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LAWRENCE J. BRADY
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MEMORANDUM

To: Members, Committee on Oversight and Government Reform

From: Darrell Issa, Chairman

Date: May 3, 2012

Re: Update on Operation Fast and Furious

Since February 2011, the House Oversight and Government and Government Reform Committee has been conducting a joint investigation with Senate Judiciary Committee Ranking Member Chuck Grassley (R-IA) of reckless conduct in the Justice Department's Operation Fast and Furious. The committee has held three hearings, conducted twenty-four transcribed interviews with fact witnesses, sent the Department of Justice over fifty letters, and issued the Department of Justice two subpoenas for documents. The Justice Department, however, continues to withhold documents critical to understanding decision making and responsibility in Operation Fast and Furious.

This memo explains key events and facts in Operation Fast and Furious that have been uncovered during the congressional investigation; remaining questions that the Justice Department refused to cooperate in helping the Committee answer; the ongoing relevance of these questions; and the extent of the harm created by both Operation Fast and Furious and the Department's refusal to fully cooperate. The memo also explains issues for Committee Members to consider in making a decision about holding Attorney General Eric Holder in contempt of Congress for his Department's refusal to provide subpoenaed documents.

Attached to this memo for review and discussion is a draft version of a contempt report that the Committee may consider at an upcoming business meeting.

Introduction to Fast and Furious

In the aftermath of a federal agent's death, on February 4, 2011, the United States Department of Justice sent a letter to Congress denying whistleblower allegations that the Justice Department had facilitated the illegal transfer of weapons to Mexican drug cartels. The Justice Department insisted that federal authorities always make, "every effort to interdict weapons that have been

purchased illegally and prevent their transportation to Mexico,” and rejected accusations that two assault rifles found at the Arizona desert murder scene of a U.S. Border Patrol agent resulted from a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) case known as Operation Fast and Furious.

Nearly ten months later, on December 2, 2011, the Justice Department sent Congress a new letter rescinding the previous written denial and acknowledging that Operation Fast and Furious was “fundamentally flawed.”

The Congressional investigation into this dangerously flawed operation has focused on ensuring accountability for reckless conduct that contributed to deaths and continues to jeopardize public safety. More than a year later, the family of a murdered Border Patrol agent, federal agents facing retaliation for blowing the whistle on reckless conduct, and the citizens of one of America’s most important and growing trade partners continue to demand the full truth. The Justice Department’s refusal to fully cooperate with this investigation has outraged many Americans and left Congress with the choice of challenging or accepting the Justice Department’s insistence that it only face an internal investigation of itself.

While field operations for Fast and Furious began in September 2009 and ended in January 2011, the scandal began to unravel in the early morning hours of December 15, 2010, when a warrior and patriot lost his life defending the United States.

A Tragic Death Leads to Whistleblowers

Late in the evening of December 14, 2010, Border Patrol Agent Brian Terry, a native of Michigan and Marine veteran, was on patrol with three other agents in Peck Canyon, near Rio Rico, Arizona. The agents spotted a group of five suspected illegal aliens – at least two were carrying rifles. As the agents approached, at least one of the suspects fired at them. The agents returned fire. In the midst of the gunfight, Agent Terry was struck by a bullet. Most of the suspected aliens fled the scene, though one of them had been wounded and was unable to flee. Though Agent Terry was fully conscious after being wounded, his bleeding could not be stopped and he died in the desert during the early morning hours of December 15 while the group waited for medical assistance to arrive.

When help finally did arrive, investigators recovered two AK-47 variant rifles at the scene. Traces conducted later that day showed the two weapons had been bought on January 16, 2010, by a then 23 year old – Jaime Avila of Phoenix, Arizona. The traces also showed investigators something else.

ATF had entered Avila as a suspect into the database more than a year earlier on November 25, 2009, as part of Operation Fast and Furious – the Department of Justice’s largest ongoing firearms trafficking case at the time. Avila was a low-level straw-buyer in a weapons trafficking organization – a seemingly legal purchaser of firearms who conducted transactions with the illegal motive of buying them for someone else. In Avila’s case, the real purchaser of the weapons he procured was a Mexican drug cartel.

In the wake of the Terry murder, law enforcement agents quickly located and arrested Avila. The U.S. Attorney's Office in Arizona indicted Avila on three counts of "lying and buying"—charges made primarily on the grounds that he had falsely indicated that weapons had been purchased for his own use.

The news of Terry's death quickly made its way back to the ATF agents working on Operation Fast and Furious. This news was the nightmare agents working the case had long dreaded, even expected. Two ATF agents, John Dodson and Larry Alt, described their feelings:

Agent Dodson:

We knew Jaime Avila was a straw purchaser, had him identified as a known straw purchaser supplying weapons to the cartel And then in May, we had a recovery where Border Patrol encounters an armed group of bandits and recovered an AK variant rifle ... purchased during the time we were watching Jaime Avila, had him under surveillance, and we did nothing.

Then on December 14th, 2010 Agent Brian Terry is killed in Rio Rico, Arizona. Two weapons recovered from the scene . . . two AK variant weapons purchased by Jaime Avila on January 16th, 2010 while we had him under surveillance, after we knew him to be a straw purchaser, after we identified him as purchasing firearms for a known Mexican drug cartel.

Agent Alt:

I have loved working for ATF since I have been hired here. I came here to retire from ATF I am not -- I am embarrassed here. I regret the day that I set foot into this field division because of some of the things that a few people have done and ... the impact it has had on the public and safety and Agent Terry.

Although agents indicated they had already complained to supervisors that the reckless tactics used would result in tragedies, Agent Terry's senseless death left the impression on some agents that more needed to be done. These agents again appealed to unsympathetic supervisors, but pleas fell on deaf ears and efforts to look outside ATF for help began. One agent indicated that he tried to alert the U.S. Department of Justice Inspector General's office as a whistleblower but got nowhere.

By January 2011 – just a month after Agent Terry's tragic murder – blogs, media outlets, and a United States Senate office had picked up on the agents' concerns and helped bring their allegations about Operation Fast and Furious to a national audience. On February 4, the Department of Justice, insinuating that the whistleblowers were lying, formally denied the allegations in a letter to Congress.

Fast and Furious Conceived

The ATF Phoenix Field Division began Operation Fast and Furious in the fall of 2009 after suspicious weapons purchases led agents to the discovery of an apparent Phoenix-based arms trafficking syndicate. Having been encouraged to devise grander strategies to stop the transfers of weapons to Mexican drug cartels, the Phoenix based agents devised a strategy that went beyond simple arrests or weapons confiscations. They would allow the U.S.-based associates of a Mexican drug cartel to continue acquiring firearms uninterrupted. In doing so, they hoped the weapons, after they were recovered at crime scenes in Mexico, could be traced and linked to cartel operatives including possible high-level financiers, suppliers, and possibly even king-pins.

The operation sought to achieve its lofty goals by focusing on the ringleader of the weapons smuggling syndicate they had identified: Manuel Celis-Acosta. Celis-Acosta was using a then-unknown number of straw-purchasers, including Jamie Avila, to purchase weapons.

In January 2010, ATF partnered with the U.S. Attorney's Office for the District of Arizona and applied to Justice Department headquarters in Washington for funding through the Department's Organized Crime Drug Enforcement Task Force (OCDETF) program. As senior Justice Department officials in Washington felt the operation had great promise, it won approval and additional funding. Operation Fast and Furious was reorganized as a Strike Force including agents from ATF, FBI, the Drug Enforcement Administration (DEA), and the Immigration and Customs Enforcement (ICE) component of the Department of Homeland Security. ATF Agent John Dodson, who would later help blow the whistle on what occurred, was among the agents transferred to Phoenix to help with the operation as a result of the designation.

The Strike Force designation also meant that the U.S. Attorney's Office – rather than ATF – would run Fast and Furious. At the time, the U.S. Attorney's Office in Arizona was led by Dennis Burke, a new political appointee who had previously served as Chief of Staff to then Arizona Governor and now Homeland Security Secretary Janet Napolitano. Earlier in his career, Burke had worked with former White House Chief of Staff Rahm Emanuel on gun control legislation as a U.S. Senate staff member.

The newly organized Strike Force, led by the U.S. Attorney's office, gave Operation Fast and Furious a chance to utilize sophisticated law enforcement techniques such as federal wire intercepts – more commonly known as wiretaps. The use of advanced techniques like wiretaps, which require a court order, also meant that Justice Department officials in Washington, D.C., would have to play a critical role. Federal law requires certain senior officials to review evidence and certify the necessity of wiretaps and other techniques.

During Fast and Furious, ATF agents were directed to monitor actual transactions between Federal Firearms Licensees (gun stores) and straw purchasers like Jamie Avila. After the purchases, ATF sometimes conducted surveillance of these weapons with assistance from local police departments. Such surveillance included following the vehicles of the straw purchasers. Frequently, the straw purchasers transferred the weapons they bought to stash houses. In other instances, they transferred the weapons to third parties.

To achieve the goal of letting weapons lead law enforcement to senior criminal figures, Operation Fast and Furious embraced a controversial tactic that outraged some veteran ATF agents: gunwalking. In Operation Fast and Furious, it was not that some weapons *got away* from agents, but rather that agents were purposefully directed to *allow* the flow of guns from straw purchasers to third parties. Instead of trying to interdict the weapons, ATF purposely avoided contact with known straw purchasers or curtailed surveillance, allowing the guns to fall into the hands of criminals and bandits on both sides of the border. ATF agents have explained that this practice was at odds with their core training. As one agent explained:

When we should have done something and it wasn't, you have let it walk. There has to be an active decision . . . a choice is made to allow it to walk. It is not like something got away from you or you lost it. If a suspect beats you in a foot chase and he gets away, you didn't let him walk, you just lost the chase. So that's what walking is.

During Operation Fast and Furious, law enforcement agents assigned to the task force allowed approximately 2,000 illegally purchased weapons walk away from gun stores. In some instances over the year and a half that Fast and Furious was conducted in the field, gun store owners expressed concern to ATF that they felt uncomfortable making repeated sales to individuals they suspected or knew were involved in criminal activity. ATF agents and prosecutors from the U.S. Attorney's office repeatedly reassured store owners that weapons were being actively tracked and their sales not only posed no danger to the public, but would actually assist law enforcement in bringing dangerous criminals to justice. They were never told of the operation's real strategy and were encouraged to continue making sales to known straw-buyers and contacting ATF with details after sales occurred.

Extent of Fast and Furious' Failure Known at Its Conclusion

Shortly after Operation Fast and Furious began in the fall of 2009, ATF had identified a number of suspected low-level straw-purchasers and the smuggling syndicate's ringleader, Manuel Celis-Acosta. Although some field agents and officials in Washington had long ago begun to feel uncomfortable with Operation Fast and Furious, it was not until after the death of Border Patrol Agent Brian Terry that its field operations finally ended.

Washington-based Justice Department officials had earlier discussed bringing Attorney General Eric Holder to Phoenix for a triumphant press conference with Arizona U.S. Attorney Dennis Burke to herald the conclusion of the Department's flagship firearms trafficking case. In the aftermath of Agent Terry's death, the task of announcing indictments at a press conference fell to ATF Phoenix Division Special Agent in Charge William Newell and Burke. Holder did not attend.

At the press conference on January 25, 2011, Newell triumphantly announced the indictment of twenty members of an arms trafficking syndicate that had been supplying weapons to the Sinaloa

Cartel – Mexico’s largest and most powerful cartel led by the notorious Joaquin “El Chapo” Guzman. The indictments included the syndicate’s ringleader, Manuel Celis-Acosta and nineteen low-level straw-buyers. What Newell did not mention, however, was that agents were aware of Celis-Acosta’s role almost from the beginning, as well as that of his lower-level subordinates who had also been indicted. Newell also did not discuss Operation Fast and Furious’ other shocking failures, of which by this time he was also aware.

Following Celis-Acosta’s arrest, ATF finally had the chance to confront the syndicate’s ringleader with the trouble he faced and begin the deal making process intended to ensnare his higher level cartel associates – the links that ATF believed could fulfill the goals of bringing senior figures in the Sinaloa Cartel to justice.

When Celis-Acosta informed ATF of the names of the two cartel contacts for whom he had been working, agents quickly came to learn that these two U.S.-based cartel contacts were already known to the Department of Justice. The DEA and FBI had jointly opened a separate investigation specifically targeting these two cartel associates, and, by January 2010, had collected a wealth of information on them - including their dealings with Manuel Celis-Acosta.

In exchange for one associate’s guilty plea to a minor charge of “Alien in Possession of a Firearm,” both of these cartel associates became FBI informants and were considered essentially unindictable well before Operation Fast and Furious concluded. One ATF official would later say that the discovery that the primary targets of their investigation were not indictable was a “major disappointment.” Adding to the information-sharing failure, DEA had actually provided Celis-Acosta’s cartel connection to ATF in December 2009 in an effort to ensure that ATF’s efforts in Operation Fast and Furious were not duplicative.

Newell shocked colleagues by telling the public the exact opposite of what had occurred in the operation. As reports about gunwalking had surfaced after Agent Terry’s death, when asked at the press conference whether ATF had allowed guns to walk, Newell offered a memorable response: “Hell, no.” ATF agents who blew the whistle on Operation Fast and Furious have described their reaction to this denial in no uncertain terms:

ATF Agent Peter Forcelli:

I was appalled, because it was a blatant lie.

ATF Agent Larry Alt:

Candidly, my mouth fell open. I was asked later by the public information officer for our division . . . and I told him that I thought that – I was just astounded that he made that statement.

The Department of Justice's Contempt Against the American People

Much of Operation Fast and Furious remained a mystery when the Department of Justice forcefully dismissed whistleblower accusations and denied that anything improper had occurred to Congress on February 4, 2011. Why, after all, would anyone be so stupid as to think arming drug cartels was a good idea?

A congressional investigation and reports by journalists utilizing whistleblowers and other sources have shed immense light on what occurred and why. Little of what is known today, however, came as a result of formal Justice Department disclosures. Instead, most of the information about what happened has come from whistleblowers and other sources with documentation that investigators have used to piece together the facts and confront officials who had responsibilities in Operation Fast and Furious.

Still, some important areas remain cloaked in secrecy:

- **How did the Justice Department finally come to the conclusion that Operation Fast and Furious was “fundamentally flawed”?**

On February 4, 2011, the Department of Justice denied whistleblower allegations that guns in Operation Fast and Furious had been allowed to “walk” to Mexico and defended the Operation itself. Ten months later, on December 2, 2011, the Justice Department formally withdrew this denial and acknowledged that Fast and Furious was “fundamentally flawed.” In responding to Congress, however, the Justice Department has taken the position that it will not share its internal deliberations related to Operation Fast and Furious that occurred after it denied anything inappropriate occurred on February 4, 2011. This position effectively denies Congress and the American people information about:

- The Justice Department switching its view from denying whistleblower allegation to admitting they were true.
- Hiding the identity of officials who led the charge to call whistleblowers liars and retaliated against them.
- The reactions of top officials when confronted with evidence about gunwalking in Fast and Furious, including whether they were surprised or were already aware.
- The Justice Department’s assessment of responsibility for officials who knew about reckless conduct or were negligent.
- Whether senior officials and political appointees at fault in Operation Fast and Furious were held to the same standards as lower level career employees whom the Department has primarily blamed.

While the Department of Justice claims that divulging this information would have a “chilling effect” on future internal deliberations, virtually any agency could use this bland argument on nearly any topic. Congress, under both Democratic and Republican leadership, has never recognized internal agency discussions as privileged and protected. This claim by the Department of Justice is also at odds with a previous decision to make internal deliberations available to Congress in the midst of a 2007 investigation into the dismissals of several U.S. Attorneys.

No one disputes that the Justice Department has this critical information – the Justice Department’s flimsy rationale for withholding this information is simply about avoiding accountability for what occurred.

- **What senior officials at the Department of Justice were told about or approved the controversial gunwalking tactics that were at the core of the operation’s strategy?**

Operation Fast and Furious was not a local effort. It was the Justice Department’s flagship arms trafficking investigation for a year and a half. Justice Department headquarters in Washington approved it as part of the Department’s Organized Crime Drug Enforcement Task Force (OCDETF) program that put it under the control of the Arizona U.S. Attorney’s office. The OCDETF designation also meant Fast and Furious would be able to use advanced investigative techniques, such as wiretaps, which by law required senior headquarters officials to review operational details.

Although they helped write the February 4, 2011, letter to Congress denying that ATF allowed gunwalking to occur, some senior officials – after being confronted with evidence – have had to acknowledge that they did know about gunwalking. They have, however, consistently denied that they knew critical details about *the gunwalking that took place in Operation Fast and Furious*.

These denials are peculiar because top officials across the Justice Department received briefings on Operation Fast and Furious that included both information on surveillance techniques and the fact that hundreds of weapons were turning up at crime scenes in Mexico. Adding to suspicion that senior Justice Department officials knew far more than they have admitted, the Justice Department has refused to turn over documents from the field that were supplied to senior officials in Washington. While the Department has argued that turning over such materials to Congress could jeopardize prosecutions, it has offered no mutually agreeable accommodation for reviewing them – such as making them available to be reviewed but not copied, or giving Congress a complete list and brief description of responsive documents. After repeated false denials about Operation Fast and Furious, the Justice Department’s unwillingness to work with Congress casts doubt on its motives.

- **How did inter-agency cooperation in a nationally designated Strike Force fail so miserably in Operation Fast and Furious?**

Operation Fast and Furious tried to use outrageous gunwalking tactics in an effort to identify top cartel associates. Although the operation let nearly 2,000 weapons walk out of Phoenix area gun stores to the Sinaloa Cartel in furtherance of this goal, it never had a chance of success. While some senior Justice Department officials, including Assistant Attorney General Lanny Breuer, head of the Department's Criminal Division, embraced the view that gunwalking could be justified, even they would now have to agree that Fast and Furious never had a chance. The reason: the Justice Department already knew about the cartel contacts for Manuel Celis-Acosta's smuggling syndicate, and the contacts were on their way to becoming essentially unindictable FBI informants. Even more blatant, the DEA had told ATF about Celis-Acosta's cartel connections at the beginning of Fast and Furious as these contacts were targets of a separate investigation.

The reforms born out of the tragic September 11th terrorist attacks were designed to put a stop to the problem of federal agencies "stove-piping" information. In a Strike Force operation like Fast and Furious that was specifically designed by the Justice Department to bring together resources from its component agencies including ATF, FBI, DEA, and Justice Department headquarters, the failure of coordination and information sharing in Operation Fast and Furious indicates a likelihood of monumental management dysfunction. To date, the Justice Department has not indicated what official had the responsibility to coordinate and de-conflict law enforcement efforts across agencies.

A core goal of congressional oversight is to identify agency mismanagement and ensure that appropriate legislative or administrative adjustments are implemented. Until now, the Justice Department's desire to protect senior officials from embarrassment from Operation Fast and Furious has superseded its willingness to work cooperatively with Congress to address a massive information sharing and agency coordination problem that Congress and the Bush Administration worked together to solve a decade ago.

Despite a subpoena, the Justice Department has refused to produce documents related to how this clear failure occurred through multiple agencies and the involvement of top Justice Officials who had responsibilities to monitor multi-agency efforts. While the Justice Department has maintained that it is concerned about exposing cartel associates with informant status to scrutiny, the Department has rebuffed Committee efforts to examine the decisions and failures of officials without looking at the informants themselves. The fact that the Committee has already learned the identity of the associates and the outrageous crimes they committed before being given informant status, stands in contrast to the Department's suggestion that its reason for non-cooperation is the informants' well-being.

When the Committee issued a subpoena to U.S. Attorney General Eric Holder on October 12, 2011, for Justice Department documents, the Committee specified 22 categories of documents it required the Department to produce. Department representatives specifically confirmed their

understanding of each category. To date, the Department has not produced any responsive documents for 12 of the 22 categories. The Department has not completely fulfilled any of the 10 categories for which documents have been produced.

For over a year, the Department has issued false denials, given answers intended to misdirect investigators, sought to intimidate witnesses, unlawfully withheld subpoenaed documents, and waited to be confronted with indisputable evidence before acknowledging uncomfortable facts. The Justice Department's demonstrable contempt for the congressional investigation has inflicted harm on the people of two nations seeking the truth – and very pointedly on the family of fallen Border Patrol Agent Brian Terry and ATF whistleblowers who now face retaliation in the wake of their own heroic efforts to expose wrongdoing.

Answers for the Family of Border Patrol Agent Brian Terry

Three days after his murder in Arizona, on December 18, 2010, Brian Terry's body arrived back in Michigan for burial. His family waited on the tarmac in Detroit. Bagpipes played as Brian's casket was unloaded from the plane, then loaded into a hearse for a police escort to the funeral home. This was not the holiday homecoming that the Terry family had envisioned for Brian. In the words of his family:

Brian did ultimately come home that Christmas; we buried him not far from the house that he was raised in just prior to Christmas day. The gifts that Brian had picked out with such thought and care began to arrive in the mail that same week. With each delivery, we felt the indescribable pain of Brian's death, but at the same time also remembered his amazing love and spirit.

One month later, federal officials offered the Terry family scant details about Brian's death and refused to answer many questions. Brian's brother and stepmother walked out of the meeting with law enforcement officials, believing that the government was not being honest with them about Brian's death.

The following week, it became clearer to the Terry family why the Department of Justice had acted evasively. News reports began to emerge that the weapons found at Brian's murder scene had linked back to something they had never heard of before: Operation Fast and Furious. As Brian Terry's mother explained, "[We] never really got a call about anything like that until it was brought out in the newspapers . . . I was – just flabbergasted. I didn't believe it at first."

The Terry family wanted answers, but no one in federal law enforcement would help. Brian's cousin, a Secret Service agent, testified at a June congressional hearing that "there is a level of frustration for the family." Terry's mother, when asked what she would say to the person who authorized Operation Fast and Furious, responded, "I don't know what I would say to them, but I would like to know what they would say to me."

In August 2011, the Terry family made a motion to intervene as crime victims under the Crime Victims' Rights Act as a party in the case against Jamie Avila, the straw-purchaser of the

weapons found at the scene of Agent Terry's murder. Inexplicably, the Justice Department filed a highly unusual motion against the Terry family, claiming that the defendant's "offenses are too factually and temporally attenuated from the murder – if connected at all." Only after months of pressure from Congress and the public did the Department finally withdraw its objection to the Terry family's motion.

In October 2011, the Terry family again wrote to Congress seeking answers and explaining that the "family remains unsatisfied with the answers provided by government officials to date, not only about the genesis and operation of Fast and Furious, but what actually occurred precipitating Brian's death."

Three weeks later, Attorney General Eric Holder testified before the Senate Judiciary Committee. Instead of providing answers, the Attorney General's testimony brought additional pain to the Terry family when, despite evidence to the contrary, he stated, "it's unfair to assume that mistakes from Fast and Furious directly led to the death of Agent Terry." He also declined to apologize to the Terry family when asked by a Senator if he believed he should do so.

The testimony was certainly not what the Terry family had hoped to hear. Brian's mother "sat in a chair and cried" upon watching it, the family said. Brian's father said, "I think they are liars and I would tell them that. What would I say to Eric Holder? They would not be nice words." Brian's father also said, "Nobody wants to outlive their son. It's just hard. I can't sleep, just thinking about him – I love him very much."

In March 2012, as more details emerged about how a lack of coordination within the Justice Department had further botched Fast and Furious, the Terry family again learned these new facts through media reports – not from Department officials. This information "sickened" the family, who observed that had "this simple piece of information been shared among the different law enforcement agencies in Arizona . . . U.S. Border Patrol Agent Brian Terry would still be alive."

While the Justice Department's admissions have largely come as a result of being confronted with indisputable facts, the painfully slow process of getting the truth has been a continuing frustration for the Terry family. They still do not have the all the facts about the circumstances surrounding Brian Terry's murder.

In life, many of Brian's friends knew him as "Superman." The local gym in Arizona where Brian worked out had to order special, 150 lb. dumbbells for him, due to his impressive strength. The dumbbells arrived at the gym the week following Brian's death, and now sit in a corner of the gym, in a shrine to Brian, not for use by others.

In death, Brian, a Marine veteran, stands as a hero who gave his life for his country. The tragic circumstances surrounding his murder, however, remain unresolved due to the Justice Department's stubborn refusal to provide critical documents and fully cooperate with the investigation of Operation Fast and Furious. As Brian's sister said of his family's desire to know the full truth, "Brian was about making a difference and justice. And I just feel that this country owes it to him, because he spent his whole life fighting for this country some way or another."

Whistleblowers Left to Twist in the Wind

ATF agents distraught in the aftermath of Agent Terry's death started blowing the whistle in an effort to stop the reckless tactics of Operation Fast and Furious and reveal what had happened. ATF Special Agent John Dodson was the first to contact Congress, reaching out to the office of Senator Chuck Grassley in January 2011 with allegations of gunwalking.

Upon learning of Agent Dodson's contact with Senator Grassley's staff in late January 2011, ATF officials were clearly displeased. They ordered him to write a memo to ATF leadership detailing exactly what he told Senator Grassley's staff. His supervisors called him on his cell phone, his home phone, and even contemplated personally visiting his home late Friday night in an attempt to manage the impact of his allegations. Only after Senator Grassley learned of this harassment and wrote to the Justice Department the following Monday did ATF leadership drop its demand for Dodson to write a summary of his contact with Senator Grassley's staff. Under federal law, no one can interfere with such an effort to contact Congress.

One confidential witness told Congress that he overheard Scot Thomasson, chief ATF spokesman, say early on in the congressional inquiry into Fast and Furious: "We need to get whatever dirt we can on these guys [the whistleblowers] and take them down." The actions of the Department of Justice towards the whistleblowers over the next year indicate that these words were part of a concerted effort at retaliation.

On June 29, 2011, a reporter asked the Committee to comment on documents he had received related to Agent John Dodson during the time period when Fast and Furious occurred. The Department of Justice had yet to provide these documents to the Committee pursuant to the March 31, 2011, subpoena of ATF, but had apparently provided them to a reporter in an attempt to undermine Dodson's credibility. The Committee worked with the reporter and his news organization to examine the claims the documents purportedly supported and made the argument that the documents were part of an underhanded strategy to smear a whistleblower. The news organization eventually decided against running the story.

Congressional investigators later determined that the individual who was behind the leaked documents was the U.S. Attorney for the District of Arizona, Dennis Burke – the Obama Administration political appointee who led the office in charge of Operation Fast and Furious. Burke later testified that the reporter contacted him, and that he believed the reporter had already seen the documents or had them read to him from someone else in the Department of Justice. Instead of e-mailing the documents to the reporter in Washington, Burke, who was in Arizona at the time, e-mailed them to a friend of his in Washington, who then printed out the documents and then delivered them to the reporter personally. These efforts successfully kept Burke's fingerprints off of the leak until he publicly admitted his role more than two months after his August 2011 resignation as blame for Fast and Furious spread.

Since Dodson became a whistleblower, ATF has transferred him to Greenville, South Carolina, where he currently serves as an investigative agent. A confidential witness has told the

Committee that ATF made the unusual decision not to reimburse him for \$30,000 in moving expenses. The real motive for this decision remains unknown.

On April 25, 2011, Committee investigators subpoenaed another whistleblower, Special Agent Larry Alt, to provide testimony about Operation Fast and Furious. Agent Alt notified his superiors about his impending testimony. The next day, ATF Internal Affairs notified Alt that they wanted to talk with him about another matter. On May 5, 2011, Agent Alt met with ATF internal affairs investigators about allegations that Alt downloaded two prohibited applications to his government-issued phone. The total cost of these applications was eight dollars.

Agent Alt adamantly denied knowingly downloading the applications. Internal Affairs investigators searched Alt's phone and were unable to find either of them. The applications were also not compatible with the make and model of the phone issued to Alt. The timing of the Internal Affairs investigation into Larry Alt, and the apparent lack of evidence regarding the allegations against him, makes the motivation for the inquiry suspect at best. Alt was prevented from transferring offices and his eligibility for promotions and pay raises barred during the pendency of the investigation – all supposedly over eight dollars in phone applications.

Special Agent Peter Forcelli, a Group Supervisor in the ATF Phoenix Field Division, also experienced retaliation by the Department of Justice for his role in blowing the whistle on Fast and Furious. During his June 15, 2011 testimony before Congress, Special Agent Forcelli testified candidly about the difficulties he encountered in getting the U.S. Attorney's Office in Arizona to prosecute certain ATF cases. The Justice Department confirmed Agent Forcelli's concerns by transferring three high-profile cases involving ATF out of that U.S. Attorney's Office.

During Agent Forcelli's June 15 testimony, the Chief of the Criminal Division of the Arizona U.S. Attorney's Office, Patrick Cunningham – who had been tasked by the Department of Justice with examining the truthfulness of the whistleblowers' allegations – was at ATF headquarters in Washington, D.C. mining Forcelli's testimony for inaccuracies. Cunningham alleged to senior officials that Forcelli was being untruthful during his testimony. Over the next several months, the Justice Department began publicizing documents relating to cases Forcelli had previously investigated at ATF in an effort to smear his character and integrity as a Special Agent. These cases had nothing to do with Fast and Furious.

In August 2011, the Office of the Inspector General began investigating Forcelli about one of the cases that the Department had publicized. In preparation for an interview with the OIG, the Arizona U.S. Attorney's Office created a memo, dated August 10, 2011, about a meeting its prosecutors had had with Forcelli three months earlier. The memo, written well-after-the-fact, characterized him as "visibly angry" during the earlier interaction.

In the midst of this saga, during a phone call with the U.S. Attorney's Office in August 2011, prosecutors notified Agent Forcelli that any contact between him and any prosecutor in the U.S. Attorney's Office would need to be reported up the chain of command. Such a policy made it practically impossible for Agent Forcelli to work with federal prosecutors in Arizona.

Due to this situation, ATF transferred Forcelli from the ATF Phoenix Field Division to ATF headquarters. Despite facing a considerable loss in the sale of his house Forcelli pulled his two children out of school and moved with his family to Virginia in March 2012 to assume a desk job.

In addition to stark individual experiences, the ATF whistleblowers have collectively described a climate of hostility and fear of reprisals since their decisions to speak up about Operation Fast and Furious. Some have even learned that deeply personal information, unrelated to their jobs, has been dug up and placed in the hands of reporters and others. During a November 2011 hearing, Senator Chuck Grassley asked Attorney General Holder to reveal the identity of a Justice Department official who had been caught participating in the leaking of documents to smear an ATF whistleblower. Instead of naming the official at the hearing, Holder decided to protect his identity and refused to answer the question.

Brave whistleblowers at ATF, and gun store owners who were lured by federal authorities into making repeated sales to criminals during Operation Fast and Furious, must live in fear as a result of retaliation by Justice Department officials who have yet to be publicly exposed for their role in Operation Fast and Furious. Until the truth is exposed about responsibility for bad decisions and a lack of leadership in Operation Fast and Furious, whistleblowers who came to Congress will continue to face fear of reprisals.

The Relationship with Mexico

Ciudad Juarez, across the border from El Paso, Texas, is the most dangerous city in the world. Fourteen hundred people were murdered in Juarez in 2008 – three times more than the highest number in any U.S. city – and this number increased to over 2,600 murders in 2009. On October 20, 2009, Ciudad's Juarez's leading newspaper proclaimed in wonderment: "Not One Person Murdered Yesterday." *That day*, however, nine murders occurred in Juarez.

In 2010, there were over 3,000 murders in the city. The violence in Juarez, and across Mexico, was increasing.

Ciudad Juarez is considered "ground zero" in the drug war. Control of the trafficking routes in Juarez affords easy access to the United States. In 2008, the Sinaloa Cartel, headed by Joaquin "El Chapo" Guzman, moved into Juarez in an attempt to wrest control of the lucrative routes from the Juarez cartel. Forbes magazine labeled Guzman as its 55th most powerful person in the world, and Guzman once paid some \$2.5 million in bribes to prison officials to make a daring escape from a maximum security Mexican prison.

In 2010, Guzman's regional enforcer in Juarez for the Sinaloa Cartel was Jose Antonio Torres Marrufo, also known as "El Jaguar." El Jaguar has a history of violent acts against those who crossed the Sinaloa Cartel. He orchestrated an attack on a drug treatment clinic center in Juarez where he suspected rival cartel members were hiding. El Jaguar's hooded gunmen forced clinic

patients into a corridor, lined them up, and shot 18 of them. As an ominous threat to members of the rival Juarez cartel, El Jaguar's men once skinned a rival cartel member's face and stitched it onto a soccer ball.

Three months into Operation Fast and Furious, El Paso had emerged as a central hub for the transport of weapons being smuggled by Manuel Celis-Acosta's syndicate. Since the beginning of Fast and Furious, ATF intelligence analysts had noticed an eastern shift in weapons crossing the border – from Tijuana and Arizona to El Paso and Juarez. ATF leadership knew that Fast and Furious weapons were heading to the Sinaloa Cartel, and Attorney General Holder was sent several memos in 2010 notifying him that the Sinaloa Cartel was buying them. As one ATF agent in Mexico who understood what was occurring observed, “Chapo is arming for war.”

By the spring of 2010, six months after Fast and Furious began and intense weapons purchases by the Sinaloa Cartel, El Jaguar's men had won the battle with the Juarez Cartel and took control of trafficking routes through Ciudad Juarez.

In October 2010, cartel members kidnapped Mario Gonzalez Rodriguez, the brother of the Attorney General for the Mexican state of Chihuahua, where Juarez is located. The cartel posted a video of the kidnapped Rodriguez online, in which he alleged, under duress, that his sister had ordered killings at the behest of the Juarez cartel. The video went viral and became a major news story in Mexico. Two weeks later, Mexican authorities found Rodriguez's body in a shallow grave. In a subsequent shootout with cartel members responsible for the murder, police arrested eight and recovered sixteen weapons. Two of these weapons traced back to Operation Fast and Furious.

Although the Department of Justice learned that these weapons traced back to Fast and Furious almost immediately, no one informed the Mexican government. Not until congressional investigators were on the verge of learning the truth about the connection did an ATF agent in Mexico finally tell the Mexican Attorney General in June 2011 – seven months after Rodriguez's murder.

In May 2011, cartel members fired a powerful Barrett .50 caliber rifle at a Mexican Federal Police helicopter in the state of Michoacan, forcing it to make an emergency landing. The attack wounded two of the officers on board. A subsequent raid on those responsible for shooting down the helicopter resulted in the deaths of 11 cartel members and the arrest of 36 more. A cache of more than 70 rifles were recovered at the scene, including several that traced back to Operation Fast and Furious.

Though the President of Mexico, Felipe Calderon has been outspoken about demanding the United States curb the flow of its firearms into Mexico, he has taken a diplomatic approach in responding to Fast and Furious given the U.S. role as a key trading partner for Mexico. The United States is the largest source of foreign direct investment in Mexico, and the United States is, by far, Mexico's largest trading partner – over 80% of Mexican exports are sent to the United States. Mexico's continued growth also has great potential to help increase U.S. exports that create American jobs.

Other Mexican officials, though, have been more pointed with their deep concerns about what the Justice Department allowed to occur. The president of the Mexican Congress, the Chamber of Deputies, has said that Fast and Furious was “a serious violation of international law.” The Chairman of the Justice Committee in the Chamber of Deputies commented that there were “150 cases of injuries and homicides” from weapons that ATF agents allowed to walk into Mexico. And over a year after Fast and Furious was first exposed, the program still remains on the minds of the Mexican press. In April, the very first question from the Mexican press during a trilateral joint press conference with President Calderon, President Obama, and Prime Minister Stephen Harper of Canada was about the trafficking of weapons from the U.S. to Mexico.

The people of Mexico have suffered tremendous loss due to cartel violence. A U.S. operation – kept secret from Mexican authorities – that sought to arm cartels has created justifiable outrage among our neighbors to the south who seek the truth about what happened and who was responsible.

Congress Faces a Choice as Integrity Questions Loom Over Justice Department

The congressional investigation into Operation Fast and Furious has yielded significant results. It forced the Department of Justice to withdraw its false denial of whistleblower allegations. Dennis Burke – the U.S. Attorney for Arizona who headed the office that led Operation Fast and Furious – was forced to resign. Attorney General Eric Holder now admits the operation was “fundamentally flawed” and that guns from the operation will continue to show up at crime scenes in Mexico and the United States “for years to come.” Attorney General Holder has also committed to ensuring that such an operation will never happen again.

Nevertheless, Operation Fast and Furious’ outrageous tactics, the Justice Department’s refusal to fully cooperate with the investigation, and efforts to smear and retaliate against whistleblowers have tainted the institutional integrity of the Justice Department. Only 567 of the nearly 2,000 weapons from the operation have been recovered and, as the Attorney General admits, the effects from Fast and Furious are far from over.

The Justice Department’s initial denials that anything inappropriate occurred, and its insinuation that whistleblowers were not telling the truth, indicated an early mindset of a Department more concerned about appearances than actual truth. Making matters worse, a pattern of questionable behavior ensued that heightened concerns. Attorney General Holder initially expressed puzzlement when asked when he first heard of Operation Fast and Furious at a congressional hearing, but neither he nor his staff ever acknowledged that memos on the flawed operation had been addressed to him until they were publicly uncovered several months later. Even later in the investigation, senior political appointees in the Department’s Criminal Division were forced to acknowledge evidence that they had known about reckless gunwalking – and did nothing about it – even though the Attorney General had insisted that such tactics had always been against Department policy. Several other senior officials who attended briefings on Operation Fast and Furious repeatedly insisted they could not recall key details about what they knew. In an

interview, Attorney General Holder's former Deputy Chief of Staff stated that he could not recall specific incidents or even his own actions 82 times over the course of a three hour interview.

Perhaps the most damning assessments of the Department's handling of the fallout from Operation Fast and Furious have come from two Justice Department officials. Kenneth Melson, the former Acting AFT Director during the pendency of Fast and Furious, told Congress that, "it appears thoroughly to us that the department is really trying to figure out a way to push the information away from their political appointees at the department." Patrick Cunningham, who had been tasked by the Justice Department with investigating ATF whistleblower allegations of gunwalking, would later invoke his Fifth Amendment privilege against self-incrimination in refusing to answer questions about his work.

The suggestion of veteran Justice Department officials that a cover-up potentially involving criminal conduct may have occurred, even after Fast and Furious' field operations ended, underscores the Justice Department's inability to investigate itself or decide what information should be withheld from the Congressional investigation.

In dealing with a prostitution scandal in Cartagena, Columbia, the Secret Service has demonstrated that agencies can conduct investigations swiftly, determine responsibility, and act decisively to hold wrongdoers accountable. The Justice Department's response, however, has been the polar opposite. More than a year after field operations of Fast and Furious ended, the Attorney General still insists he needs more facts before holding individuals responsible for facilitating the transfer of weapons to Mexican drug cartels to account. To many Americans, this inaction creates the impression that the Department is trying to run out the clock on the relatively short lifespan of political appointments.

The Justice Department's failure to respond appropriately to the allegations of whistleblowers and to cooperate with Congressional oversight has crossed the line of appropriate conduct for a government agency. Congress now faces a moment of decision between exerting its full authority to compel an agency refusing to cooperate with congressional oversight or accepting a dangerous expansion of Executive Branch authority and unilateral action allowing agencies to set their own terms for cooperating with congressional oversight.