



**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D. C. 20530

February 4, 2011

The Honorable Charles E. Grassley  
Ranking Minority Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Senator Grassley:

This responds to your letters, dated January 27, 2011 and January 31, 2011, to Acting Director Kenneth Melson of the Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), regarding Project Gunrunner. We appreciate your strong support for the Department's law enforcement mission.

At the outset, the allegation described in your January 27 letter—that ATF “sanctioned” or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico—is false. ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico. Indeed, an important goal of Project Gunrunner is to stop the flow of weapons from the United States to drug cartels in Mexico. Since its inception in 2006, Project Gunrunner investigations have seized in excess of 10,000 firearms and 1.1 million rounds of ammunition destined for Mexico. Hundreds of individuals have been convicted of criminal offenses arising from these investigations and many others are on-going. ATF remains committed to investigating and dismantling firearms trafficking organizations, and will continue to pursue those cases vigorously with all available investigative resources.

In this vein, the suggestion that Project Gunrunner focuses simply on straw purchasers is incorrect. The defendants named in the indictments referenced in your January 27 letter include leaders of a sophisticated gun trafficking organization. One of the goals of the investigation that led to those indictments is to dismantle the entire trafficking organization, not merely to arrest straw purchasers.

I also want to assure you that ATF has made no attempt to retaliate against any of its agents regarding this matter. We recognize the importance of protecting employees from retaliation relating to their disclosures of waste, fraud, and abuse. ATF employees receive annual training on their rights under the Whistleblower Protection Act, and those with knowledge of waste, fraud, or abuse are encouraged to communicate directly with the

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Department's Office of Inspector General. These protections do not negate the Department's legitimate interest in protecting confidential information about pending criminal investigations.

We also want to protect investigations and the law enforcement personnel who directly conduct them from inappropriate political influence. For this reason, we respectfully request that Committee staff not contact law enforcement personnel seeking information about pending criminal investigations, including the investigation into the death of Customs and Border Patrol Agent Brian Terry. Like you, we are deeply concerned by his murder, and we are actively investigating the matter. Please direct any inquiry into his killing to this office.

The Department would be pleased to provide a briefing to Committee staff about Project Gunrunner and ATF's efforts to work with its law enforcement partners to build cases that will disrupt and dismantle criminal organizations. That briefing would not address the on-going criminal investigation referenced in your letter. As you know, the Department has a long-standing policy against the disclosure of non-public information about pending criminal investigations, which protects the independence and effectiveness of our law enforcement efforts as well as the privacy and due process interests of individuals who may or may not ever be charged with criminal offenses.

We hope that this information is helpful and look forward to briefing Committee staff about Project Gunrunner. Please do not hesitate to contact this office if we may provide additional assistance about this or any other matter.

Sincerely,



Ronald Weich  
Assistant Attorney General

cc: The Honorable Patrick J. Leahy  
Chairman



Office of the Deputy Attorney General  
Washington, D.C. 20530

December 2, 2011

The Honorable Darrell E. Issa  
Chairman  
Committee on Oversight and  
Government Reform  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Charles E. Grassley  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, D.C. 20510

Dear Mr. Chairman and Ranking Member Grassley:

This supplements the Department's November 16, 2011 response to Chairman Issa's November 9, 2011 letter to Assistant Attorney General Ronald Weich seeking highly deliberative internal communications relating to the drafting of our February 4, 2011 letter to Ranking Member Grassley regarding Operation Fast and Furious.

The Department has a long-held view, shared by Administrations of both political parties, that congressional requests seeking information about the Executive Branch's deliberations in responding to congressional requests implicate significant confidentiality interests grounded in the separation of powers under the U.S. Constitution. As indicated in congressional testimony by senior Department officials on several occasions, however, facts have come to light during the course of this investigation that indicate that the February 4 letter contains inaccuracies. Because of this, the Department now formally withdraws the February 4 letter.

Under these unique circumstances, we have concluded that we will make a rare exception to the Department's recognized protocols and provide you with information related to how the inaccurate information came to be included in the letter. As a result, we are delivering today to your respective offices 1364 pages of material related to that topic.<sup>1</sup> We want to emphasize that our decision in this instance to provide highly deliberative materials is *sui generis*.

The Attorney General has made clear, both in testimony before the Senate Judiciary Committee last month and in a letter dated October 7, 2011, that Operation Fast and Furious was

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<sup>1</sup> These documents bear limited redactions, typically information relating to Department employees, such as their cell phone numbers. In addition, we have redacted text from documents that does not relate to how the inaccurate information came to be included in the February 4 letter. The nature of specific redactions is indicated by a redaction code ("RC") set forth in the enclosed list. In response to requests from Chairman Smith and Chairman Leahy, the documents we deliver to you will also be delivered to the House and Senate Committees on the Judiciary.

fundamentally flawed and that its tactics must never be repeated. We have already provided Congress with extensive information about the strategy and tactics underlying that investigation.

We believe that the documents provided today highlight two points regarding the drafting of the February 4 response. First, to respond to the allegations contained in Ranking Member Grassley's letters, Department personnel, primarily in the Office of Legislative Affairs, the Criminal Division and the Office of the Deputy Attorney General, relied on information provided by supervisors from the components in the best position to know the relevant facts: ATF and the U.S. Attorney's Office in Arizona, both of which had responsibility for Operation Fast and Furious. Information provided by those supervisors was inaccurate. We understand that, in transcribed interviews with congressional investigators, the supervisors have said that they did not know at the time the letter was drafted that information they provided was inaccurate. Second, there was significant concern about how much information properly should be shared with Congress regarding the open Fast and Furious investigation and open investigation of the murder of Customs and Border Protection Agent Brian Terry. The documents reflect this concern in the drafting of the February 4 letter.

Ranking Member Grassley's January 27, 2011 letter said, in its first paragraph, that "I am specifically writing you concerning an ATF operation called 'Project Gunrunner.'" His January 31, 2011 letter also cited "serious allegations associated with Project Gunrunner and the death of Customs and Border Protection Agent Brian Terry." While these letters referred to Project Gunrunner – the name of the broad, overall ATF effort to stem the illegal cross-border flow of weapons – the allegations actually related to Operation Fast and Furious, which was a particular ATF operation in Arizona. Following the receipt of the incoming letters, the Department convened a series of calls in an effort to learn the facts about Operation Fast and Furious. Participants in these calls included the then-Acting Director of ATF and the Agency's then-Deputy Director. Notes of these conversations reflect that then-ATF leadership indicated to the staff of the Department that:

- "we didn't let [] guns walk[;]"
- "we . . . didn't know they were straw purchasers at the time[;]"
- "ATF had no probable cause to arrest the purchaser or prevent action[;]"
- "ATF doesn't let guns walk[;]"
- "we always try to interdict weapons purchased illegally[;] and
- "we try to interdict all that we being [sic] transported to Mexico[.]"

HOCR DOJ 003744; HOCR DOJ 003745; HOCR DOJ 003935. In particular, the portion of the notes that indicate that "we always try to interdict weapons purchased illegally" and "we try to interdict all that we being [sic] transported to Mexico" track almost verbatim the inaccurate information included in the letter that the Department sent to Ranking Member Grassley. Our final letter read as follows:

ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.

[Letter from Assistant Attorney General Ronald Weich to The Honorable Charles E. Grassley dated February 4, 2011, at 1.] That language was in an early draft of the response prepared by the Department and remained virtually unchanged throughout the drafting process. HOCR DOJ 004049-004050.

The leadership of the U.S. Attorney's Office in Arizona communicated that the allegations in Ranking Member Grassley's letters regarding the Arizona investigation and the guns recovered at the scene of Agent Terry's murder were untrue. One of the central allegations in the January 27 incoming letter was that ATF had "sanctioned" the sale of two weapons that were recovered at the Terry murder scene. In response, on January 31, 2011, the then-U.S. Attorney wrote to others in the Department that:

Grassley's assertions regarding the Arizona investigation and the weapons recovered at the BP Agent Terry murder scene are based on categorical falsehoods.

HOCR DOJ 003938-003939. He asked that the following language be included in the response to Ranking Member Grassley:

'Regarding the allegations repeated in your letter that ATF in any way "sanctioned", had knowledge of, or permitted weapons purchased on January 16, 2010 in Arizona to reach the Republic of Mexico is categorically false.'

HOCR DOJ 004166-004167.

The documents produced today also reflect that the drafters of the February 4 letter were focused on how much should be said about the open Fast and Furious investigation and the investigation into the murder of Agent Terry. One view was that the "[g]oal would [be] to put on the record whatever we can say about the pending matter, without opening the door re info we're not prepared to publicly disclose; . . ." HOCR DOJ 004100. The other view was ". . . I fully appreciate the concerns about commenting on ongoing cases – both present and future – but I think the Department should consider making a more forceful rebuttal to the allegations here, which are terribly damaging to ATF." *Id.* Over a period of days, drafts of the letter were sent to the leadership of ATF and the U.S. Attorney's Office in Arizona for review and comment, and thereafter circulated within those offices for review and comment by others. *See, e.g.*, HOCR DOJ 004100-004102; HOCR DOJ 004122-004124; HOCR DOJ 004132-004134; HOCR DOJ 004144-004146. After a series of edits on February 4 and the re-circulation of drafts to the leadership of ATF and the U.S. Attorney's Office, the final letter provided, in part, that:

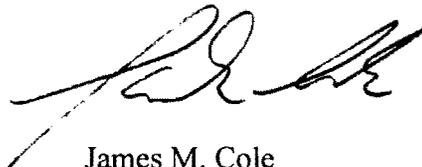
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At the outset, the allegation described in your January 27 letter—that ATF ‘sanctioned’ or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico—is false. ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.

HOCR DOJ 004868-004870

We trust that you will find this information useful and we look forward to continuing to work with you on this matter.

Sincerely,



James M. Cole  
Deputy Attorney General

cc: The Honorable Patrick Leahy, Chairman  
U.S. Senate Committee on the Judiciary

The Honorable Elijah E. Cummings, Ranking Member  
U.S. House Committee on Oversight and Government Reform

The Honorable Lamar Smith, Chairman  
U.S. House Committee on the Judiciary

The Honorable John Conyers, Ranking Member  
U.S. House Committee on the Judiciary