#) hundreds of millions of narco-dollars belonging to Mexican cartels. The *New York Times* first exposed that scheme in a front-page story late last year entitled "[U.S. Agents Launder Mexican Profits of Drug Cartels](#)." And Congress was quick to hop on it.

As the congressional investigation into Fast and Furious continues, lawmakers in Arizona announced that the state would also be probing the scheme to determine whether the federal gun-trafficking programs violated any state laws. The special committee, which will have subpoena powers, is also charged with investigating the impact of Fast and Furious on Arizona. A report will be submitted by March 30.

Around 50,000 people have died in Mexico's drug war in recent years, yet massive amounts of narcotics continue flowing across the border unimpeded despite [billions spent by the U.S. government](#). Critics [say](#) it may be time to [develop a new strategy](#) — especially if the current one involves sending guns to the cartels and then laundering their profits.

Activists and lawmakers still seem determined to find out what was really going on under the auspices of Fast and Furious, and now, the DEA money-laundering scandal. How important Cunningham's role might be in that investigation, however, remains unclear.

Photo of Patrick Cunningham: AP Images

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