

Appendix II

January 2011

January 2011

United States Senate

WASHINGTON, DC 20510

January 27, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

It is my understanding that the ATF is continually conducting operations along the southwestern United States border to thwart illegal firearm trafficking. I am specifically writing you concerning an ATF operation called "Project Gunrunner." There are serious concerns that the ATF may have become careless, if not negligent, in implementing the Gunrunner strategy.

Members of the Judiciary Committee have received numerous allegations that the ATF sanctioned the sale of hundreds of assault weapons to suspected straw purchasers, who then allegedly transported these weapons throughout the southwestern border area and into Mexico. According to the allegations, one of these individuals purchased three assault rifles with cash in Glendale, Arizona on January 16, 2010. Two of the weapons were then allegedly used in a firefight on December 14, 2010 against Customs and Border Protection (CBP) agents, killing CBP Agent Brian Terry. These extremely serious allegations were accompanied by detailed documentation which appears to lend credibility to the claims and partially corroborates them.

On Tuesday, according to press reports, the ATF arrested 17 suspects in a Project Gunrunner bust. William Newell, the Special Agent in Charge of the ATF's Phoenix Field Office was quoted as saying, "We strongly believe we took down the entire organization from top to bottom that operated out of the Phoenix area." However, if the 17 individuals were merely straw purchasers of whom the ATF had been previously aware before Agent Terry's death, then that raises a host of serious questions that the ATF needs to address immediately.

As you know, the Department of Justice Office of Inspector General (OIG) released a review of ATF's Project Gunrunner in November of 2010, in which the OIG concluded that Project Gunrunner has been unsuccessful, in large part because:

Project Gunrunner's investigative focus has largely remained on gun dealer inspections and straw purchaser investigations, rather than targeting higher-level traffickers and smugglers. As a result, ATF has not made full use of the

intelligence, technological, and prosecutorial resources that can help ATF's investigations reach into the higher levels of trafficking rings.¹

Therefore, in order to gain a more complete understanding of ATF activities in Project Gunrunner, I request that you arrange for my staff to be briefed by knowledgeable ATF supervisors no later than February 3, 2011. Please contact Jason Foster or Brian Downey at (202) 224-5225 to schedule the briefing. All formal correspondence should be sent electronically in PDF format to Brian_Downey@judiciary-rep.senate.gov or via facsimile to (202) 224-3799.

Sincerely,



Charles E. Grassley
Ranking Member

¹ *Review of ATF's Project Gunrunner, Evaluation and Inspections Report I-2011-001*, November 2010, available at <http://www.justice.gov/oig/reports/ATF/e1101.pdf>

United States Senate

WASHINGTON, DC 20510

January 31, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

As you know, I wrote to you on Thursday, January 27, regarding serious allegations associated with Project Gunrunner and the death of Customs and Border Protection Agent Brian Terry. Although the staff briefing I requested has not yet been scheduled, it appears that the ATF is reacting in less productive ways to my request. I understand that Assistant Special Agent in Charge (ASAC) George Gillette of the ATF's Phoenix office questioned one of the individual agents who answered my staff's questions about Project Gunrunner. ASAC Gillette allegedly accused the agent of misconduct related to his contacts with the Senate Judiciary Committee. This is exactly the wrong sort of reaction for the ATF. Rather than focusing on retaliating against whistleblowers, the ATF's sole focus should be on finding and disclosing the truth as soon as possible.

Whistleblowers are some of the most patriotic people I know—men and women who labor, often anonymously, to let Congress and the American people know when the Government isn't working so we can fix it. As such, it would be prudent for you to remind ATF management about the value of protected disclosures to Congress and/or Inspectors General in accordance with the whistleblower protection laws. Absent such a clear communication from you, ATF management might be able to intimidate whistleblowers to prevent them from providing information to Congress.

As you may be aware, obstructing a Congressional investigation is a crime.¹ Additionally, denying or interfering with employees' rights to furnish information to

¹ 18 U.S.C. § 1505 states, in pertinent part:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress--

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

Congress is also against the law.² Federal officials who deny or interfere with employees' rights to furnish information to Congress are not entitled to have their salaries paid by taxpayers' dollars.³ Finally, ATF personnel have Constitutional rights to express their concerns to Congress under the First Amendment.

ATF employees have the right to talk to Congress and to provide Congress with information free and clear of agency interference. Further, these employees have the right to be free from fear of retaliation or reprisal for doing so. Please ensure that ATF employees are aware of their rights and whistleblower protections and that ATF managers are accountable for respecting any protected disclosures.

If you have any questions please contact my Committee staff, Jason Foster at (202) 224-5225. Any formal correspondence should be sent electronically in PDF searchable format to Brian_Downey@judiciary-rep.senate.gov.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Eric H. Holder, Jr.
Attorney General of the United States

² 5 U.S.C. § 7211 states:

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

³ P.L. 111 -117 § 714 states:

No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who -

(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or

(2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, stats, pay, or performance of efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).

February 2011

February 2011

**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

The Honorable Charles E. Grassley
Page Two

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

United States Senate

WASHINGTON, DC 20510

February 9, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
 Attorney General
 U.S. Department of Justice
 950 Pennsylvania Avenue, N.W.
 Washington, DC 20530

Dear Attorney General Holder:

During our meeting on January 31, I provided you with copies of my recent letters to Acting ATF Director Kenneth E. Melson. I had received serious allegations from ATF whistleblowers. ATF agents told my staff that the agency allowed the sale of assault rifles to known and suspected straw purchasers for an illegal trafficking ring near the southwest border. Authorities allegedly recovered two of those weapons at the scene of a fire near the southwest border on December 14, 2010. Customs and Border Protection Agent Brian Terry lost his life in that fire and may have been killed with one of those two rifles. That is why I requested nearly two weeks ago that the ATF brief my staff as soon as possible.

Unfortunately, the reaction to my request has, so far, been little more than delay and denial. I finally received a letter at close of business on Friday, February 4, in response to my request. It came not from the ATF, but from the Justice Department. In that letter, the Department categorically denied that the ATF “knowingly allowed the sale of assault weapons to a straw purchaser...” The Department said the ATF makes “every effort to interdict weapons that have been purchased illegally and prevent their transportation into Mexico.”

However, as I explained in my initial letter to Acting Director Melson, the allegations I received are supported by documentation. It is already public record that federal agents arrested Jaime Avila on December 15, 2010—the very same day that CBP Agent Terry died. The ATF had been tracking Avila’s firearms purchases because Avila was a suspected trafficker since at least November 2009.¹ According to the whistleblowers, at least one gun dealer wanted to stop participating in sales like those to Avila sometime around October 2009. However, the ATF allegedly encouraged the dealer to continue selling to suspected traffickers and asked the dealer to forward information about the sales to the Bureau.

¹ Bureau of Alcohol, Tobacco, and Firearms, “Multiple Sale Summary,” Nov 25, 2009 (Attachment 1).

The dealer who sold the weapons allegedly recovered at the scene of Agent Terry's death met with both ATF representatives and Assistant U.S. Attorneys as early as December 17, 2009 to "discuss his role as [a Federal Firearms Licensee] FFL during this investigation."² On January 9, 2010, Jaime Avila bought three more firearms at the same Glendale, Arizona gun dealer and his purchase was entered into an ATF database two days later.³ By January 13, ATF added Avila to a suspect person database for the investigation.⁴ On January 14, ATF entered the firearms Avila purchased five days earlier into the National Tracing Center's Suspect Gun Database.⁵

On January 16, 2010, Avila bought three AK-47 variant, Romanian WASR-10 assault rifles from the same dealer with the serial numbers 1983AH3977, 1979IS1530, and 1971CZ3775.⁶ ATF entered these weapons into the National Tracing Center's Suspect Gun Database three days later.⁷ Over the next several months, ATF continued to track Avila's multiple firearms purchases in near real-time, including two purchases of .50 caliber rifles in June 2010.⁸

After the shooting of CBP Agent Terry, law enforcement officials recovered from the scene two assault rifles.⁹ On December 16, 2010, ATF's trace results confirmed that serial numbers 1983AH3977 and 1971CZ3755 match two of the three rifles purchased by Avila and tracked by the ATF nearly a year earlier.¹⁰ In addition to these specific weapons, the indictment of Avila and others references approximately 769 firearms. Of those, the indictment refers to the recovery of only about 103 weapons. So, where are the other approximately 666 weapons referenced in the indictment? Why did the ATF not seize them?

The Justice Department's reply asked that Committee staff stop speaking to law enforcement personnel about these matters. However, if not for the bravery and patriotism of law enforcement personnel who were willing to put their careers on the line, this Committee would have been forced to rely on nothing more than rumors in the blogosphere and a Justice Department denial to resolve these allegations. We need more than that. To be an effective check on Executive Branch power, we need cold, hard facts. We will seek them from whatever source is necessary.

Unfortunately, the Justice Department's letter suggested that my attempts to seek information about these matters might be politically motivated. I understand the Department needs to "protect ... law enforcement personnel ... from inappropriate

² Bureau of Alcohol, Tobacco, and Firearms, "Management Log for Case: 785115-10-[redacted]," Dec 17, 2009 (Attachment 2).

³ Bureau of Alcohol, Tobacco, and Firearms, "Multiple Sale Summary," Jan 11, 2010 (Attachment 3).

⁴ E-mail from ATF Program Analyst to ATF Agents, Jan 13, 2010 (Attachment 4).

⁵ Bureau of Alcohol, Tobacco, and Firearms, "Suspect Gun Summary," Jan 14, 2010 (Attachment 5).

⁶ Bureau of Alcohol, Tobacco, and Firearms, "Suspect Gun Summary," Jan 19, 2010 (Attachment 6).

⁷ *Id.*

⁸ Bureau of Alcohol, Tobacco, and Firearms, "Suspect Gun Summary," Jun 8 and Jun 16, 2010 (Attachment 7).

⁹ Bureau of Alcohol, Tobacco, and Firearms, "Significant Information Report," Dec 16, 2010 (Attachment 8).

¹⁰ Bureau of Alcohol, Tobacco, and Firearms, "Firearms Trace Summaries," Dec 16, 2010 (Attachment 9).

political influence.”¹¹ However, there is a difference between inappropriate political influence and appropriately holding officials accountable to the American people. I try to conduct non-partisan oversight of the Executive Branch. Regardless of which party controls the White House or the Congress, I do my best to ask tough questions. If you have any evidence that there is anything “inappropriate” about my motives in this matter, please let me know. Otherwise, I respectfully request that the Department avoid such implications in the future.

Finally, I want to share with you a portion of an e-mail from Carolyn Terry, Agent Terry’s stepmother. She wrote yesterday:

It’s hard to accept that our son was shot and murdered with a gun that was bought in the U.S. We have not had any contact from the Border Patrol or any other agents since returning home on the 22nd of [January]. Our calls are not returned. I truly feel that our son’s death is a cover-up and they hope that we will go away. That will not happen. We want to know who allowed the sale of that gun that murdered our son. Any help will [be] appreciated. We are the victims of this case and we want some answers.¹²

The Terry family deserves answers. The whistleblowers have expressed a desire to honor Agent Terry’s memory by disclosing this information. The Justice Department should work to do the same. The best way to honor his memory is to come clean.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives

The Honorable Alan D. Bersin
Commissioner
United States Customs and Border Protection

¹¹ Letter from the Justice Department to Senator Charles E. Grassley, Jan 31, 2011.

¹² E-mail from Carolyn Terry, Feb 8, 2011.

United States Senate

WASHINGTON, DC 20510

February 16, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Holder:

I appreciate the staff briefing that Department of Justice (DOJ) and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) officials provided on February 10, 2011. However, the briefers focused on general issues related to challenges in successfully prosecuting gun trafficking cases. They refused to answer specific questions about the facts and circumstances that led me to request the briefing.

Specifically, they refused to say whether the approximately 103 weapons seized according to the Jaime Avila indictment were the only seizures related to the nearly 770 weapons mentioned in the indictment. They refused to say whether the third assault rifle purchased by Avila in January 2010—the one not found at the scene of CBP Agent Brian Terry's shooting—has been recovered elsewhere. When asked whether ATF had encouraged any gun dealer to proceed with sales to known or suspected traffickers such as Avila, the briefers said only that they did not have any "personal knowledge" of that.

Therefore, please provide the following documents to the Committee:

- 1) All records relating to communications between the ATF and the Federal Firearms Licensee (FFL) who sold the weapons to Avila, including any Report of Investigation (ROI) or other records relating to the December 17, 2009 meeting "to discuss his role as an FFL during this investigation."
- 2) All records relating to communications between ATF headquarters and Phoenix Special Agent in Charge (SAC) William Newell from December 1, 2010 to the present, including a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of CBP Agent Brian Terry.
- 3) A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF Headquarters in the Spring of 2010.

- 4) Copies of all e-mails related to Operation Fast and Furious, the Jaime Avila case, or the death of CBP Agent Brian Terry sent to or from SAC Newell, Assistant Special Agent in Charge (ASAC) George Gillette, Group 7 Supervisor, or the Case Agent between November 1, 2009 and January 31, 2011.

Please provide documents in batches on a rolling basis as they are identified and located. Also, please prioritize your search for documents and produce them in the following order: (1) documents in response to requests one through three, (2) documents in response to request four dated between December 13, 2010 and January 31, 2011, and (3) documents in response to request four dated between November 1, 2009 and December 13, 2010.

I look forward to receiving your response. Please provide the first set of requested documentation by no later than February 23, 2011. If you have any questions please contact Jason Foster or Brian Downey at (202) 224-5225. All formal correspondence should be sent electronically in PDF format to Brian_Downey@judiciary-rep.senate.gov or via facsimile to (202) 224-3799.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives

The Honorable Alan D. Bersin
Commissioner
United States Customs and Border Protection

March 2011

March 2011

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D. C. 20530

March 2, 2011

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

Dear Senator Grassley:

This responds to your letters, dated February 9, 2011 and February 16, 2011, which reiterated your concerns about gun trafficking along the Southwest border and requested documents that apparently relate to a particular ongoing investigation in Arizona.

We appreciated the opportunity to brief Committee staff on February 10, 2011, regarding the efforts by Department prosecutors and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to interdict weapons sold illegally along the Southwest border and to hold accountable the leadership of criminal organizations that support this trafficking.

As you know, we are not in a position to disclose documents relating to any ongoing investigation, nor can we confirm or deny the existence of records in our ongoing investigative files, based upon the Department's longstanding policy regarding pending matters. We would appreciate the opportunity to confer with your staff if we can respond to your interests in another way, consistent with that policy.

The Attorney General has asked the Acting Inspector General to evaluate the concerns that have been raised about ATF investigative actions in light of its recent review of Project Gunrunner to determine whether additional examination by her Office is appropriate. We appreciate your interest in our law enforcement efforts and again ask that you direct to the Inspector General individuals who believe they have knowledge of misconduct by Department employees.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance in this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Weich".

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

United States Senate
WASHINGTON, DC 20510

March 3, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Attorney General Holder and Acting Director Melson:

It has been over a month since I first contacted Acting Director Melson about serious whistleblower allegations related to a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner” initiative. Several agents alleged that ATF leadership encouraged cooperating gun dealers to engage in sales of multiple assault weapons to individuals suspected of illegally purchasing for resale to Mexican cartels. These agents were motivated to come forward after federal authorities recovered two of the Operation Fast and Furious guns at the scene where a Customs and Border Patrol Agent named Brian Terry was killed.

In response to my letter, the Department of Justice (DOJ) denied that ATF would ever knowingly allow weapons to fall into the hands of criminals, or let firearms “walk” in an operation. On February 9, I wrote to DOJ and attached documents that supported the whistleblower allegations about the guns found at the scene of Agent Terry’s death.¹

My office continues to receive mounting evidence in support of the whistleblower allegations. For example, attached are detailed accounts of three specific instances where ATF allowed firearms to “walk.”² In all three instances, the suspect asks a cooperating

¹ Letter from Senator Grassley to Attorney General Holder. February 9, 2011. Accessed at <http://judiciary.senate.gov/resources/documents/upload/020911GrassleyToHolder-ATF.pdf>.

² ATF Reports of Investigation (ROIs) detailing ATF Phoenix Field Operations from May 8-June 1, 2010. (Attachment 1)

defendant to purchase firearms at a gun dealer who was also cooperating with the ATF. So, two of the three participants in the transactions were acting in concert with the ATF. Yet, the ATF allowed the suspect to take possession of the firearms in each instance. In one case the suspect said that he “assumed the only real risk in their trafficking arrangement when he [REDACTED] ‘erase(d) the (serial) numbers’ from the firearms and ‘take (transports) them...’”³

The whistleblowers did not wait until a federal agent was killed before voicing their concerns internally. Several agents in the Phoenix Gun Trafficking Group (Group VII) voiced their opposition to the ATF’s handling of the case internally first. Group Supervisor David Voth sent an email on March 12, 2010 about the “schism developing amongst our group.”⁴ His response to dissent within the group was to invite those who disagreed with the strategy to find another job:

Whether you care or not people of rank and authority at HQ are paying close attention to this case and they also believe we (Phoenix Group VII) are doing what they envisioned the Southwest Border Groups doing. It may sound cheesy, but we are “The tip of the ATF spear” [sic] when it comes to the Southwest Border Firearms Trafficking.

We need to resolve our issues at this meeting. I will be damned if this case is going to suffer due to petty arguing, rumors, or other adolescent behavior.

... **If you don’t think this is fun, you’re in the wrong line of work—period!** This is the pinnacle of domestic U.S. law enforcement techniques. After this the toolbox is empty. Maybe the Maricopa County Jail is hiring detention officers and you can get paid \$30,000 (instead of \$100,000) to serve lunch to inmates all day.⁵

Two weeks later, on April 2, 2010, Voth sent an email to Assistant U.S. Attorney Emory Hurley and Assistant Special Agent in Charge (ASAC) George Gillett with the subject, “No pressure but perhaps an increased sense of urgency.”⁶ In the email, he reiterated support for the strategy, but cited increasing levels of violence as a reason to move more quickly. Voth wrote:

Our subjects purchased 359 firearms during the month of March alone, to include numerous Barrett .50 caliber rifles. I believe we are righteous in our plan to dismantle this entire organization and to rush in to arrest any one person without taking in to [sic] account the entire scope of the conspiracy would be ill advised to the overall good of the mission. I

³ *Id.*

⁴ Email from Group Supervisor David Voth to Group VII. March 12, 2010. (Attachment 2)

⁵ *Id.* (Emphasis in original.)

⁶ Email from Group Supervisor David Voth to Group VII, Emory Hurley (USAAZ), and George Gillett. April 2, 2010. (Attachment 3)

acknowledge that we are all in agreement that to do so properly requires patience and planning. In the event, however, that there is anything we can do to facilitate a timely response or turnaround by others, we should communicate our sense of urgency with regard to this matter.⁷

Voth also acknowledged in a May 3, 2010 email to his group that “April was the second most violent month during the Calderon administration with 1,231 executions.”⁸ ATF personnel in Mexico reportedly noted the increased violence and contacted ATF Headquarters to express concern over the Operation Fast and Furious strategy of allowing the weapons sales to proceed.

ATF Headquarters was fully aware of the strategy. A copy the Operation Fast and Furious case summary sent to ATF Headquarters states:

This OCDETF [Organized Crime Drug Enforcement Task Force] case is a large scale firearms trafficking case with the firearms being recovered in the Republic of Mexico or on/near the US/Mexico border (El Paso, TX, Nogales, AZ, Douglas, AZ, etc.) To date over 1,500 firearms have been purchased since October 2009 for over one million (\$1,000,000.00) cash in over-the-counter transactions at various Phoenix area FFLs. [REDACTION] There are many facets to this investigation but ATF is attempting to not only secure a straw purchase/dealing in firearms without a license case against various individuals but more specifically to make the bigger connection to the Mexican Cartel/Drug Trafficking Organization (DTO) obtaining these firearms for the best possible case and the most severe charges when it is time to Indict [sic] this case.⁹

Dismantling the Mexican drug cartels is a worthy goal. However, asking cooperating gun dealers to arm cartels and bandits without control of the weapons or knowledge of their whereabouts is an extremely risky strategy. ATF leadership did not allow agents to interdict the weapons in this case. Instead, agents simply monitored the purchases of “suspect guns” and entered them into a database of firearms “suspected to eventually be used in criminal activity.”¹⁰ Over the course of this investigation, weapons allowed to walk were ending up in Mexico and along the Southwestern border. The ATF was well aware that this was happening. For example, in November 2009, four 7.62 caliber weapons were recovered in Naco, Mexico just two weeks after being purchased by one of the ATF’s suspects in Glendale, Arizona.¹¹ Also, in July 2010 a Romanian AK-47

⁷ *Id.*

⁸ Email from Group Supervisor David Voth to Group VII. May 3, 2010. (Attachment 4)

⁹ Phoenix Group VII, Operation Fast and Furious. (Attachment 5)

¹⁰ Email from Senior Firearms Program Specialist to Group VII Agent. June 17, 2010. (Attachment 6)

¹¹ Email: Suspect Person Activity Report. March 18, 2010. (Attachment 7)

variant—the same model found at the scene of Agent Terry’s death—was recovered in Navojoa, Mexico.¹²

In light of this evidence, the Justice Department’s denials simply don’t hold water. On February 4, 2011, the Department claimed that the ATF did not “knowingly” allow the sale of assault weapons to straw purchasers and that “ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation into Mexico.”¹³ Clearly those statements are not accurate. These documents establish that ATF allowed illegal firearm purchases by suspected traffickers in hopes of making a larger case against the cartels. ATF was not alone. The U.S. Attorney’s office appears to have been fully aware and engaged in endorsing the same strategy.

Congress needs to get to the bottom of this.

After close of business last night, I received a one-page response to my letters of February 9 and 16.¹⁴ The response asks that I direct to the Inspector General any individuals who believe they have knowledge of misconduct by Department employees. You should know that just after Agent Terry died in December, at least one whistleblower contacted the Office of Inspector General before contacting my office. Despite reporting the allegations multiple times by phone, Internet, and fax, no one contacted the whistleblower until after my staff contacted the Acting Inspector General directly on February 1.

I have received no documents in response to my February 16, 2011, request. Last night’s DOJ reply cites the Justice Department’s “longstanding policy regarding pending matters” as a reason for withholding documents “relating to any ongoing investigation.”¹⁵ However, as you know, that policy is merely a policy. It is not mandated by any binding legal authority.

There are many instances where the Justice Department and its components choose to provide information about pending investigations to Congress. These examples are not always officially documented, but often occur when there are particularly egregious allegations of government misconduct or there is an extremely high level of public interest in an investigation. Getting to the truth of the ATF whistleblower allegations in this case is extremely important to the family of Brian Terry and should be important to all Americans. There is no reason to wait the unknown number of years it might take for all of the trials and all of the appeals to be exhausted. The time for truth is now.

¹² Email from ATF Violent Crime Analysis Branch and Group VII Agents, detailing a weapon recovery in Mexico. August 6, 2010. (Attachment 8)

¹³ Letter from the Department of Justice to Senator Grassley. February 4, 2011. (Attachment 9)

¹⁴ Letter from the Department of Justice to Senator Grassley. March 2, 2011. (Attachment 10)

¹⁵ *Id.*

In addition to providing the documents I previously requested, please explain how the denials in the Justice Department's February 4, 2011 letter to me can be squared with the evidence.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

cc:

The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation

The Honorable Alan D. Bersin
Commissioner
United States Customs and Border Protection

United States Senate

WASHINGTON, DC 20510

March 4, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

Due to my inquiry into the ATF's Operation Fast and Furious, I am concerned that the ATF may have employed the same risky strategy of encouraging weapons trafficking that was employed elsewhere by the ATF, beyond the Phoenix Field Office and its Operation "Fast and Furious."

As you know, U.S. Immigration and Customs Enforcement (ICE) Agent Jaime Zapata was murdered in Mexico on February 15. According to a press report based on an unnamed source, the weapon used to kill Zapata "was shipped through Laredo with the possible knowledge of the ATF," and "the feds were already investigating the suspects when the gun was sent to Mexico."¹ According to another report in the Dallas Morning News:

In North Texas . . . ATF agents were conducting another Project Gunrunner surveillance operation involving brothers Otilio and Ranferi Osorio. ATF and Drug Enforcement Administration officials organized the November undercover transfer of about 40 weapons believed to be destined for a Mexican drug cartel. When Immigration and Customs Enforcement Agent Jaime Zapata was gunned down Feb. 15 in Mexico, ballistics tests and a partial serial number linked one weapon used in the shooting to Otilio Osorio.²

In its March 1 press release announcing the arrest of the Osorio brothers as well as their next-door neighbor Kelvin Morrison, the Department of Justice (DOJ) confirmed that all three men were being investigated by the ATF as early as last November. Prior to the 40 weapons referenced above being confiscated in Laredo, the Osorio brothers and Morrison provided the guns to an ATF confidential informant in Dallas in a meeting set up by the ATF. After the delivery of the illegal weapons, the three men were stopped by local police. Why were these traffickers not thereafter arrested in November?

¹ Terry Wallace, "ATF: Gun in US agent's death traced to Texas man," *Associated Press*, February 28, 2011.

² "Federal gun-smuggling surveillance program backfires," *Dallas Morning News*, March 3, 2011.

Naturally, this raises questions about whether the ATF strategy of allowing straw purchasers to continue to operate in hopes of making bigger cases may have contributed to the shooting of ICE Agent Jaime Zapata. Please provide written answers to the following questions:

- (1) Although the gun used in the assault on Agent Zapata that has been traced back to the U.S. was purchased on October 10, 2010, how can we know that it did not make its way down to Mexico after the November investigation, when the arrest of these three criminals might have prevented the gun from being trafficked and later used to murder Agent Zapata?
- (2) When did law enforcement first become aware that Morrison purchased the gun?
- (3) Given that the likely recipients of any trafficked guns were so close to the border, did any ATF personnel raise concerns about the possibility of those guns being used against U.S. law enforcement? If so, how did the ATF address those concerns?
- (4) Did any ATF personnel raise concerns about the wisdom of allowing individuals like the Osorio brothers or Morrison to continue their activities after the November weapons transfer? If so, how did the ATF address those concerns?

In addition to answering those questions, please provide all records relating to:

- (5) When law enforcement officials first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison;
- (6) Surveillance that may have been conducted on the Osorio brothers or Morrison prior to the November transfer of weapons between the ATF's confidential informant and the Osorio brothers and Morrison;
- (7) The November transfer; and
- (8) Any surveillance that law enforcement continued to conduct on the Osorio brothers or Morrison after the November transfer.

Please contact my staff no later than March 7, 2011 to schedule a briefing on this matter. Should you have any questions regarding this letter, please contact Tristan Leavitt at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

United States Senate
WASHINGTON, DC 20510

March 4, 2011

Via Electronic Transmission

Alan D. Bersin
Commissioner
United States Customs and Border Protection
1300 Pennsylvania Avenue, N.W.
Washington, DC 20528

Dear Commissioner Bersin:

As you know, I am investigating the connection between the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation “Fast and Furious” and the firefight on December 14, 2010 that claimed the life of Customs and Border Protection (CBP) Border Patrol Tactical Unit (BORTAC) Agent Brian Terry. Terry’s attackers were apparently armed with assault rifles originally purchased as part of ATF’s Operation Fast and Furious. The BORTAC unit used thermal binoculars to identify the rifles and demanded that the suspected aliens drop their weapons. Yet, according to an affidavit filed by the FBI, even after the aliens refused to disarm themselves, the BORTAC unit was under standing orders to first use non-lethal bean bag rounds.¹ The aliens responded with gunfire, and Agent Terry was killed in the ensuing exchange.

It’s difficult to understand why CBP would require its agents to use less-than-lethal force against people who are clearly armed and dangerous. Further, Agent Brian Terry’s brother, Kent Terry, has said that of the four individuals in the BORTAC unit, only two were armed with standard firearms at all. Two carried *only* bean bag guns. These agents did not even have the means to defend themselves.

Please provide copies of all records relating to:

- (1) CBP’s policy on the use of force in circumstances such as those Brian Terry reportedly faced, and
- (2) Any change to that policy in the last two years.

¹ Affidavit of FBI Agent Scott Hunter, December 29, 1020, Case No. 10-10251M. (Attachment 1)

In addition, please contact my staff no later than March 7, 2011 to schedule a briefing on this matter. Should you have any questions regarding this letter, please contact Tristan Leavitt at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

cc: The Honorable Janet Napolitano
Secretary
United States Department of Homeland Security
301 7th Street, N.W.
Washington, DC 20528

United States Senate
WASHINGTON, DC 20510

March 4, 2011

Via Electronic Transmission

The Honorable Hillary Rodham Clinton
Secretary
U.S. Department of State
Harry S. Truman Building
2201 C Street, NW
Washington, DC 20520

Dear Secretary Clinton:

Over the past month I have been investigating the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner initiative. According to several agents, ATF leadership encouraged gun dealers to engage in sales of multiple assault weapons to individuals suspected of illegally purchasing for resale to Mexican cartels. I am looking into the connection between Operation Fast and Furious and the firefight on December 14, 2010 that claimed the life of CBP Agent Brian Terry.

I understand that Assistant Attorney General Lanny Breuer, his deputy, and other officials met in Mexico City in the summer of 2010 to discuss “on-going investigations” related to Project Gunrunner with the U.S. Ambassador to Mexico. Accordingly, please provide all records relating to any such meeting that may have occurred from June through September 2010, to include meeting minutes, briefing notes, emails, or cables.

I would appreciate a response no later than March 11, 2011. If you have any questions about this request, please contact Jason Foster at (202) 224-5225. Thank you for your prompt attention to this important matter.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

United States Senate
WASHINGTON, DC 20510

March 8, 2011

VIA ELECTRONIC TRANSMISSION

Kevin L. Perkins, Chair
Integrity Committee
Council of Inspectors General on Integrity and Efficiency
935 Pennsylvania Ave., NW, Room 3973
Washington, DC 20535-0001

**Re: Whistleblower allegations involving Operation Fast and Furious, a
Project Gunrunner case at the Bureau of Alcohol, Tobacco,
Firearms, and Explosives (ATF)**

Dear Mr. Perkins:

Agent John Dodson and other whistleblowers have alleged that the ATF intentionally allowed thousands of weapons to be illegally trafficked to Mexico.¹ ATF appears to have acted with the full knowledge and approval of the Justice Department. Hundreds of these firearms later turned up at crime scenes on both sides of the border, including at the murder scene of Customs and Border Protection Agent Brian Terry.

At first, ATF and the Justice Department repeatedly denied the allegations, asserting that they were "false." However, now that I have presented extensive documentary evidence supporting the claims, Attorney General Holder has asked the Justice Department's Office of Inspector General (DOJ-OIG) to conduct a review. Unfortunately, there are three reasons that the public may be unable to trust that the DOJ-OIG is completely disinterested and independent.

First, the position of Justice Department Inspector General is currently vacant. The Acting Inspector General just recently took over for Glenn Fine. Thus, the office is without a Presidentially-appointed and Senate-confirmed leader. In my experience, acting inspectors general tend to function as caretakers of the office. They are not necessarily equipped to take on an entrenched bureaucracy and challenge senior officials with the tough questions necessary to get to the bottom of a controversy as

¹ John Solomon, David Heath, and Gordon Whitkin, "ATF Let Hundreds of U.S. Weapons Fall into Hands of Suspected Mexican Gunrunner," *The Center for Public Integrity* (Mar 3, 2011), <http://www.publicintegrity.org/articles/entry/2976>.

Kevin L. Perkins
March 8, 2011
Page 2 of 3

serious and far-reaching as this one. That would be especially true if the acting inspector general is seeking the nomination to fill the position on a long-term basis.

Second, the DOJ-OIG was aware of the allegations long before the Attorney General's request and did nothing. Agent Dodson had already contacted the DOJ-OIG in December, just after Agent Terry's death. He received no reply. After contacting my office, Agent Dodson contacted DOJ-OIG again, and still received no reply. No one from the office contacted him to gather information about his allegations until after my staff contacted the Acting Inspector General directly on February 1, 2011. Given that the DOJ-OIG initially failed to follow-up, it might have an incentive to minimize the significance of the allegations in order to avoid the appearance that its own inaction contributed to the problem in the last few months.

Third, I understand that ATF officials have cited a DOJ-OIG report critical of Project Gunrunner² as one of the factors that prompted the shift to a riskier strategy of letting guns be trafficked rather than arresting straw buyers. DOJ-OIG may be sensitive to the appearance that its previous criticism created the conditions under which ATF and DOJ felt pressured to take risks in order to make a "big case" against the cartels. Again, that could create an incentive to minimize the significance of the allegations.

For these reasons, the DOJ-OIG does not appear to be completely disinterested in the outcome of its review. Without a greater level of independence, it will be difficult for the public to have faith in the impartiality and integrity of the result. Therefore, I request that the Acting Inspector General recuse her office and that a disinterested inspector general's office be selected to conduct the review.

In addition, I request that the scope of the inquiry be expanded beyond the underlying decision to allow guns to "walk." The investigation should also carefully examine the circumstances surrounding false and misleading statements to Senate Judiciary Committee staff and to me in response to questions about these allegations over the past several weeks.

² Department of Justice Office of Inspector General, *Review of ATF's Project Gunrunner, Evaluation and Inspections Report I-2011-001* (November 2010), <http://www.justice.gov/oig/reports/ATF/e1101.pdf>. ("ATF's focus remains largely on inspections of gun dealers and investigations of straw purchasers, rather than on higher-level traffickers, smugglers, and the ultimate recipients of the trafficked guns.")

Kevin L. Perkins
March 8, 2011
Page 3 of 3

Attached for your reference are copies of my correspondence with the ATF and the Justice Department, beginning on January 27, 2011. Please provide a written reply no later than March 15, 2011. Thank you for your prompt attention to this extremely important matter.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

cc: Attorney General Eric Holder
U.S. Department of Justice

Acting Inspector General Cynthia A. Schnedar
U.S. Department of Justice

Acting Director Kenneth Melson
Bureau of Alcohol, Tobacco, Firearms, and Explosives

Attachments



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 8, 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 March 3, 2011, and March 4, 2011, which reiterated your concerns about investigations into weapons trafficking along the Southwest border.

We appreciate your continuing concern about this matter. We have referred your letters and the attached documents to the Department's Office of the Inspector General (OIG). As you know, the Attorney General has asked the Acting Inspector General to evaluate concerns raised about Project Gunrunner, the effort by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to interdict weapons purchased illegally for transport to Mexican cartels. We urge you to provide the OIG with any additional information that you think would be helpful to its review.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance in this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Weich".

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

LAMAR S. SMITH, Texas
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
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TED POE, Texas
JASON CHAFFETZ, Utah
TOM REED, New York
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
BEN QUAYLE, Arizona

JOHN CONYERS, JR., Michigan
RANKING MEMBER

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ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISSI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA T. SÁNCHEZ, California
DEBBIE WASSERMAN SCHULTZ, Florida

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

March 9, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Holder,

We write to express our concerns about allegations that the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Operation Gunrunner may have been complicit in the illegal transfer of firearms into Mexico. According to media reports, the Phoenix-based program known as "Fast and Furious" intentionally allowed straw buyers for criminal organizations to purchase thousands of guns so that ATF could track them across the border.

We find it ironic that the government allowed guns to be trafficked into Mexico as part of a program designed to stop guns from being trafficked into Mexico. We are also troubled that ATF engaged in activities that may have facilitated the transfer of guns to violent drug cartels while simultaneously attempting to restrict lawful firearms sales by border-area firearms dealers. In December, ATF sought to impose additional reporting requirements on semi-automatic rifles, a proposal that we strongly oppose.

The program resulted in a large flow of weapons across the border to Mexico. According to the Center for Public Integrity, ATF allowed nearly 2,000 guns—valued at over one million dollars—to cross the border to known criminal organizations.¹ As would be expected, many of the guns were used in violent crimes. Worse, two guns from the program were found at the murder scene of Customs and Border Protection Agent Brian Terry in December.

¹ John Solomon, David Heath, and Gordon Witkin, *ATF Let Hundreds of U.S. Weapons Fall into Hands of Suspected Mexican Gunrunners*, The Center for Public Integrity (March 3, 2011), available at <http://www.publicintegrity.org/articles/entry/2976/>.

The Hon. Eric H. Holder, Jr.
March 9, 2011
Page 2

ATF's strategy to allow weapons to flow into the hands of criminals carried serious and obvious risks. More disturbing, however, is that ATF appears to have accepted these risks without due regard for the consequences

ATF initiated Operation Gunrunner after the Department of Justice Inspector General (IG) criticized the ATF's gun tracing ability. In a 2010 report, the IG wrote:

Despite the increased activity related to Project Gunrunner, ATF is not using intelligence effectively to identify and target firearms trafficking organizations operating along the Southwest border and in Mexico. Moreover, ATF's expansion of its automated system (eTrace) to trace guns seized in Mexico has yielded very limited information of intelligence value.²

In addition, there seems to have been little effective coordination between ATF and the Department as a whole. While guns continued to cross the border, the Department was apparently slow to approve wiretaps and to bring prosecutions. Internal ATF documents show that ATF's supervisors became increasingly concerned about the pace of the investigations. It was only this January, 15 months after ATF initiated the program and a month after agent Terry's murder, that the Department finally issued its first indictment based on evidence from the program.

We commend your request that the Department's Inspector General investigate these allegations. In the meantime, we ask that the Department respond to the following questions:

1. How many weapons have been allowed to pass to Mexico under the program known as "Fast and Furious"? Is the program still active?
2. Who at ATF Headquarters approved the program?
3. Who in the U.S. Attorney's Office for the District of Arizona approved the program? On what authority did the Office approve the program?
4. Did ATF or the U.S. Attorney's Office in Phoenix coordinate the "Fast and Furious" program with the Department? Did the Department approve the strategy?
5. What changes or improvements has ATF made to its eTrace program and its ability to use intelligence to target gun trafficking organizations in general?
6. Does ATF view the "Fast and Furious" program as a success?

Thank you for your attention to this matter. We respectfully request that the Department respond to these questions by Friday, March 18, 2011.

Sincerely,

² Review of ATF's Project Gunrunner, U.S. Dept. of Justice Office of the Inspector General, p. vi (2010), available at <http://www.justice.gov/oig/reports/ATF/e1101.pdf>.

The Hon. Eric H. Holder, Jr.
March 9, 2011
Page 3

Lamar Smith

Jim L. Greenwood

Bob Latta

Paul E. Ryan

Tom Marino

Tim Wirth

Frey Cardy

Scott Franks

J. R. Gohmert

Bob Goodenow

Elton Gallegly

Howard Coble

~~ATW~~

Steve King

cc: The Honorable John Conyers, Jr.

NATIONAL RIFLE ASSOCIATION OF AMERICA
 11250 WAPLES MILL ROAD
 FAIRFAX, VIRGINIA 22030



March 9, 2011

The Hon. Patrick J. Leahy
 Chairman
 Senate Committee on the Judiciary
 224 Dirksen Building
 Washington, DC 20510

The Hon. Charles E. Grassley
 Ranking Member
 Senate Committee on the Judiciary
 152 Dirksen Building
 Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

I am writing to ask you to conduct expedited hearings on firearms trafficking enforcement tactics used by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

As the nation's oldest and largest group dedicated to the civil rights of firearms owners, we have felt firsthand the effects of recent violence along the Mexican border. Among the victims of the bloodshed was NRA Life member Robert Krentz, murdered on his Arizona ranch by border-crossing criminals. We've also seen the violence exploited as an excuse for promoting many gun control proposals, most of which had been suggested earlier as "solutions" to other problems.

Law enforcement agencies have sufficient laws at their disposal to address this crisis. Among the relevant laws are those outlawing transfers to prohibited persons such as illegal aliens and nonimmigrant aliens, transfers for use in violent and drug trafficking crimes, and illegal exportation of firearms and ammunition. Current and proposed laws that simply affect honest Americans shouldn't be any part of that plan.

To be clear, the National Rifle Association strongly supports the efforts of federal, state and local law enforcement officials to disrupt criminal enterprises, and thousands of our members proudly serve in those agencies. However, the Department of Justice's Inspector General has criticized the BATFE for focusing on investigations of straw purchasers "rather than on higher-level traffickers, smugglers, and the ultimate recipients of the trafficked guns." And more recent national media reports have raised very serious allegations that even while the Inspector General's review was going on, BATFE leaders were undertaking a new approach to the issue—an approach that can only be called wrongheaded, foolish and reportedly deadly.

Their project—known as “Fast and Furious” and apparently conducted over the strong objections of rank and file agents—reportedly allowed over 2,000 firearms to be sold to individuals already linked to Mexican drug cartels. Many of those transactions were reported as suspicious by the licensed firearms dealers themselves, but BATFE reportedly encouraged them to proceed with these sales, which the dealers would otherwise have turned down. Hundreds of those guns have reportedly been traced to criminal activity so far, including two that were discovered at the scene of a shootout that claimed the life of a U.S. Border Patrol agent.

It’s tragically ironic that while this plan was apparently unraveling, the BATFE was also seeking White House approval to demand reporting of certain multiple rifle sales. That reporting requirement would flood the agency with even more reports of legal transactions, while likely driving criminal traffickers further underground.

We are clearly at a critical point on this issue. Without aggressive enforcement of existing laws, the situation on the border will continue to deteriorate, claiming the lives of innocent citizens and law enforcement personnel alike. Yet reckless enforcement tactics may already have cost lives, while ineffective regulatory requirements would waste scarce resources and undermine Americans’ Second Amendment rights.

Oversight of these serious problems should not be conducted by the very agencies that reportedly created them. Therefore, we respectfully urge you to use every power at your disposal to review the BATFE’s investigative tactics and regulatory proposals with respect to southwest border issues.

The investigation should consider the effectiveness of past BATFE enforcement tactics, as well as the conduct of the “Fast and Furious” operation and the bureau’s response to internal criticism of that initiative. Any investigation should also examine the responses by the BATFE and the Department of Justice to earlier congressional inquiries about the “Fast and Furious” program. (In particular, there seems to be good reason to question the Justice Department’s statement on February 4 that the BATFE never sanctioned the sale of guns “to a straw purchaser who then transported them into Mexico.”)

We greatly appreciate your attention to this issue. If you have any questions, please don’t hesitate to contact me personally.

Sincerely,



Chris W. Cox
Executive Director
NRA Institute for Legislative Action

EVERY DOOLEY POST & EVERY, LLP

Attorneys at Law
90 Concord Avenue
Belmont, MA 02478

Telephone: (617) [REDACTED]

Fax: (617) [REDACTED]

March 10, 2011

Transmitted Electronically and via Overnight Delivery

Brian_Downey@judiciary-rep.senate.gov

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

Re: George T. Gillett, Jr.
Assistant Special Agent in Charge, Phoenix Field Division

Dear Senator Grassley;

By way of introduction, this office represents George T. Gillett, Jr., Assistant Special Agent in Charge of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Phoenix Field Division. Recently, you sent several correspondences to Kenneth E. Melson, Acting Director of ATF, addressing multiple issues emanating from an ATF operation known as “Fast and Furious.”¹ These letters allege that ATF knowingly permitted the sale of hundreds of weapons to known gunrunners and/or the Mexican cartel, that ATF’s actions resulted in the death of U.S. Border Patrol Agent, Brian Terry and that the “whistleblowing” agents who brought ATF’s purported wrongdoing to light have been subjected to unlawful retaliation at the hands ATF Management. You reference ASAC George Gillett, by name, in at least three of these letters. Moreover, you allege that ASAC Gillett engaged in some level of misconduct and/or illegal activity in connection with the “Fast and Furious”/“Project Gunrunner” initiative.

¹ Operation “Fast and Furious” was a component of the overarching, national ATF initiative known as “Project Gunrunner.”

At the outset of this correspondence, we wish to express our sincere respect and appreciation for your work as an advocate of federal whistleblowers. Our office has also long fought for the implementation of increased protections for federal whistleblowers. We have defended federal employees who have been subjected to retaliation based on their protected whistleblowing in a number of cases. Some of the more noteworthy cases in which we have served as counsel, at some point, have been: *Chambers v. Dept. of the Interior*, *Parikh v. Dept. of Veterans Affairs* and *MacLean v. Dept. of Homeland Security*. On far too many occasions, we have witnessed, firsthand, the unlawful, retaliatory treatment of federal employees who have had the courage to report agency corruption and threats to the public safety. In this matter, however, we are concerned that you have inaccurately and prematurely judged ASAC Gillett's actions without giving proper review and consideration to all of the relevant facts.

At all times relevant to this matter, ASAC Gillett's actions were consistent with and in furtherance of the "Fast and Furious"/"Project Gunrunner" initiatives; operations that were explicitly approved and consistently overseen by DOJ, ATF, and the U.S. Attorney's Office. Moreover, with respect to the whistleblower on whose behalf you wrote, ASAC Gillett's actions were not motivated by retaliation, but rather out of legitimate concern about the release of sensitive grand jury information and were effected at the explicit direction of his superiors. These facts notwithstanding, our primary purpose in writing is not to address your recently communicated inquiries. Rather, our overarching concern relates primarily to ASAC Gillett's safety and protection.

As you are aware, your letters to ATF are a matter of public record and are easily procured by any private citizen with Internet access. In addressing your concerns about Project Gunrunner, your letters attributed the alleged impropriety to individually named ATF employees. With regard to our client, you pointedly accuse ASAC Gillett of engaging in whistleblower retaliation and acting with negligent disregard with respect to Project Gunrunner's implementation and operations. The serious allegations you have levied against ASAC Gillett in the court of public opinion have hindered his right to fully and properly defend against these allegations and have effectively prematurely indicted a federal law enforcement officer with more than 20 years of faithful service.

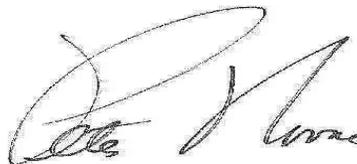
Your inquiries to ATF concerning Project Gunrunner have garnered significant public attention. In effect, the media has taken your salacious accusation as a definitive finding that ASAC Gillett has committed some level of misconduct resulting in the death of a brother federal agent. As you know, a cursory Internet search allows private citizens to locate and contact virtually anyone (including federal employees) with unnerving ease. In the wake of this national media coverage, ASAC Gillett has received various written threats from unidentified members of the public. We are concerned that continued airing of your concerns that prematurely attribute blame to certain named individuals will result in further harm to ASAC Gillett.

We are absolutely convinced that the allegations against ASAC Gillett will be dispelled once all relevant information is aired in the proper forum. However, until that time, we respectfully request that you refrain from publicly attributing allegations of purported malfeasance to ASAC Gillett in any forthcoming correspondence or in communications with the media. This will preserve ASAC Gillett's right to fully and properly defend against any such allegations and simultaneously safeguard his personal safety and the safety of his family.

We thank you, in advance, for your anticipated cooperation and ask that you contact us with any questions or concerns regarding this matter.

Very truly yours,

AVERY DOOLEY POST & AVERY, LLP

A handwritten signature in black ink, appearing to read "Peter H. Noone". The signature is stylized and cursive.

Peter H. Noone

PHN/caf

*Secretary*U.S. Department of Homeland Security
Washington, DC 20528**Homeland
Security**

March 11, 2011

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

Dear Senator Grassley:

Thank you for the opportunity to testify Wednesday in front of the Senate Judiciary Committee on the Department of Homeland Security's (DHS) work to keep our Nation safe from terrorism and other threats, as well as our historic border security and immigration enforcement efforts.

I wanted to follow up with you regarding the tragic murder of Border Patrol Agent Brian Terry while attempting to apprehend armed subjects in Peck Canyon south of Tucson, Arizona, on December 14, 2010. While the Federal Bureau of Investigation's (FBI) investigation of Agent Terry's murder continues, I wanted to share with you important details regarding U.S. Customs and Border Protection's (CBP) use of force policy, as well as the weapons that our CBP Agents and Officers carry when in the line of duty.

Like law enforcement agencies across the United States, CBP Officers and Agents, including the U.S. Border Patrol, are equipped with a variety of lethal and less-lethal weapons. At no point, however, are our law enforcement personnel ever performing their duties equipped with only a less-lethal device. Standard equipment for all CBP Officers and Agents include HK P2000 handguns. Members of Border Patrol Tactical Units (BORTAC), like Agent Terry and his team, carry these sidearms along with additional weaponry, often including M4 rifles. On the night of his murder, all members of Agent Terry's team were armed with lethal weapons, and Agent Terry himself carried a HK P2000 handgun and a M4 long rifle. As was noted in FBI Special Agent Scott Hunter's December 29, 2010 affidavit, Agent Terry's BORTAC team used their weapons to return fire on the suspects.

More broadly, CBP's use of force policy, similar to use of force policies for all law enforcement agencies, authorizes Officers and Agents to use deadly force when they have a reasonable belief that a subject poses an immediate danger of death or serious physical injury to the Officer or Agent or to another person. The decision on whether to use deadly force rests with the Officers and Agents in the field. CBP law enforcement personnel have never been

www.dhs.gov

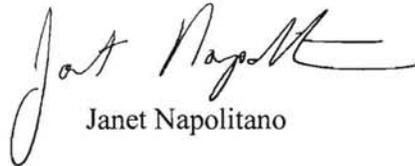
The Honorable Charles Grassley
Page 2

ordered—now or in the past—to use less-lethal devices before using deadly force. Our Officers and Agents are empowered to determine the appropriate level of force in defense of themselves, their fellow Officers and Agents, or innocent third parties. We would like to provide you with an in-person briefing on the specifics of the use of force policy. I will have my staff be in touch with yours to arrange this briefing.

CBP will continue to be relentless in its commitment to securing our Nation's borders, while remembering all of the men and women who have made the ultimate sacrifice. We will not tolerate these acts against our Agents or any other law enforcement organization and will continue to do everything possible to bring those responsible to justice.

Should you wish to discuss this further, please do not hesitate to contact me at (202) 282-8203.

Yours very truly,



Janet Napolitano

cc: The Honorable Jon Kyl, Senate Committee on the Judiciary

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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CHARLES E. GRASSLEY, IOWA
 ORRIN G. HATCH, UTAH
 JON KYL, ARIZONA
 JEFF SESSIONS, ALABAMA
 LINDSEY O. GRAHAM, SOUTH CAROLINA
 JOHN CORNYN, TEXAS
 MICHAEL S. LEE, UTAH
 TOM COBURN, OKLAHOMA

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

March 15, 2011

Via Electronic Transmission

The Honorable Michele M. Leonhart
 Administrator
 U.S. Drug Enforcement Administration
 U.S. Department of Justice
 700 Army Navy Drive
 Arlington, VA 22202

Dear Administrator Leonhart:

Since January, I have been investigating the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner” initiative. According to several agents, ATF leadership encouraged gun dealers to engage in sales of multiple weapons to individuals suspected of illegally purchasing for resale to Mexican cartels.

I understand from documents and other information provided that Drug Enforcement Administration (DEA) Agents were aware of Operation Fast and Furious and possibly deeply involved in the operation. Reportedly, DEA funds were used to facilitate operations in ATF’s Operation Fast and Furious.

Accordingly, in order to get a better understanding of DEA’s involvement with Operation Fast and Furious please provide all records relating to communications between supervisors and DEA headquarters regarding DEA’s involvement. Additionally, I request that you arrange for knowledgeable DEA supervisors to brief members of my staff no later than March 25, 2011.

I would appreciate a response to this letter no later than March 18, 2011. If you have any questions about this request, please contact Brian Downey at (202) 224-5225. Thank you for your prompt attention to this important matter.

Sincerely,

Charles E. Grassley
 Ranking Member

cc: The Honorable Eric H. Holder, Jr.
 Attorney General, United States Department of Justice

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

March 15, 2011

Via Electronic Transmission

The Honorable John T. Morton
 Director
 U.S. Immigration and Customs Enforcement
 U.S. Department of Homeland Security
 500 12th Street, SW
 Washington, DC 20536

Dear Director Morton:

Since January, I have been investigating the Bureau of Alcohol, Tobacco Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner” initiative. According to several agents, ATF leadership encouraged gun dealers to engage in sales of multiple assault weapons to individuals suspected of illegally purchasing for resale to Mexican cartels.

I understand from documents in my possession that Immigration and Customs Enforcement (ICE) Agents were aware of Operation Fast and Furious and possibly deeply involved in the operation. On March 9, at an oversight hearing of the Department of Homeland Security, I questioned Secretary Napolitano regarding possible ICE participation in Operation Fast and Furious. Secretary Napolitano indicated that she was unaware of a specific ICE Agent being part of ATF’s operation.

Accordingly, to get a better understanding of ICE’s involvement with Operation Fast and Furious please provide all records relating communications between ICE supervisors and ICE headquarters regarding ICE’s involvement. Additionally, I request that you arrange for knowledgeable ICE supervisors to brief members of my staff no later than March 25, 2011.

I would appreciate a response by no later than March 18, 2011. If you have any questions about this request, please contact Brian Downey at (202) 224-5225. Thank you for your prompt attention to this important matter.

Sincerely,



Charles E. Grassley
 Ranking Member

cc: The Honorable Janet Napolitano
 Secretary, United States Department of Homeland Security

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN
 DIANNE FEINSTEIN, CALIFORNIA
 CHARLES E. SCHUMER, NEW YORK
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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

March 16, 2011

Via Electronic Transmission

The Honorable Alan D. Bersin
 Commissioner
 U.S. Customs and Border Protection
 U.S. Department of Homeland Security
 1300 Pennsylvania Avenue, NW
 Washington, DC 20229

Dear Commissioner Bersin:

Since January, I have been investigating the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner” initiative. According to several agents, ATF leadership encouraged gun dealers to engage in sales of multiple weapons to individuals suspected of illegally purchasing them for resale to Mexican cartels. Specifically, I am seeking information on whether CBP officials had an opportunity to seize weapons from straw purchasers on two specific occasions.

First, on March 8, 2011, federal authorities indicted 11 defendants, including the Mayor and the Police Chief of a small town in New Mexico, for conspiring to smuggle weapons from the United States into Mexico.¹ According to the indictment, on January 14, 2010, Blas Gutierrez and Miguel Carrillo were pulled over near the border and were found in possession of eight weapons, including three AK-47-type pistols.² Also according to the indictment, two of the weapons were later smuggled to Mexico, where they were found this month, March 2011.³ I understand that CBP may have been the agency that conducted the vehicle stop referenced in the indictment and that some of the weapons may have been connected to Operation Fast and Furious. However, CBP allegedly let the individuals go, perhaps because it failed to determine that the weapons or individuals were connected to ATF operation at the time of the vehicle stop.

Second, CBP officials allegedly stopped Jaime Avila near the border in the spring or summer of 2010. He allegedly had the two WASR-10 rifles in his possession that were later found at the scene of Agent Brian Terry’s murder, along with over thirty additional weapons. CBP officials contacted ATF or an Assistant United States Attorney who allegedly instructed CBP to allow Avila proceed without seizing the weapons.

¹ Indictment, filed March 8, 2011, *United States v. Villalobos*, Case 2:11-cr-00487. (Attachment 1)

² *Id.* at 3.

³ *Id.*

In order to ascertain the extent to which these accounts are accurate, please ensure that CBP officials are prepared to answer questions about these two incidents in addition to questions about the use of force policy at the staff briefing scheduled for this Friday. If you have any questions about this request, please contact Brian Downey at (202) 224-5225. Thank you for your prompt attention to this important matter.

Sincerely,



Charles E. Grassley
Ranking Member

Attachment

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

DAN BURTON, INDIANA
JOHN L. MICA, FLORIDA
TODD RUSSELL PLATTS, PENNSYLVANIA
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PAUL A. GOSAR, D.D.S., ARIZONA
RAUL R. LABRADOR, IDAHO
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DESJARLAIS, M.D., TENNESSEE
JOE WALSH, ILLINOIS
TREY GOWDY, SOUTH CAROLINA
DENNIS A. ROSS, FLORIDA
FRANK C. GUINTA, NEW HAMPSHIRE
BLAKE FARENTHOLD, TEXAS
MIKE KELLY, PENNSYLVANIA

LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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FACSIMILE (202) 225-3974
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<http://oversight.house.gov>

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PETER WELCH, VERMONT
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CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPEIER, CALIFORNIA

March 16, 2011

Mr. Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

Recent media reports have raised grave questions about your department's handling of operations involving gun trafficking into Mexico. In the aftermath of the tragic killings of Border Patrol Agent Brian Terry and Immigration and Customs Enforcement Agent Jaime Zapata, it is imperative that you act decisively to assuage the public's deep suspicions that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has a policy of permitting – and even encouraging – the movement of guns into Mexico by straw purchasers. The presence of these guns may have subsequently led to the deaths of hundreds of people on both sides of the border, including Agents Terry and Zapata.¹

It has been brought to my attention that you are not cooperating with congressional inquiries about Project Gunrunner and Operation Fast and Furious. Last week, Senator Charles Grassley expressed frustration at ATF's responsiveness in a letter to the Department of Justice (DOJ): "I'm still asking questions and we're getting the runaround from the Justice Department, [t]hey're stonewalling. And the longer the wait, the more they fight, the more egg that they're going to have on their face."²

Operation Fast and Furious is part of ATF's Project Gunrunner program designed to prevent illegal guns from crossing the border into Mexico. ATF implemented the plan in June 2007 and outlined four key areas of Gunrunner: expansion of gun tracing in Mexico, international coordination, domestic activities, and intelligence.

¹ Kim Murphy and Ken Ellingwood, *Mexico Lawmakers Demand Answers about Guns Smuggled under ATF's Watch*, L.A. TIMES, Mar. 11, 2011, <http://www.latimes.com/news/nationworld/nation/la-naw-mexico-guns-20110311,0,6476764,full.story>.

² William Lajeunesse, *ATF, DOJ Launch Damage Control Effort over Growing Project Gunrunner Scandal*, FOXNEWS, Mar. 9, 2011, <http://www.foxnews.com/us/2011/03/09/project-gun-runner-scandal-border/?test=latestnewsrunner> Scandal.

Mr. Kenneth E. Melson
 March 16, 2011
 Page 2

A November 2010 DOJ Office of the Inspector General (OIG) report detailed many shortcomings with the program, especially its inability to find and arrest higher-level traffickers.³ With direct approval from ATF headquarters in Washington, a special ATF strike force let federally licensed gun shops sell about 1765 firearms to straw buyers for the drug cartels over a 15 month span beginning in October 2009.⁴ Some 797 of the guns were recovered as a result of criminal activity on both sides of the border, including two at the site of the killing of Agent Terry.

At the same time of the release of the OIG report – and perhaps influenced by it – ATF formalized its policy of letting American guns reach the drug cartels.⁵ Field agents vociferously objected, aghast at the prospect of high-caliber weapons being allowed to enter Mexico.⁶ Senior Agent John Dodson was one of those agents who came forward to complain that the ATF had allowed the guns to be “walked” into Mexico.⁷ ATF even videotaped suspected drug cartel suppliers as they loaded AK-47 type assault rifles into their cars and permitted them to transport those firearms across the border.⁸ ATF officials failed to report this to Mexican authorities⁹ and eventually lost track of hundreds of these guns.¹⁰ Unsurprisingly, these weapons began showing up at crime scenes both in Mexico and the U.S. Notably on December 14, 2010, two “walked” rifles turned up at Agent Terry’s murder site.

Senator Grassley requested specific documents about this policy but, thus far, has received nothing from ATF or DOJ. In fact, Special Agent In Charge (SAC) William D. Newell has steadfastly denied that this policy even exists, as has DOJ.¹¹ When confronted by documentary evidence from Senator Grassley’s office, however, Attorney General Holder asked the Justice Department’s Office of Inspector General (DOJ-OIG) to conduct a review. Such a review by the Acting Inspector General, however, is inadequate. As Senator Grassley wrote to Kevin Perkins, Chair of the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency, “the DOJ-OIG does not appear to be completely disinterested in the outcome of its review. Without a greater level of independence, it will be difficult for the public to have faith in the impartiality and integrity of the result.”¹²

³ Department of Justice Office of Inspector General, Review of ATF’s Project Gunrunner, Evaluation and Inspection Report I-2011-001(Nov. 2010), <http://www.justice.gov/oig/reports/ATF/e1101.pdf>.

⁴ John Solomon, David Heath, and Gordon Whitkin, *ATF Let Hundreds of U.S. Weapons Fall into Hands of Suspected Mexican Gunrunners*, CENTER FOR PUBLIC INTEGRITY, Mar 3, 2011, <http://www.publicintegrity.org/articles/entry/2976/>.

⁵ *Id.*

⁶ *Id.*

⁷ Sharyl Atkisson, *Agent: I Was Ordered To Let U.S. Guns into Mexico*, CBS NEWS, Mar. 3, 2011, <http://www.cbsnews.com/stories/2011/03/03/eveningnews/main20039031.shtml>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Murphy & Ellingwood, *supra* note 1.

¹¹ Solomon, *et al.*, *supra* note 4.

¹² Letter from Sen. Charles Grassley, Ranking Member, S. Jud. Comm., to Kevin L. Perkins, Chair, Integrity Comm., Council of Inspectors General on Integrity and Efficiency (Mar. 8, 2011).

Mr. Kenneth E. Melson
March 16, 2011
Page 3

I wholeheartedly agree with this sentiment. Given the entanglement of the DOJ-OIG report with the policy change, it has become clear that the Acting Inspector General cannot conduct an objective and independent inquiry sufficient to foster public confidence. Only a full congressional investigation can achieve this result and restore the public's faith in the workings of the ATF. Therefore, I am requesting that you provide the following documents and information:

1. Documents and communications relating to the genesis of Project Gunner and Operation Fast and Furious, and any memoranda or reports involving any changes to either program at or near the time of the release of the DOJ-OIG report about Project Gunrunner in November 2010.
2. A list of individuals responsible for authorizing the decision to "walk" guns to Mexico in order to follow them and capture a "bigger fish."
3. Following the fatal shooting of Agent Brian Terry, did ATF conduct an investigation of the circumstances of his killing? Did you determine whether the two guns found at the crime scene were permitted to cross into Mexico?
4. Is ATF aware what weapon was responsible for the death of Agent Brian Terry?
5. All documents, including e-mails, relating to communications between the ATF and the Federal Firearms Licensee (FFL) who sold weapons to Jaime Avila, including any Report of Investigation (ROI) or other records relating to a December 17, 2009 meeting "to discuss his role as an FFL during this investigation."
6. A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF headquarters in the spring of 2010.
7. All documents, including e-mails, relating to communications regarding Operation Fast and Furious between ATF headquarters and Special Agent in Charge (SAC) William D. Newell, Assistant Special Agents in Charge Jim Needles and George Gillette, Group Supervisor David Voth, or any Case Agent from November 1, 2009 to the present. The response to this request should include a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of Agent Brian Terry.
8. All documents and communications related to complaints or objections by ATF agents in Phoenix about letting straw buyers with American guns enter Mexico.

The Committee on Oversight and Government Reform is the principal oversight Committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Mr. Kenneth E. Melson
March 16, 2011
Page 4

We request that you provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on March 30, 2011. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

If you have any questions about this request, please contact Ashok Pinto or Henry Kerner of the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely



Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member



Office of the
Inspector General

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

March 16, 2011

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

Dear Senator Grassley:

This is in response to your letter of March 8, 2011, to Kevin L. Perkins, in his capacity as Chair of the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE). You expressed concern that the Department of Justice's Office of Inspector General would not be able to apply a publicly acceptable level of independence and objectivity in carrying out a review that the Attorney General had requested it to perform regarding an operation of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

In accordance with the Integrity Committee's rules, because this matter involved the DOJ-OIG, Mr. Perkins, as an official of the FBI and other Justice Department staff recused themselves from any involvement in this matter. Accordingly, as the Committee's senior member, I am acting as Chairperson for this case.

At a special meeting called on March 14, 2011, to consider the issues identified in your letter, the membership concluded unanimously that neither the Committee's authorizing statute nor its internal rules and procedures apply to the matters you identified. The Committee's jurisdiction, as defined by section 7(d)(1) of the Inspector General Reform Act of 2008 (Public Law 110-409, October 14, 2008), is to "receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and staff members." In this context, the Committee has consistently interpreted its mandate to extend only to questions of improper or wrongful conduct on the part of individuals occupying positions of significant responsibility in Inspector General offices, and then, as required by the statute, make recommendations, where appropriate, to the Chair of the CIGIE. However, your statement of reasons why "the public may be unable to trust that the DOJ-OIG is completely disinterested and independent" appears to involve concerns of an institutional or organizational nature, about which the Committee is not empowered to act. Furthermore, the IC has no authority to mandate the recusal of an Office of Inspector General.

However, as the name Integrity Committee implies, scenarios may occur from time to time that cause the membership to comment in a manner that goes beyond the chartered structure. Your stated reservations about the suitability of the DOJ-OIG to properly investigate the Project Gunrunner case present one of those instances.

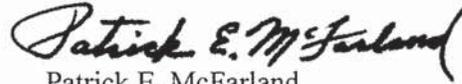
Honorable Charles E. Grassley

2

While that office is currently headed by an acting Inspector General, the organization, managed for many years by former Inspector General Glenn Fine, has established itself as a model of independence, objectivity, and above all, integrity in every aspect of its daily pursuits. It fully earned an unquestioned reputation for successfully addressing highly difficult and sensitive cases, and deserves the trust and confidence of the public. Further, its prior involvement in a review of a portion of the same ATF program can properly be viewed, not as an impediment to objectivity, but rather as an opportunity for the DOJ-OIG staff to have obtained familiarity with the subject-matter and working environment that would be used advantageously in the investigation requested by the Attorney General. Thus, although an Inspector General from another agency could feasibly conduct this work, it would face a learning curve that might involve some delay in completing the assignment. Finally, it appears that the belief DOJ-OIG was not responsive to disclosures made by an ATF agent may have been initially reached without obtaining information from that office.

If you have any questions or need further information, please do not hesitate to contact me on (202) 606-1200.

Sincerely,



Patrick E. McFarland
Inspector General



U.S. Department of Justice

Office of the Inspector General

March 21, 2011

The Honorable Charles E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

The Department of Justice (DOJ or Department) Office of the Inspector General (OIG) recently initiated a review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) firearms trafficking investigation known as Operation Fast and Furious, and other investigations with similar objectives, methods, and strategies. I am writing to inform you of the scope and preliminary objectives of our review, and to respond to the request in your March 8, 2011 letter to the Integrity Committee of the Council of Inspector General on Integrity and Efficiency (CIGIE) that the DOJ OIG be recused from this review.

The preliminary objectives of our review are to examine the development and implementation of Operation Fast and Furious and other firearms trafficking investigations; the involvement of the Department (including ATF, the Criminal Division, and U.S. Attorneys' Offices) and other law enforcement or government entities in the investigations; the guidelines and other internal controls in place and compliance with those controls during the investigations; and the investigative outcomes. We believe our review will address many of the important issues you have raised about Operation Fast and Furious.

In your letter to the CIGIE Integrity Committee, you requested that the OIG be recused from conducting this review and that another Inspector General's office handle the investigation. I have carefully considered your letter, but firmly believe there is no basis for the DOJ OIG to recuse itself from this review. The DOJ OIG is the most appropriate Inspector General's office to conduct this review. Our investigative team is composed of senior attorneys, including former prosecutors, law enforcement agents, and analysts. The OIG's significant investigative experience and extensive knowledge of Department components and operations makes it uniquely capable of conducting a review of Operation Fast and Furious and similar operations.

You expressed three concerns in requesting our recusal. The first is that the OIG does not have a Presidentially-appointed and Senate-confirmed leader. However, my status as an Acting Inspector General does not in any way compromise the independence of the OIG or otherwise impede our capability to conduct this or any other review. Acting Inspectors General have often been called upon to conduct high profile reviews and investigations, and have responded with tough, independent reports containing significant findings and recommendations for the affected agencies.¹ I can assure you that under my leadership the OIG will continue to conduct hard-hitting and vigilant investigations in carrying out our important oversight responsibilities.

The second concern you raised is that the OIG was “aware of the allegations long before the Attorney General’s request and did nothing.” I first learned of the allegations about Operation Fast and Furious when a member of your staff contacted me on January 27, 2011. I immediately looked into the concerns raised by your staff member and found that the OIG had no record of receiving a complaint on this matter. I gave your staff member the contact information for an individual in the OIG front office to convey to any complainant who wanted to contact us about this matter. We subsequently were contacted by an ATF Special Agent and promptly followed up by interviewing the agent regarding the agent’s concerns about Operation Fast and Furious.²

The third concern you raised as a basis for the OIG’s recusal is your understanding that ATF officials have cited an OIG report on Project Gunrunner as one of the factors that prompted the ATF to “shift to a riskier strategy of letting guns be trafficked rather than arresting straw buyers.” The report you reference, *A Review of Project Gunrunner*, was issued by our office in November 2010. We did not recommend in that report that ATF shift its strategy to “letting guns be trafficked rather than arresting straw buyers.”

¹ For example, our previous Inspector General, Glenn Fine, served as Acting Inspector General prior to his confirmation as the Inspector General and issued several important reports during his tenure as Acting Inspector General. See, e.g., *An Investigation of the Immigration and Naturalization Service’s Citizenship USA Initiative*, July 2000; *An Investigation of Misconduct and Mismanagement at ICITAP, OPDAT, and the Criminal Divisions Office of Administration*, September 2000.

² The OIG’s public webpage at <http://www.justice.gov/oig/> provides several means of reporting allegations of waste, fraud, abuse, or misconduct, including a hotline number, an e-mail address, an on-line submission form, and a fax number. We discussed with the ATF Special Agent the efforts made to contact our office so that we could identify and correct any deficiencies in our intake process.

Rather, the OIG made a total of 15 recommendations in that report to help ATF improve its implementation of Project Gunrunner, including a recommendation that ATF focus on developing more complex conspiracy cases against higher level gun traffickers and gun trafficking conspirators. Our report also recommended that ATF send guidance to field management, agents, and intelligence staff encouraging them to participate in and exploit the resources and tools of the Organized Crime Drug Enforcement Task Force, as directed in the Deputy Attorney General's cartel strategy.

Our report, however, did not review what strategies ATF should employ in pursuing more complex cases, nor did it address what internal controls the ATF should have in place to minimize the risk associated with its investigative strategies. Thus, while our prior work gives us familiarity with Project Gunrunner that we will draw upon, it did not address the issues that we will examine in our review of Operation Fast and Furious.

In addition, ATF first became aware of our findings and recommendations in the Project Gunrunner review on September 3, 2010, when we provided a draft of the report to ATF for factual accuracy and sensitivity review prior to publication. Our understanding is that Operation Fast and Furious was initiated in late 2009 and that the investigative strategy employed in this operation was implemented shortly thereafter, well before the OIG began to formulate any recommendations relating to Project Gunrunner.

For all of these reasons, I believe the DOJ OIG is best situated to conduct a thorough, objective, and independent review of Operation Fast and Furious. I expect that we will address many of the important issues you have raised, and at the same time provide guidance to the Department about the conduct of this operation and how to address any deficiencies we identify.

If you have any questions about this letter or these issues, please contact me or Senior Counsel Jay Lerner at (202) 514-3435.

Sincerely,



Cynthia A. Schnedar
Acting Inspector General



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 23, 2012

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
 United States Senate
 Washington, DC 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letters dated March 19, 2012 and March 22, 2012, which summarize the contents of sensitive law enforcement documents known as Reports of Investigation (ROIs) that were prepared by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The ROIs summarized in your letters relate to an active criminal investigation of a firearms trafficking ring, as well as to the prosecution of Manuel Celis-Acosta, who is under indictment in federal court in Arizona and awaiting trial on serious felony charges.

We began to receive calls from reporters about your letters soon after we received them from you, and they have since been the subject of public reports. While we do not know who provided these letters to reporters, we are deeply disturbed that the sensitive law enforcement information contained in them has now entered the public realm. This public disclosure is impeding the Department's efforts to hold individuals accountable for their illegal acts, including by discouraging cooperation with our efforts in these very cases. Since we know that you share our desire to bring dangerous arms traffickers to justice, we ask that you preserve the confidentiality of sensitive law enforcement information that may come into your possession.

We consider the airing of this information to have been quite unnecessary because we have already acknowledged on numerous occasions that Operation Fast and Furious and operations conducted during the prior Administration employed inappropriate investigative tactics. Indeed, after learning about the allegations relating to Operation Fast and Furious, the Attorney General referred the matter to the Department's Inspector General for review and instructed the Deputy Attorney General to issue a directive making clear that such tactics must not be used again.

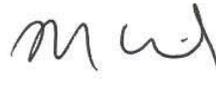
The Honorable Darrell E. Issa
 The Honorable Charles E. Grassley
 Page Two

Your letters seek briefings by the Department relating to the timing of Mr. Celis-Acosta's arrest. Consistent with longstanding Department policy, we have concluded that it would be inappropriate for us to brief Congress about the details of our investigation of this individual while the criminal proceeding against him remains pending. Among other considerations, information from his case may be relevant to other ongoing federal criminal investigations. The Department must avoid disclosures that could compromise pending investigations or prosecutions, and we must also ensure that prosecutorial decisions are free of political influence and the appearance of political influence. That is why, from the beginning of your review, we have provided documents and information about the inappropriate strategy and tactics employed in Operation Fast and Furious while, at the same time, declining to provide details about specific investigative or prosecutorial judgments made with respect to particular individuals.

Finally, your letters ask why the Department has not produced ROIs in response to the Committee's subpoena. ROIs often contain sensitive details about law enforcement matters, especially when they pertain to pending investigations or prosecutions. We have produced and will continue to produce information that relates to the Committee's legitimate oversight interest in the strategies and tactics of these operations, but only consistent with our law enforcement responsibilities. Our efforts to respond to the subpoena are continuing, and we will advise you if we have withheld ROIs and other documents responsive to your subpoena for law enforcement reasons.

We hope that this information is helpful. Please do not hesitate to contact this office if we can provide additional assistance regarding this or any other matter.

Sincerely,



Ronald Weich
 Assistant Attorney General

cc: The Honorable Elijah E. Cummings
 Ranking Member
 Committee on Oversight and
 Government Reform
 U.S. House of Representatives

The Honorable Patrick J. Leahy
 Chairman
 Committee on the Judiciary
 United States Senate

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

March 25, 2011

Via Electronic Transmission

Cynthia A. Schnedar
 Acting Inspector General
 U.S. Department of Justice
 Office of the Inspector General
 950 Pennsylvania Avenue, NW
 Washington, DC 20530

Dear Acting Inspector General Schnedar:

In several previous letters to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and your office, I have expressed my concerns over the actions of the ATF in Operation “Fast and Furious.”

On March 3, 2011, ATF Special Agent Jay Dobyns filed a Department of Justice Office of the Inspector General (OIG) online complaint, a copy of which is attached for your reference. Although the complaint is not directly related to Operation Fast and Furious, it alleges misconduct on the part of supervisors from ATF’s Phoenix Field Office. Agent Dobyns reported serious allegations, which may provide important background and context for the Congressional review of Operation Fast and Furious.

In his OIG complaint, Agent Dobyns provides an email from one of the supervisors saying, “I’ll go out of my way to conceal [significant details],” and “I have enough [Law Enforcement] and intelligence community experience to know how to protect myself and my subordinates. I can hide the ball with the best of them.” Furthermore, Agent Dobyns advised that his allegations have been reported numerous times in the past to ATF management and the Department of Justice has been aware of them for at least eighteen months.

Due to the nature of the claims, please evaluate Agent Dobyns’ claims in an expedited manner and provide an updated status of how the OIG intends to investigate the allegations.

Department of Justice Inspector General
March 25, 2011
Page 2 of 2

Thank you for your attention to this important matter. I request that your agency provide a response no later than April 8, 2011. Should you have any questions regarding this letter, please contact Jason Foster at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

Attachment

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

March 28, 2011

Via Electronic Transmission

Kenneth E. Melson
 Acting Director
 Bureau of Alcohol, Tobacco, Firearms, and Explosives
 99 New York Avenue, NE
 Washington, DC 20226

Dear Acting Director Melson:

On March 4, 2011, I wrote you regarding questions surrounding the February 15 murder of U.S. Immigration and Customs Enforcement (ICE) Agent Jaime Zapata in Mexico. I have yet to receive a reply.

In my last letter, I referenced the March 1 DOJ press release regarding the Osorio brothers and their next-door neighbor Kelvin Morrison. They were arrested on charges related to trafficking firearms to a Mexican drug cartel and indicted on March 23. According to the release, all three defendants had been suspects in an ATF undercover operation in early November 2010. In that operation, the Osorio brothers and Morrison provided 40 firearms to an ATF informant. The press release indicates, "The meeting [between the informant and the suspected traffickers] was arranged related to an investigation of Los Zetas," a Mexican drug trafficking cartel.¹

The DOJ's press release appears to be the first public acknowledgement that one of the firearms used in the murder of Agent Zapata had been traced back to Otilio Osorio. Specifically, the press release stated:

[A]ccording to one affidavit filed in the case, one of the three firearms used in the Feb. 15, 2011, deadly assault of ICE Special Agent Jaime Zapata that was seized by Mexican officials has been traced by ATF to Otilio Osorio. Otilio Osorio allegedly purchased that firearm on Oct. 10, 2010, in the Dallas/Fort Worth metroplex, prior to law enforcement's awareness of the purchase. Ballistic testing

¹ Press Release, Department of Justice, March 1, 2011, available at <http://dallas.fbi.gov/dojpressrel/pressrel11/dl030111.htm>.

Acting Director Melson
 March 28, 2011
 Page 2 of 3

conducted by Mexican authorities on this firearm indicated it was one of the three firearms used during the deadly assault on Special Agent Zapata's vehicle.²

The DOJ's press release gives the impression that law enforcement officials were unaware of Osorio's activities in October 2010 when he allegedly purchased the weapon that was later used to kill Agent Zapata.

The press release leads the reader to believe that law enforcement had no reason to suspect Osorio was a straw purchaser until sometime between October 10 and early November, when he was the subject of the undercover operation. According to the release:

The investigation *now has also revealed* that on Aug. 7, 2010, a Romarm, model WASR, 7.62 caliber rifle was discovered by law enforcement officers in LaPryor, Texas, near the U.S./Mexico border. Trace results indicated that Morrison purchased this firearm on July 30, 2010, from a FFL [federal firearms licensee]. According to the affidavit, between July 10, 2010, and Nov. 4, 2010, Morrison purchased 24 firearms from FFLs.³

This portion of the DOJ's press release appears designed to give the impression that the August 7 discovery by unspecified "law enforcement officers" and subsequent trace results linking the weapon to Morrison became known only after the October 10 purchase of the murder weapon.

However, I have learned that ATF agents actually observed a cache of weapons being loaded into a suspect vehicle on July 29, 2010, but did not maintain surveillance on that vehicle.⁴ The very next day, Morrison purchased the firearm that was later "discovered," in August.⁵ In fact, it was actually seized along with 22 other AK-style firearms in the very suspect vehicle that ATF agents had witnessed being loaded with weapons on July 29.⁶ When the vehicle was stopped en route to Eagle Pass, Texas on August 7, the weapon purchased by Morrison on July 30 was recovered, *along with two weapons purchased by Ranferi Osorio.*⁷ All of these facts were apparently known to federal authorities contemporaneously, and yet none of them are included in the Justice Department's craftily-worded press release.

The March 8 letter I received from Department of Justice (DOJ) Assistant Attorney General Ronald Weich is not an adequate response to my March 4 letter, which was addressed specifically to you. Therefore, please provide your direct response to the questions in my letter, along with the documents previously requested. In particular, please prioritize any documents responsive to paragraph (5), which called for all records relating to when law enforcement first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison.

² *Id.*

³ *Id.* (Emphasis added.)

⁴ ATF Management Log, Case 785096-10-[redacted], Case Title "[redacted] Firearm Traffickers (SWB Gunrunner)." (Attachment 1)

⁵ ATF Firearms Trace Summary, Sep. 17, 2010. (Attachment 2)

⁶ *Supra* note 4.

⁷ ATF Firearms Trace Summary, Sep. 15, 2010; ATF Firearms Trace Summary, Sep. 17, 2010. (Attachment 3)

Acting Director Melson
March 28, 2011
Page 3 of 3

Should you have any questions regarding this letter, please contact Tristan Leavitt at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

Attachment

DARRELL E. ISSA, CALIFORNIA
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Congress of the United States
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JACKIE SPEIER, CALIFORNIA

March 29, 2011

The Honorable Hillary Rodham Clinton
Secretary
U.S. Department of State
Harry S. Truman Building
2201 C Street, NW
Washington, DC 20520

Dear Secretary Clinton:

On March 4, 2011, Senator Charles E. Grassley wrote to you requesting basic information about the connection between Operation “Fast and Furious,” conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and the December 14, 2010 firefight that claimed the life of Border Patrol Agent Brian Terry.¹ I understand that you have yet to respond and are likely to refuse Senator Grassley’s request for information without a letter from the Chairman of the Senate Judiciary Committee. This refusal is mystifying in its own right, given Senator Grassley’s standing as the Ranking Member of that Committee. More inexplicably, your refusal stands in stark contradiction to the promise of transparency promoted by President Obama. During Sunshine Week last year, the President stated that he had “recommit[ed] [his] administration to be the most open and honest ever.”²

Given the gravity of this matter, this refusal is simply unacceptable. Therefore, I am joining Senator Grassley’s request for any and all records relating to a meeting involving the then-U.S. Ambassador to Mexico Carlos Pascual with Assistant Attorney General Lanny Breuer, Mr. Breuer’s deputy, and other officials in Mexico City in the summer of 2010 regarding “on-going investigations” related to Project Gunrunner and its “Fast and Furious” component. The records sought include meeting minutes, briefing notes, e-mails and cables relating to any such meeting or meetings that may have occurred from June through September 2010. Additionally, please explain in detail the reasons behind your refusal to answer the Senator directly.

¹ Letter from Sen. Charles Grassley, Ranking Member, S. Jud. Comm., to Hon. Hillary R. Clinton, Sec’y, U.S. Dep’t of State (Mar. 4, 2011).

² The White House, Office of the Press Secretary, Statement from the President on Sunshine Week (Mar. 16, 2010), <http://www.whitehouse.gov/the-press-office/statement-president-sunshine-week>.

The Honorable Hillary Rodham Clinton
March 29, 2011
Page 2

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at “any time” investigate “any matter” as set forth in House Rule X.

We request that you provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on April 12, 2011. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee’s request.

If you have any questions about this request, please contact Ashok Pinto or Henry Kerner of the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

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

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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WASHINGTON, DC 20515-6143

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Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

April 2011

April 2011



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 1, 2011

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

Dear Chairman Issa:

As you know, the Department has been working with the Committee to provide documents responsive to its March 16 request to the Bureau of Alcohol, Tobacco, Firearms and Explosives. Yesterday, we informed Committee staff that we intended to produce a number of responsive documents within the next week. As we explained, there are some documents that we would be unable to provide without compromising the Department's ongoing criminal investigation into the death of Agent Brian Terry as well as other investigations and prosecutions, but we would seek to work productively with the Committee to find other ways to be responsive to its needs.

We were therefore surprised and disappointed when shortly after we notified your staff of our intent to work with the Committee, you nevertheless issued a subpoena a few hours later. Despite this unnecessary step on your part, we will review the subpoena and work with the Committee to address your concerns.

As the Attorney General has said, it is an important mission of the Department of Justice to stop the flow of guns into Mexico. He has asked the Department's Inspector General to investigate this matter and has also reiterated to Department personnel that they are not to knowingly allow any guns to be illegally transported into Mexico. We look forward to continuing to work with you on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald Weich".

Ronald Weich
 Assistant Attorney General

cc: The Honorable Elijah Cummings
 Ranking Minority Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 4, 2011

The Honorable Lamar Smith
 Chairman
 Committee on the Judiciary
 U.S. House of Representatives
 Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter, dated March 9, 2011, which asked a number of questions about the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigation known as Operation Fast and Furious. An identical letter has been sent to all signatories of your letter.

Mexican drug cartels are a significant organized crime threat, both to the United States and to Mexico. According to the Department's 2010 National Drug Threat Assessment, these cartels present the single greatest drug trafficking threat to the United States. Mexican cartels use violence to control drug trafficking corridors, through which drugs flow north into the United States while guns and cash flow south to Mexico. For calendar year 2009, the Mexican government reported 9,635 murders in Mexico resulting from organized crime and drug trafficking – an increase of 50% from the number of murders in 2008 and three times the 2,837 killed in 2007. In part because Mexican law severely restricts gun ownership, Mexico's drug traffickers routinely smuggle weapons purchased in the United States into Mexico.

Stopping the flow of weapons across the border into Mexico is a challenging task given the resources of the cartels and the cartels' use of sophisticated trafficking organizations to move firearms across the border. These trafficking organizations typically involve the use of straw purchasers, who purchase the weapons not for themselves, but with the purpose of transferring them to others who then facilitate their movement across the border to the cartels. Among the challenges in investigating a trafficking organization is developing sufficient evidence to prove that particular firearm purchases are, in fact, unlawful straw purchases. As you know, it is legal for a non-prohibited person to purchase an unlimited number of firearms from a licensed gun dealer and then to sell or barter those firearms to another person.

Operation Fast and Furious is an ongoing criminal investigation of an extensive gun-trafficking enterprise.¹ It was opened over a year ago and approved by the ATF Phoenix Field Office and the United States Attorney's Office for the District of Arizona (USAO) in the normal

¹ Operation Fast and Furious, which is one law enforcement investigation, should not be confused with Project Gunrunner, which is the broader initiative to deal with weapons trafficking along the Southwest Border generally. As was recently noted by the Congressional Research Service, "[a]s of March 2010, Project Gunrunner had led to the arrest of 1,397 defendants – 850 of which had been convicted – and the seizure of over 6,688 firearms." Congressional Research Service Report RL32724, *Mexico-U.S. Relations: Issues for Congress*, February 15, 2011, at 19.

The Honorable Lamar Smith
Page Two

course, consistent with established procedures for such matters. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program. The purpose of the investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico, in part by prosecuting its leadership. The investigation is led by a dedicated team of USAO prosecutors and ATF agents. With regard to your question about the results and status of the investigation, to date, these efforts have resulted in an indictment charging 20 defendants with federal firearms offenses and the investigation is continuing.

Allegations have been raised about how this investigation was structured and conducted. As you note, at the request of the Attorney General, the Acting Inspector General is now investigating those allegations. The Attorney General has also made it clear to the law enforcement agencies and prosecutors working along the Southwest Border that the Department should never knowingly permit firearms to cross the border.

You have also asked for information about eTrace, an important tool in ATF's work to dismantle gun trafficking. eTrace is an Internet-based system that allows participating law enforcement agencies to submit firearm traces to the ATF National Tracing Center. Authorized users can receive firearm trace results electronically, search a database of all firearm traces submitted by their individual agency, and perform analyses. In the last year, eTrace has gained strong new features. eTrace now accommodates data in Spanish, gives translations, and allows users to better sort and search additional data elements and images to improve weapons tracing. In the next 24 months, planned enhancements to eTrace will improve ATF's ability to monitor and map gun tracing data in real time and to share information with other federal agencies, as well as with state and local law enforcement.

Unfortunately, at this time, we are not in a position to answer your questions in greater detail. The Department has a long standing policy against the disclosure of non-public information about ongoing criminal investigations. This policy is based on our strong interest in protecting the independence and effectiveness of ongoing law enforcement efforts. We are, however, in the process of working with Chairman Issa to provide documents concerning this matter and would be willing to work with you and your staff in the same manner. Through this process we hope to find ways to be responsive to your needs that are consistent with the Department's need to maintain the confidentiality of ongoing investigations.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this, or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

JOY BERTRAND, ESQ., L.L.C.
Scottsdale, Arizona ~~ Milwaukee, Wisconsin

P.O. Box 2734
Scottsdale, AZ 85252-2734

2266 N. Prospect Ave., Suite 310
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Joy Bertrand
Owner
[REDACTED]

Shannon Peters
Attorney
[REDACTED]
Admitted in Arizona

Anjali Patel
Attorney
[REDACTED]
Admitted in Arizona

April 6, 2011

Honorable Charles Grassley
135 Hart Senate Office Building
Washington, DC 20510
fax - 202-224-6020
via facsimile and overnight mail

RE: ATF Special Agent John Dodson
Notice of Attorney Representation

Dear Senator Grassley:

Mr. Dodson has asked me to represent him as his attorney regarding your current investigation of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Nothing in this Notice should be construed as an indication of disinterest or uncooperativeness on Mr. Dodson's part. Mr. Dodson remains willing to assist you with your investigation, but he asks that you communicate with him *via* his counsel.

You are welcome to contact me with any questions or concerns you have about this matter.

Sincerely Yours,



Joy Bertrand
Attorney for ATF Special Agent John Dodson

cc: United States Senate Judiciary Committee

office - 602-374-5321 fax - 602-374-2712
www.joybertrandlaw.com



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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

April 8, 2011

VIA ELECTRONIC TRANSMISSION

Kenneth E. Melson
 Acting Director
 Bureau of Alcohol, Tobacco, Firearms, and Explosives
 99 New York Avenue, NE
 Washington, DC 20226

Dear Acting Director Melson:

Attached is an email released through the Freedom of Information Act (FOIA).¹ It appears to contain proposed guidance to ATF employees about how to respond to contacts from my office. The guidance instructs ATF employees that they “are in no way obligated to respond” to questions from Congress. It also attempts to prevent direct communications with my office by instructing that ATF employees “should refer congressional staff who seek information from you to the ATF’s office of congressional affairs.” The guidance further attempts to prevent direct communications with my office by claiming that ATF employees “are not authorized to disclose non-public information.”

It is unclear from the email released through FOIA whether this guidance was actually communicated to ATF employees. However, it is of grave concern because, as you know, such attempts to prevent direct communications with Congress are not a lawfully authorized activity of any officer or employee of the United States whose salary is paid with appropriated funds.² Specifically, no officer or employee may attempt to prohibit or prevent “any other officer or employee of the Federal Government from having *direct* oral or written communication or *contact* with any Member, committee, or subcommittee of the Congress” about a matter related to his employment or the

¹ Attachment 1.

² Consolidated Appropriations Act, 2010, P.L. 111-117, 123 Stat. 3034, § 714 (2010), as continued by §101 of continuing resolutions P.L. 111-242, 124 Stat. 2607 (2010) and P.L. 112-6, 125 Stat. 23 (2011)—which extends the funding levels in the 2010 appropriations bills, as well as “the authority and conditions provided in such Acts,” through April 8, 2011.

Kenneth E. Melson
April 8, 2011
Page 2 of 4

agency "in any way, *irrespective of whether such communication or contact is at the initiative*" of the employee or Congress (emphasis added).³

I wrote to you on January 31 to ensure you were aware of these provisions and to express concerns that without proper guidance, managers might inappropriately intimidate employees to discourage them from speaking with Congress and thus unlawfully interfere with a Congressional inquiry.⁴ In order for Congress to exercise its oversight authority and act as a check on Executive power, it is crucial that agency employees are free to communicate directly with Members and Committee staff. Direct contact means contacts that do not necessarily involve Congressional liaison or agency management. Without such direct, unfiltered communications, Congress would still be unaware of, and unable to inquire about, the serious allegations involving the death of Border Patrol Agent Brian Terry and the sales of weapons to known and suspected gun traffickers.

I have a long experience of witnessing retaliation against whistleblowers. Sometimes it is explicit and immediate. Often it is subtle and delayed until after public scrutiny has faded. Unfortunately, it is so frequent that employees fear that even truthful answers to direct factual questions from Congress will get them in trouble. That is why I am committed to maintaining the confidentiality of those employees who wish to cooperate with a Congressional inquiry or report problems anonymously. Direct contact with Congress of the sort protected by the law serves as an extra level of protection against retaliation and is obviously essential where an employee seeks confidentiality.

However, in some cases, agency employees choose to disclose their direct contacts with Congress, despite the potential consequences. As I explained in my January 31 letter, one employee chose to disclose his protected contacts with my staff and was immediately questioned about the content of those communications. I was concerned about that because forcing an employee to reveal the details of such communications would intrude on the integrity of the Congressional inquiry and offend the comity between the Branches that flows from the separation of powers under the Constitution.

Now, a second agency employee has chosen to disclose that he has had protected contacts with Congress. George Gillett, through and in conjunction with his legal counsel, is cooperating with this investigation. Mr. Gillett is the Assistant Special Agent in Charge of the ATF's Phoenix field division, and Committee staff's direct contacts with him are an essential component of our inquiry. He has participated in two preliminary meetings jointly with Senate Judiciary Committee staff and House Oversight and Government Reform Committee staff. As you know, retaliation for such communications is prohibited by law.

³ *Id.*

⁴ 18 U.S.C. § 1505 (providing criminal penalties for obstructing or impeding the power of Congressional inquiry).

Kenneth E. Melson
April 8, 2011
Page 3 of 4

On one previous occasion when an agency sought to compel an individual to disclose the content of his communications with Congress, I was prepared to introduce a resolution authorizing the Senate Legal Counsel to seek legal remedy in the courts. Fortunately, in light of that draft resolution, the Executive Branch withdrew its attempt to compel discovery of communications between a whistleblower and Congress.⁵

In this current inquiry, a similar attempt was also abandoned. The first ATF agent to disclose that he had direct contacts with Congress was ordered to describe the content of his communications in writing. However, shortly after my January 31 letter, I was pleased to learn that the order was withdrawn. I appreciate the agency's willingness to respect Congressional prerogatives and avoid interfering with a Congressional inquiry. Similarly, the agency should avoid intruding into our investigative process by seeking to learn the content of ASAC Gillett's communications with Congress.

In light of the attached email, I have renewed concerns that the guidance being given to employees may be inconsistent with the law.⁶ Therefore, please provide written answers to the following questions:

1. Was the attached guidance distributed, either in writing or otherwise, to ATF field offices or other ATF personnel?
2. Was any guidance on contacts with Congress distributed, either in writing or otherwise, to ATF field offices or other ATF personnel? If so, please provide a copy.
3. What steps have you taken or do you plan to take to ensure that employees are aware of their right to communicate directly with Congress if they so choose?

⁵ See S. PRT. 110-28, § VIII.D.2 "Attempt to Compel Disclosure of Confidential Communications with Congress," p. 103, 641, 652 ("Nothing in this agreement shall require [the production of] any communications with, or documents that were created for, any Senate Committees (or the staff or members thereof)"). See also S. HRG. 109-898, at 39-41, 470-471, responses to questions for the record to Dec. 5, 2006, Senate Judiciary Committee hearing at 8.

⁶ See generally, Government Accountability Office, "Department of Health and Human Services—Chief Actuary's Communications with Congress," B-302911 (Sep. 7, 2004) (discussing the history and background in support of the government-wide prohibition on attempts to prevent direct communications with Congress) (Attachment 2).

Kenneth E. Melson
April 8, 2011
Page 4 of 4

Please reply no later than April 14, 2011. If you have any questions about this request, please contact Jason Foster at (202) 225-5225. Thank you for your cooperation.

Sincerely,



Charles E. Grassley
Ranking Member

Attachments

cc: Chairman Patrick Leahy, Senate Committee on the Judiciary
Chairman Darrell Issa, House Committee on Oversight and Government Reform

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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MINORITY (202) 225-5051
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JACKIE SPEIER, CALIFORNIA

April 8, 2011

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, N.E.
Washington, DC 20226

Dear Acting Director Melson:

Recent media reports have given rise to grave concerns over Project Gunrunner and Operation Fast and Furious, conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Over the past few months, Senator Charles Grassley, the Ranking Member of the Senate Judiciary Committee, wrote you multiple letters asking for documents and information about these programs. I wrote to you on March 16, 2011, requesting substantially similar information by March 30, 2011. You failed to comply with the March 30th deadline, and on March 31, 2011, the Committee issued a subpoena for those documents.

The public deserves assurances that its government is not allowing guns bought by Mexican drug cartels to be “walked” across the border into Mexico. To determine whether this occurred, the Committee is entitled to receive all relevant materials that would aid its investigation. At present, I am not confident that ATF will produce all documents of probative value to enable the Committee to exercise its legitimate oversight responsibilities.

Therefore, I now request that all types of documents and essential communications between and among ATF employees related to the planning and implementation of Project Gunrunner and Operation Fast and Furious be preserved. So that ATF can produce a full and complete record of those documents to the Committee in response to current and future document requests, please take the following steps:

1. Preserve all documents and records, including e-mail, electronic documents, and data (“electronic records”) **created since July 1, 2009** related to the planning and implementation of Project Gunrunner and Operation Fast and Furious. For the purposes of this request, “preserve” means taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of electronic records, as well as negligent or intentional handling that would make such records incomplete or inaccessible;

Mr. Kenneth E. Melson
April 8, 2011
Page 2

2. Exercise reasonable efforts to identify and notify former employees and contractors, subcontractors and consultants who may have access to such electronic records that they are to be preserved; and
3. If it is the routine practice of any agency employee or contractor to destroy or otherwise alter such electronic records, either halt such practices or arrange for the preservation of complete and accurate duplicates or copies of such records, suitable for production if requested.

I request that you respond in writing **no later than April 18, 2011**, to confirm receipt of this letter. Your response should also advise the Committee of actions ATF has taken and will take to comply with the Committee's subpoena and this document preservation request. I am skeptical about ATF's response to the subpoena because I understand that individuals who likely have documents responsive to the subpoena have not been contacted or instructed to gather and forward these documents. A copy of the schedule of documents is attached. Please note that you should take no action related to the documents of the Office of the Inspector General in responding to this request.

If you have any questions, please contact Ashok Pinto or Henry Kerner of the Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

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

SCHEDULE

In accordance with the attached schedule instructions, produce all documents in unredacted form described below:

1. Documents and communications relating to the genesis of Project Gunrunner and Operation Fast and Furious, and any memoranda or reports involving any changes to either program at or near the time of the release of the Department of Justice (DOJ) Office of the Inspector General report about Project Gunrunner in November 2010.
2. Documents and communications relating to individuals responsible for authorizing the decision to “walk” guns to Mexico in order to follow them and capture a “bigger fish.”
3. Documents and communications relating to any investigations conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) or any other DOJ component following the fatal shooting of Agent Brian Terry, including information pertaining to two guns found at the crime scene that may have been connected to Project Gunrunner.
4. Documents and communications relating to any weapons recovered at the crime scene or during the investigation into the death of Agent Brian Terry.
5. Documents and communications between ATF and the Federal Firearms Licensee (FFL) who sold weapons to Jaime Avila, including any Report of Investigation (ROI) or other records relating to a December 17, 2009 meeting “to discuss his role as an FFL during this investigation.”
6. A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF headquarters in the spring of 2010.
7. Documents and communications relating to Operation Fast and Furious between and among ATF headquarters and Special Agent in Charge William D. Newell, Assistant Special Agents in Charge Jim Needles and George Gillette, Group Supervisor David Voth, or any Case Agent from November 1, 2009 to the present. The response to this component of the subpoena shall include a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of Agent Brian Terry.
8. Documents and communications relating to complaints or objections by ATF agents about: (1) encouraging, sanctioning, or otherwise allowing FFLs to sell firearms to known or suspected straw buyers, (2) failure to maintain surveillance on known or suspected straw buyers, (3) failure to maintain operational control over weapons purchased by known or suspected straw buyers, or (4) letting known or suspected straw buyers with American guns enter Mexico.

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 8, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter dated March 16, 2011, and your subpoena issued on March 31, 2011, to Kenneth Melson, Acting Director of the Department's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Your letter and subpoena requested documents and other information concerning, among other things, the pending criminal investigation undertaken by ATF known as Operation Fast and Furious and the pending criminal investigation into the shooting death of Customs and Border Protection (CBP) Agent Brian Terry.

To date, our search has located several law enforcement sensitive documents responsive to the requests in your letter and the subpoena. We have substantial confidentiality interests in these documents because they contain information about ATF strategies and procedures that could be used by individuals seeking to evade our law enforcement efforts. We are prepared to make these documents, with some redactions, available for review by Committee staff at the Department. They will bear redactions to protect information about ongoing criminal investigations, investigative targets, internal deliberations about law enforcement options, and communications with foreign government representatives. In addition, we notified Committee staff that we have identified certain publicly available documents that are responsive. Committee staff informed us that, for now, they do not want us to produce such documents. Our search for records responsive to your letter and the subpoena is continuing and we will supplement this response when additional information becomes available.

While our efforts to identify responsive documents are continuing, many of your requests seek records relating to ongoing criminal investigations. Based upon the Department's long-standing policy regarding the confidentiality of ongoing criminal investigations, we are not in a position to disclose such documents, nor can we confirm or deny the existence of records in our ongoing investigative files. This policy is based on our strong need to protect the independence and effectiveness of our law enforcement efforts. The enclosed May 17, 2000 letter from Attorney General Reno to Senator Hatch, then-Chairman of the Senate Judiciary Committee, provides a fuller statement of the rationale for this policy, as well as its lengthy and nonpartisan

The Honorable Darrell Issa
Page 2

history. Within those constraints, we would appreciate the opportunity to confer with Committee staff to explore other options to accommodate your interests and look forward to working with you regarding the information you seek.

Your letter also asks certain questions, and reflects certain assumptions, concerning Operation Fast and Furious that we are presently unable to address because they relate directly to an ongoing investigation. We can say, however, that Operation Fast and Furious is a criminal investigation of an extensive gun-trafficking enterprise.¹ The purpose of the investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico, in part by prosecuting its leadership. The investigation is led by a dedicated team of United States Attorney's Office prosecutors and ATF agents. These efforts have already resulted in an indictment charging 20 defendants with federal firearms offenses, and the investigation is continuing.

Mexican drug cartels are a significant organized crime threat, both to the United States and to Mexico. According to the Department's 2010 National Drug Threat Assessment, these cartels present the single greatest drug trafficking threat to the United States. Mexican cartels use violence to control drug trafficking corridors, through which drugs flow north into the United States, while guns and cash flow south to Mexico. Drug-related violence in Mexico was increasing at an alarming rate well before the inception of Operation Fast and Furious. For calendar year 2009, the Mexican government reported 9,635 murders in Mexico resulting from organized crime and drug trafficking – an increase of 50 percent from the number of murders in 2008 and three times the 2,837 killed in 2007. In part because Mexican law severely restricts gun ownership, Mexico's drug traffickers routinely smuggle weapons purchased in the United States into Mexico.

Stopping the flow of weapons across the border into Mexico is a challenging task given the resources of the cartels and the cartels' use of sophisticated trafficking organizations to move firearms across the border. These trafficking organizations typically involve the use of straw purchasers, who purchase the weapons not for themselves, but with the purpose of transferring them to others who then facilitate their movement across the border to the cartels. Among the challenges in investigating a trafficking organization is developing sufficient evidence to prove that particular firearm purchases are, in fact, unlawful straw purchases. As you know, it is legal for a non-prohibited person to purchase an unlimited number of firearms from a licensed gun dealer and then to sell or barter those firearms to another person.

Allegations have been raised about how Operation Fast and Furious was structured and conducted. As you note, at the request of the Attorney General, the Department of Justice's Office of the Inspector General (DOJ-OIG) is now investigating those allegations. Your letter asks about DOJ-OIG's ability to handle this inquiry in an independent and objective manner.

¹ Operation Fast and Furious, which is one law enforcement investigation, should not be confused with Project Gunrunner, which is the broader initiative to deal with weapons trafficking along the Southwest Border generally. As was recently noted by the Congressional Research Service, "[a]s of March 2010, Project Gunrunner had led to the arrest of 1,397 defendants – 850 of which had been convicted – and the seizure of over 6,688 firearms." Congressional Research Service Report RL32724, *Mexico-U.S. Relations: Issues for Congress*, February 15, 2011, at 19.

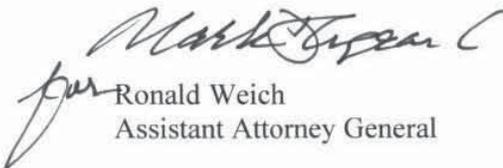
The Honorable Darrell Issa
Page 3

The enclosed letter to Senator Grassley, dated March 16, 2011, from the acting Chairperson of the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE), responds to similar questions raised by Senator Grassley. CIGIE's response to Senator Grassley describes DOJ-OIG as "a model of independence, objectivity, and above all, integrity in every aspect of its daily pursuits." The response goes on to state that DOJ-OIG has "fully earned an unquestioned reputation for successfully addressing highly difficult and sensitive cases, and deserves the trust and confidence of the public. Further, its prior involvement in a review of a portion of the same ATF program can properly be viewed, not as an impediment to objectivity, but rather as an opportunity for the DOJ-OIG staff to have obtained familiarity with the subject-matter and working environment that would be used advantageously in the investigation requested by the Attorney General."

Finally, your letter asks about the shooting death of CBP Agent Brian Terry. The Department, with the Federal Bureau of Investigation leading the effort, is investigating the shooting death of Agent Terry. ATF has assisted in that investigation and the United States Attorney's Office has assigned senior prosecutors to the case. We are dedicated to holding Agent Terry's killer or killers responsible through the criminal justice process that is currently underway, but we are not in a position to provide additional information at this time regarding this active criminal investigation for the reasons set forth above and in the enclosed Attorney General Reno letter.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional information regarding this, or any other, matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

EVERY DOOLEY POST & AVERY, LLP

Attorneys at Law
 90 Concord Avenue
 Belmont, MA 02478

Telephone: (617) 489-5300

Fax: (617) 489-0085

April 8, 2011

Transmitted via Electronic Mail

██████████@usdoj.gov

Kenneth E. Melson
 Acting Director
 Bureau of Alcohol, Tobacco, Firearms, and Explosives
 99 New York Avenue, NE
 Washington, DC 20226

Re: George T. Gillett, Jr.
 Assistant Special Agent in Charge, Phoenix Field Division

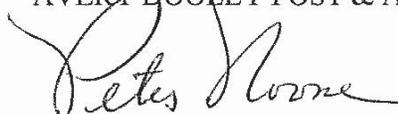
Dear Acting Director Melson:

As you are aware, this office represents George T. Gillett, Jr. in matters relevant to his federal employment. Upon request from Senator Grassley's office, our client met with members of the Senator's staff earlier this week and exercised his rights pursuant to 5 USC § 7211.¹

We ask that any and all inquiries relative to this matter be submitted to our office, directly and thank you, in advance, for your anticipated cooperation.

Very truly yours,

EVERY DOOLEY POST & AVERY, LLP



Peter H. Noone

PHN/caf

Cc. William Newell
 Special Agent in Charge, Phoenix Field Division

¹ 5 U.S.C. § 7211 states:

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

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April 11, 2011

Mr. Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, N.E.
Washington, DC 20226

Dear Acting Director Melson:

We received the Department's letter dated April 8, 2011, regarding the Committee's investigation of Project Gunrunner and Operation Fast and Furious. Absent a valid assertion of executive privilege over the materials sought, I expect you to produce the things identified in the March 31, 2011, subpoena's schedule by the return date.

Sincerely,


Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

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

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 12, 2011

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

Dear Senator Grassley:

This responds to your letter to Michele Leonhart, Administrator of the Department's Drug Enforcement Administration (DEA), dated March 15, 2011, requesting documents and a briefing about DEA's role in an ongoing law enforcement operation known as Operation Fast and Furious. The Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is the lead law enforcement agency for that investigation.

Operation Fast and Furious is an ongoing criminal investigation of an extensive gun-trafficking enterprise. The investigation was approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program. OCDETF seeks to combine the resources and expertise of member agencies, which include DEA and ATF, to disrupt and dismantle organizations responsible for illegal narcotics trafficking, weapons trafficking, and money laundering. Through the OCDETF Program, the DEA Phoenix Division has been indirectly involved in Operation Fast and Furious. Upon invitation from ATF, DEA participated in the press conference held in Phoenix on January 25, 2011, along with ATF, the Internal Revenue Service, and the United States Attorney's Office.

DEA is not in a position to provide records or a briefing about the continuing investigation at this time, consistent with the Department's long-standing policy regarding the confidentiality of on-going criminal investigations. This policy is based upon our strong interest in protecting the independence and effectiveness of our law enforcement efforts.

Generally speaking, however, when another Department component leads an OCDETF investigation, DEA works cooperatively to support drug-related aspects of the investigation. Such cooperation means that DEA may share investigative expertise, report leads, and provide manpower to assist in an investigative or enforcement operation as requested by the lead investigative agency.

The Honorable Charles E. Grassley
Page Two

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'RW', is positioned above the typed name.

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick Leahy
Chairman

Ashok/Henry

United States Department of State

Washington, D.C. 20520

APR 12 2011

Dear Mr. Chairman:

We are in receipt of your letter of March 29, 2011, requesting records pertaining to Assistant Attorney General Breuer's meetings with Ambassador Carlos Pascual in Mexico on Project Gunrunner between June and September, 2010. In that letter, you requested that we provide responsive documents by no later than April 12.

Our review of documents has thus far identified only the attached cable. Although this cable falls outside your requested date range, we are providing it in its entirety. Please be assured we will continue our review of Department of State records for responsive documents.

Please note that the enclosed document is a Department cable that, although unclassified, should be treated as sensitive information, and as such, we strongly request that this document not be publicly released – in full, in part, or summarized – without providing the Department a more extensive opportunity to review and, if necessary, redact such sensitive information.

Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Macmanus", written over a horizontal line.

Joseph E. Macmanus
Acting Assistant Secretary
Legislative Affairs

Enclosure:

As stated.

The Honorable
Darrell Issa, Chairman,
Committee on Oversight and Government Reform,
House of Representatives.

APR-15-2011 16:20 From:

To: 202 224 9102

P.2/3

UNCLASSIFIED//FOR OFFICIAL USE ONLY
 1300 Pennsylvania Avenue, NW
 Washington, DC 20229



**U.S. Customs and
 Border Protection**

Commissioner

APR 18 2011

The Honorable Charles E. Grassley
 United States Senate
 Washington, DC 20510

Dear Senator Grassley:

Thank you for your letters dated March 4 and March 16, 2011 seeking information related to the murder of Border Patrol Agent Brian A. Terry and your concerns over some individuals encountered by U.S. Customs and Border Protection (CBP) who are allegedly associated with the ongoing investigation pertaining to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' operation, "Fast and Furious."

Agent Terry, who was assigned to the Border Patrol Tactical Unit (BORTAC), was mortally wounded on December 14, 2010 while attempting to arrest armed subjects near Rio Rico south of Tucson, Arizona. He later succumbed to his injuries during the early morning hours of December 15, 2010. The Federal Bureau of Investigation (FBI), as the lead agency, is working in collaboration with CBP to bring to justice the individuals who committed this heinous act against our agent to justice.

In your March 4, 2011 letter, you made an inquiry regarding CBP's policy on the use of force and inquired about any changes made to that policy over the past two years. You also indicated in your letter, with reference to an FBI affidavit of December 29, 2010 relating to Agent Terry's case, an understanding that CBP requires its law enforcement personnel to use less-lethal force against individuals who are clearly armed and dangerous. Respectfully, that understanding is neither warranted by the affidavit itself nor by CBP's Use of Force policy. The understanding, in short, is incorrect. CBP policy clearly authorizes agents to use deadly force when they have reasonable belief that a subject poses an immediate danger (i.e., possesses the means, intent, and opportunity) of death or serious physical injury to the agent or to another person.

The U.S. Border Patrol provides less-lethal devices to its agents to assist them in responding to a wide variety of threats faced in field settings. BORTAC provides additional devices, both lethal and less lethal, to its agents to ensure they have the capability to respond to a myriad of threats when conducting tactical operations in both rural and urban settings. The decision to deploy these devices rests with the agents in the field and is dependent upon the situation present at the time of any encounter.

CBP provides policy, guidance, equipment, and training to its field personnel to ensure they are trained in the use of each of the deployed devices, as well as the specific threat necessary to employ those devices. CBP policy, guidance, and training are designed to empower agents in

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The Honorable Charles E. Grassley
Page 2

utilizing these devices. At no time are agents required to progress through less-lethal devices before utilizing deadly force. Agents are not required to employ some other type of force, if they decide that deadly force is immediately required as a matter of self defense or in the defense of others.

If deadly force is necessitated, CBP personnel, including BORTAC agents, always have the ability to carry out this measure of force in the form of a CBP-issued sidearm worn on their person. BORTAC agents are also qualified on many other long-arm capabilities. The decision about whether to carry and use these weapons is dictated by the mission and known threats of a planned deployment.

Below are five primary Use of Force policy and guidance documents in place concerning the utilization of deadly force devices and less-lethal force devices by all Border Patrol agents.

- INS Firearms Policy, February 19, 2003
- DHS Policy on Use of Deadly Force, July 1, 2004
- CBP Interim Use of Force and Firearms Guidelines, October 11, 2004
- Less Lethal Specialty Impact – Chemical Munitions Policy, September 16, 2009
- CBP Use of Force Policy Handbook, October 2010 (full implementation date of April 1, 2011)

CBP considers these policies to contain law enforcement sensitive information, the dissemination of which is restricted. On March 18, 2011, in an effort toward transparency within these limitations of law enforcement sensitivity, CBP provided your staff with a briefing on these policies that was well received.

In your March 16, 2011 correspondence, you requested any information CBP had regarding the encounter of Blas Gutierrez, Miguel Carrillo, and Jaime Avila. Our review indicates that any CBP records relating to these individuals would be covered by The *Privacy Act of 1974*, Title 5 USC § 552a, which limits CBP's ability to provide information in response to this request.

I appreciate your concern in this important matter. Should you need additional assistance, please contact Mr. Michael Yeager, Assistant Commissioner, Office of Congressional Affairs, at (202) 344-1760.

Sincerely,



Alan D. Bersin
Commissioner

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

April 13, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
 Attorney General
 U.S. Department of Justice
 950 Pennsylvania Avenue, N.W.
 Washington, DC 20530

Dear Attorney General Holder:

At approximately 1:30 p.m. yesterday, my staff learned that the Justice Department was making four documents available at 2:00 pm for Chairman Darrell Issa's staff to review regarding the controversy over ATF's Project Gunrunner, Operation Fast and Furious, and the death of Border Patrol Agent Brian Terry. These documents are among those I requested in February of this year. Yet, the Justice Department refused to make them available for my staff to review. In fact, the Justice Department has produced not one single page of documents in response to my inquiries.

Thus far, I have not requested that Chairman Leahy join in any document requests, consider any subpoenas, or schedule any hearings into this matter in the Senate Judiciary Committee. Any such request would be unnecessary and duplicative of the process on the House side, so long as any documents provided there are also provided to the Senate Judiciary Committee at the same time.

The Department's failure to cooperate with my requests is especially troubling in light of the February 4, 2011, reply to my initial letter. In that reply, the Justice Department took the position that those allegations were "false" and specifically denied "that ATF 'sanctioned' or otherwise knowingly allowed the sale of assault weapons" to straw purchasers. The letter further claimed that "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."

I already provided evidence contradicting that denial in my February 9 and March 3 letters. In addition, attached you will find further documentation undermining the Department's assertion. Specifically, the documents are emails between ATF officials and a Federal Firearms Licensee (FFL) in Arizona. These emails demonstrate that ATF instructed gun dealers to engage in suspicious sales despite the dealers'

The Honorable Eric H. Holder, Jr.
April 13, 2011
Page 2 of 4

concerns. The emails refer to meetings between the FFL and the U.S. Attorney's office to address the concerns being raised by the FFL. ATF supervisor David Voth wrote on April 13, 2010:

I understand that the frequency with which some individuals under investigation by our office have been purchasing firearms from your business has caused concerns for you. ... However, if it helps put you at ease we (ATF) are continually monitoring these suspects using a variety of investigative techniques which I cannot go into [in] detail.¹

In response, the gun dealer expresses concern about potential future liability and sought something in writing to address the issue explicitly:

For us, we were hoping to put together something like a letter of understanding to alleviate concerns of some type of recourse against us down the road for selling these items. We just want to make sure we are cooperating with ATF and that we are not viewed as selling to bad guys.²

Following this email, the ATF arranged a meeting between the FFL and the U.S. Attorney's office. According to the FFL, the U.S. Attorney's office scheduled a follow-up meeting with the FFL, but asked that the FFL's attorney not be present.³

At the meeting on May 13, 2010, the U.S. Attorney's office declined to provide anything in writing but assured the gun dealer in even stronger terms that there were safeguards in place to prevent further distribution of the weapons after being purchased from his business.⁴ As we now know, those assurances proved to be untrue. On June 17, 2010, the gun dealer wrote to the ATF to again express concerns after seeing a report on Fox News about firearms and the border:

The segment, if the information was correct, is disturbing to me. When you, [the Assistant U.S. Attorney], and I met on May 13th, I shared my concerns with you guys that I wanted to make sure that none of the firearms that were sold per our conversation with you and various ATF agents could or would ever end up south of the border or in the hands of the bad guys. ... I want to help ATF with its investigation but not at the risk of agents' safety because I have some very close friends that are U.S. Border Patrol agents in southern AZ[.]⁵

¹ Email from ATF Group VII Supervisor David Voth to Cooperating FFL, Apr. 13, 2010 (Attached).

² Email from Cooperating FFL to ATF Group VII Supervisor David Voth, Apr. 13, 2010 (Attached).

³ Telephone interview with Cooperating FFL, Apr. 5, 2011.

⁴ *Id.*

⁵ Email from Cooperating FFL to ATF Group VII Supervisor David Voth, Jun. 17, 2010 (Attached).

The Honorable Eric H. Holder, Jr.
April 13, 2011
Page 3 of 4

Incredibly, the FFL sent this email six months before guns from the same ATF operation were found at the scene of Border Patrol Agent Brian Terry's murder. So, not only were the ATF agents who later blew the whistle predicting that this operation would end in tragedy, so were the gun dealers—even as ATF urged them to make the sales.

Furthermore, according to the FFL, there were "one or two" occasions on which his employees actually witnessed and recorded with surveillance cameras an exchange of money between the straw purchaser and another individual on the premises.⁶ Despite this actual knowledge of a straw purchase, the dealer said ATF officials wanted him to proceed with the transaction.⁷ However, his employees refused to process the sale.⁸

In light of this new evidence, the Justice Department's claim that the ATF never knowingly sanctioned or allowed the sale of assault weapons to straw purchasers is simply not credible. As you know, I have multiple document and information requests pending with various components of the Justice Department. Unfortunately, however, it appears that senior Department officials are not allowing the components to respond fully and directly.

Please provide written answers to the following questions by no later than April 20, 2011:

1. Do you stand by the assertion in the Department's reply that the ATF whistleblower allegations are "false" and specifically that ATF did not sanction or otherwise knowingly allow the sale of assault weapons to straw purchasers? If so, please explain why in light of the mounting evidence to the contrary.
2. Will you commit to providing the Senate Judiciary Committee with documents, or access to documents, simultaneously with the House Committee on Oversight and Government Reform? If not, please explain why not.

⁶ Telephone interview with Cooperating FFL, Apr. 5, 2011.

⁷ *Id.*

⁸ *Id.*

The Honorable Eric H. Holder, Jr.
April 13, 2011
Page 4 of 4

If you have any questions regarding this request, please have your staff contact Jason Foster at (202) 224-5225. Thank you for your prompt attention these important issues.

Sincerely,



Charles E. Grassley
Ranking Member

Attachment

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

Chairman Darrell Issa
U.S. House Committee on Oversight and Government Reform



United States Department of State

Washington, D.C. 20520

APR 14 2011

Dear Senator Grassley:

Thank you for your letter of March 4 requesting records pertaining to meetings in Mexico on Project Gunrunner between June and September, 2010.

The document that you have requested is an internal Executive Branch communication. The State Department's longstanding practice is to consider release of internal Executive Branch communication documents when requested by the chair of a committee of jurisdiction. Under these circumstances, we respectfully ask that you channel your request through the chair of a committee of jurisdiction, at which point we would be pleased to respond to it. The Department is committed to providing Congress with the information it needs to fulfill its legislative duties. To that end, we note that the Department is currently responding to a similar request from the Chairman of the House Committee on Oversight and Government Reform.

We hope this information is useful. Please do not hesitate to contact us if you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Macmanus', written over a large, stylized circular flourish.

Joseph E. Macmanus
Acting Assistant Secretary
Legislative Affairs

The Honorable
Charles E. Grassley,
United States Senate.



U.S. Department of Justice

Office of the Inspector General

April 15, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

Dear Senator Grassley:

I am writing in response to your letter dated March 25, 2011, concerning a complaint submitted to the Office of the Inspector General (OIG) on March 4, 2011, by Jay Dobyys, a Special Agent (SA) with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I address below the issues you raise in your letter.

As you state in your letter, SA Dobyys's complaint is not directly related to ATF's Operation Fast and Furious. However, SA Dobyys is among the individuals we anticipate contacting during our review of that operation to obtain any relevant information, including information about his allegations of misconduct by supervisors from ATF's Phoenix Field Office.

The OIG previously investigated complaints by SA Dobyys about ATF management that were referred to the OIG by the Office of Special Counsel (OSC) in February 2007. We issued our report of investigation on September 22, 2008, concluding that ATF needlessly and inappropriately delayed its response to two threats that had been made against SA Dobyys. The OSC concurred with our findings and subsequently posted the OIG report online at: <http://www.osc.gov/FY%202009%20A.html>.

SA Dobyys alleges in his March 4, 2011, complaint that ATF special agents engaged in misconduct while investigating an alleged arson at Dobyys's home and threats made against him. It is our understanding that the ATF referred the arson investigation to the Federal Bureau of Investigation and that the investigation of that incident remains ongoing. In addition, it is our understanding that SA Dobyys filed a lawsuit in the U.S. Court of Federal Claims against the ATF alleging breach of contract based upon a prior settlement agreement he entered into with the ATF. The alleged breach relates to the ATF's handling of his relocation, its follow-up to the alleged arson, and related matters, and this lawsuit remains pending. Given the ongoing nature

of the arson investigation and the litigation between SA Dobyms and ATF relating to the threat response, we are not opening an investigation of these matters.

SA Dobyms also alleges misconduct by Department attorneys in the context of litigation related to the arson investigation and threats against SA Dobyms. These allegations concern the exercise of the attorneys' authority to litigate or provide legal advice and therefore fall within the jurisdiction of the Department's Office of Professional Responsibility.

Thank you for bringing your concerns about these matters to our attention. If you have any questions about this letter or these issues, please contact me or Senior Counsel Jay Lerner at (202) 514-3435.

Sincerely,



Cynthia A. Schnedar
Acting Inspector General

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 18, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to the Attorney General, dated March 9, 2011, which asked about the Department of Justice's review of allegations about the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) program known as Project Gunrunner, which is a broad initiative to address weapons trafficking along the Southwest Border generally.

We believe that the allegations referenced in your letter pertain specifically to Operation Fast and Furious, which is an ongoing criminal investigation of an extensive gun-trafficking enterprise. Fast and Furious is being undertaken as part of the broader Project Gunrunner initiative, and the purpose of the investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico, in part by prosecuting its leadership. The investigation is led by a dedicated team of prosecutors from the United States Attorney's Office in Arizona and ATF agents. To date, these efforts have resulted in an indictment charging 20 defendants with federal firearms offenses and the investigation is continuing. As we have advised Senator Grassley in response to his requests to us, we are not in a position to provide additional information about the investigation at this time, consistent with the Department's longstanding policy of not disclosing non-public information on ongoing criminal investigations.

On February 10, 2011, Department and ATF representatives conducted a briefing for Committee staff about Project Gunrunner. We noted in the briefing that stopping the flow of weapons across the border into Mexico is a challenging task given the resources of the cartels and the cartels' use of sophisticated trafficking organizations to move firearms across the border. These trafficking organizations typically involve the use of straw purchasers, who purchase the weapons not for themselves, but with the purpose of transferring them to others who then facilitate their movement across the border to the cartels. Among the challenges in investigating a trafficking organization is developing sufficient evidence to prove that particular firearm purchases are, in fact, unlawful straw purchases. It is, of course, legal for a non-prohibited person to purchase an unlimited number of firearms from a licensed gun dealer and then to sell or barter those firearms to another person.

The Honorable Patrick Leahy
Page Two

At the request of the Attorney General, the Acting Inspector General is investigating allegations that have been raised about Operation Fast and Furious. The Attorney General has also made it clear to the law enforcement agencies and prosecutors working along the Southwest Border that the Department should never knowingly permit firearms to cross the border. We note that the National Rifle Association (NRA) letter enclosed with your letter suggested that the Committee conduct oversight, including hearings, regarding ATF's activities relating to the Southwest Border. Given the ongoing criminal investigations in Arizona and the Inspector General's ongoing review of allegations regarding those investigations, we do not believe that such oversight, or hearings, would be helpful at this time. We also note that the Cochise County Sheriff's Office is leading a separate investigation of the shooting death of Robert Krentz in Arizona, which also was mentioned in the NRA letter.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance in this or any other matter.

Sincerely,



 Ronald Weich
Assistant Attorney General

cc: The Honorable Charles Grassley
Ranking Minority Member

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 19, 2011

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

Dear Mr. Chairman:

We are advised that the Committee has issued a subpoena for documents and testimony at a public hearing to a cooperating witness in the trial currently scheduled for June 7, 2011, in United States v. Jaime Avila, Jr. et al., No. CR11-126 PHX JAT(LOA), an indicted federal case in Phoenix, Arizona charging twenty defendants with an array of firearms, drug, and money laundering offenses. Neither the individual's cooperation with our ongoing investigation nor his identity as a trial witness has been disclosed in the judicial proceedings to date. We were advised by his attorney that, prior to the issuance of the subpoena, your staff was informed that the individual is a cooperating witness in a pending federal criminal case and that he was concerned that his appearance at a public congressional hearing might jeopardize his physical safety. We understand that your staff indicated that he could submit to an interview rather than appear at a public hearing at this time.

Committee staff's plan to obtain testimony or information from a cooperating witness in an indicted federal criminal case awaiting trial, whether in a public hearing or a nonpublic interview, implicates the serious concerns that the Department has expressed to you in recent weeks. We have previously informed the Committee, in response to your requests for information about these ongoing criminal matters, that any disclosure of non-public information about the pending investigations at issue would present risks to specific law enforcement efforts and to cooperating witnesses. We stated in our letter dated April 13, 2011, that among those risks was the fact that the identification of cooperating witnesses "– even the knowledge that the information they provide may be disclosed – discourages cooperation by them and others whose assistance is important to the success of our law enforcement efforts."

We understand that the Committee wants to get to the bottom of the allegations that as part of the Fast and Furious investigation the ATF knowingly allowed guns to enter Mexico. The Department wants to find out what happened in this regard as well. That is why the Attorney General referred this matter to the Department's Office of the Inspector General, an independent and nonpartisan office that will examine the facts and report its findings. We are not ignoring the allegations that have been raised. Nor are we questioning the Committee's

The Honorable Darrell Issa
Page Two

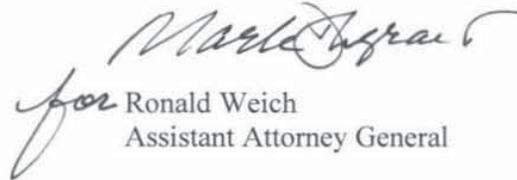
responsibility to conduct oversight of this matter. However, we are concerned about the timing of the Committee's oversight.

The Fast and Furious investigation has produced the indictment of 20 alleged gun traffickers. The Department believes that a successful prosecution is an important part of fighting the violence in Mexico and in the United States that emanates from the Mexican cartels. By conducting oversight of this matter now, rather than at the conclusion of the investigations and prosecutions, the Committee risks compromising this prosecution and ongoing investigations of other alleged firearms traffickers, drug dealers, and money launderers. In addition, congressional oversight relating to the investigation risks jeopardizing the physical safety of our witnesses and discouraging the cooperation of others whose assistance could be vital.

Therefore, we respectfully ask that the Committee refrain from contacting or subpoenaing the witnesses and cooperators involved in either the indicted criminal case or the continuing criminal investigations while these criminal matters remain pending.

The Department appreciates your interest in this matter and shares your desire to resolve these allegations. We will be happy to discuss this important matter with you or your staff further, so that we may explore ways to accomplish this goal without jeopardizing successful prosecutions and investigations in this important area.

Sincerely,


for Ronald Weich
Assistant Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

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COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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April 20, 2011

Mr. Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

The Committee on Oversight and Government Reform issued a subpoena to you on March 31, 2011. The subpoena instructed you to produce documents pertaining to Project Gunrunner and Operation Fast and Furious, conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). I wrote to you on April 11, 2011 to reiterate that, “[a]bsent a valid assertion of executive privilege over the materials sought, I expect you to produce the things identified in the March 31, 2011, subpoena’s schedule by the return date.”¹ The April 13, 2011 deadline for compliance has passed without production of any documents.

I am disappointed that you have failed to produce any documents that would meet your legal obligations by the subpoena’s April 13th deadline. Instead of documents, after the deadline passed, I received a letter from Assistant Attorney General Ronald Weich. Mr. Weich did not assert a claim of executive privilege in withholding all documents from the Committee. Instead, the Department’s response again restated its lack of production was due solely to the Department’s internal policy relating to “ongoing law enforcement investigations,” “pending criminal investigations,” “on-going criminal investigations,” and “open criminal investigative files.”² Absent a claim of executive privilege, these vague assertions are not a valid basis for your decision to withhold documents.

¹ Letter from Rep. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (OGR), to Kenneth E. Melson, Acting Director, ATF (Apr. 11, 2011).

² Letter from Ronald Weich, Assistant Attorney General, DOJ, to Rep. Darrell E. Issa, OGR Chairman (Apr. 13, 2011) (hereinafter Weich Letter).

Mr. Kenneth E. Melson
 April 20, 2011
 Page 2

Mr. Weich's April 13, 2011 letter focuses almost exclusively on a general Department policy regarding pending criminal investigations. It is unclear to which specific criminal investigations Mr. Weich is referring. Such a blanket prohibition, if accepted, would conceal the entirety of Project Gunrunner and Operation Fast and Furious from legitimate congressional scrutiny. This is unacceptable. As a co-equal branch of government, Congress has a right, even a constitutional obligation, to conduct oversight of the Executive Branch, including the Department of Justice.

Over the past 85 years, the U.S. Supreme Court has consistently ruled the investigatory power of Congress is essential to the legislative function,³ and the Court has gradually expanded that power.⁴ Pointedly, the Supreme Court has also weighed in on the Department of Justice's internal policy of withholding documents to Congress that pertain to open criminal investigations:

It may be conceded that Congress is without authority to compel disclosure for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.⁵

The Department's internal policy to withhold documents from what it labels pending criminal investigations may not deprive Congress from obtaining those same documents if they are pertinent to a congressional investigation – particularly in a matter involving allegations that reckless and inappropriate decisions by top Justice Department officials may have contributed to the deaths of U.S. and Mexican citizens.

Let me be clear. The Committee is not seeking these documents from the Department of Justice in furtherance of the prosecution of pending suits. Rather, we are seeking these documents in furtherance of the proper use of our constitutional authority. Sometimes, we may take a deferential approach to the Department when we are both investigating a third-party's wrongdoing. Here, however, we are not conducting a concurrent investigation *with* the Department of Justice, but rather an independent investigation *of* the Department of Justice – specifically, of allegations that the reckless and inappropriate decisions of Department officials have created a serious public safety hazard. We are asking for documents that relate to decisions such officials made. Congress is legally entitled to all of these documents.

There are several prominent examples of Congress investigating the conduct of the Department of Justice while the Department proceeded simultaneously with criminal or civil probes:

³ *McGrain v. Daugherty*, 273 U.S. 135 (1927).

⁴ *Watkins v. United States*, 354 U.S. 178 (1957); *Barenblatt v. United States*, 360 U.S. 109 (1959).

⁵ *Sinclair v. United States*, 279 U.S. 263 (1929).

Mr. Kenneth E. Melson
 April 20, 2011
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- Starting in 1922, Congress investigated “charges of misfeasance and nonfeasance in the Department of Justice”⁶ at the same time that the Department of Justice failed to prosecute meritorious cases against Department of Interior employees stemming from the Teapot Dome Scandal.
- In 1992, a House subcommittee investigated a Department of Justice plea bargain regarding environmental crimes committed by the company that managed the Rocky Flats nuclear weapons facility.⁷
- In 2004, the House Committee on Government Reform investigated allegations that agents in the FBI’s Boston regional office knowingly permitted informants to commit nearly two dozen murders while they were acting as informants. At the time of the congressional investigation, cases were still pending against the Department of Justice.⁸

In each of these instances, Congress was able to obtain a substantial amount of responsive documents to aid its investigation. There is no constitutional, statutory, or case law authority that permits the Department of Justice to withhold documents from Congress due to the pendency of a criminal probe.

Assistant Attorney General Weich’s most recent letter also noted that the Department of Justice “made available documents for review prior to [the subpoena deadline].”⁹ This statement, however, is misleading. The Department made only four documents available for an *in camera* review at Department of Justice headquarters. The viewing consisted of the following materials:

1. Southwest Border Initiative Project Gunrunner, December 2007.
2. ATF’s Project Gunrunner and OCDETF (Organized Crime Drug Enforcement Task Force).
3. Memorandum to all ADs and all Field Ops Personnel, from AD Field Ops.
4. Project Gunrunner – A Cartel Focused Strategy, September 2010.

These documents were quite general and largely unhelpful as none of them directly pertain to Operation Fast and Furious. This is not surprising considering that the Department of Justice believes it is “not in a position to disclose such documents, nor can [DOJ] confirm or deny the

⁶ *McGrain*, 273 U.S. at 151.

⁷ See *Environmental Crimes at the Rocky Flats Nuclear Weapons Facility: Hearings before the Subcomm. on Investigations and Oversight of the House Committee on Science, Space, and Technology*, 102nd Cong., 2d Sess., Vols. I and II (1992).

⁸ *Everything Secret Degenerates: The FBI’s Use of Murderers as Informants*, H. Rept. 108-414, 108th Cong., 2d Sess. (2004).

⁹ Weich Letter, *supra* note 2.

Mr. Kenneth E. Melson
 April 20, 2011
 Page 4

existence of records in [its] ongoing investigative files.”¹⁰ Undeterred by the Department’s refusal to produce documents, the Committee has been able to confirm independently that such documents do in fact exist. Attached to this letter are several documents the Committee has obtained indicating not only that the Department and ATF were aware that straw purchasers were consistently and illegally buying assault rifles and other weapons, but that they also failed to prevent their disappearance. Tragically, some of these weapons ATF represented it was tracking ended up at crime scenes, including at the locations of the murders of Border Patrol Agent Brian Terry and Immigrations and Customs Enforcement Officer Jaime Zapata.

Attachment 1 is a January 13, 2010 e-mail from an ATF employee containing a list of 42 names added to the Suspect Person Database. One of these names is Jaime Avila. Attachment 2 shows a Suspect Gun Summary for three WASR-10 rifles that Jaime Avila bought just three days later, on January 16, 2010. These guns were entered into ATF’s database on January 19, 2010. Attachment 3 is a Significant Information Report regarding the murder of Brian Terry. The Report states that “[t]wo (2) of the AK-47 variant rifles purchased by AVILA on 01/16/2010 were recovered in the area during” the search after Terry’s murder. This document demonstrates that ATF knew straw purchasers were acquiring weapons and failed to track those weapons. As an apparent result, a U.S. federal agent lost his life.

Attachment 4 shows the results of three Firearms Trace Summaries for Ranferi Osorio and Kelvin Morrison, his neighbor. One of the weapons recovered at the murder scene of Jaime Zapata was traced to a purchase made by Otilio Osorio, Ranferi’s brother.¹¹ The Attachment shows that not only did Ranferi Osorio and Kelvin Morrison purchase assault rifles, but these weapons had shown up at crime scenes, as indicated by the “Time to Crime” section of the Firearms Trace Summary. Both the Department and ATF knew that weapons were turning up at crime scenes, yet did not act. This is even more egregious when read in conjunction with an e-mail from Group VII Supervisor David Voth, as shown in Attachment 5. In the e-mail, Voth says:

[W]ithout being dramatic we have a sense of urgency with regards to this investigation. Our subjects purchased 359 firearms during the month of March alone, to include numerous Barrett .50 caliber rifles. I believe we are righteous in our plan to dismantle this entire organization and to rush in to arrest any one person without taking in to account the entire scope of the conspiracy would be ill advised to the overall good of the mission.

As a result of this “plan,” another U.S. federal agent may have also lost his life.

Attachment 6 presents a summary of the number of firearms purchased with ATF’s knowledge during the pendency of Operation Fast and Furious. The amount of firearms is a staggering 1,500 (minimum) heavy-duty weapons. Attachment 7 is an e-mail exchange between a Federal Firearms Licensee (FFL) and ATF in which the FFL expresses concern over the

¹⁰ Letter from Assistant Attorney General Ronald Weich to OGR Chairman Darrell E. Issa (Apr. 8, 2011).

¹¹ See Press Release, Department of Justice, Three Dallas-Area Men Arrested on Federal Firearms Charges Related to Trafficking Firearms to a Mexican Drug Cartel (Mar. 1, 2011).

Mr. Kenneth E. Melson
April 20, 2011
Page 5

frequency of guns sold, and the strong possibility guns sold to straw purchasers would end up in Mexico or “in the hands of bad guys.” ATF, in conjunction with the Department of Justice, assures the FFL that there are safeguards in place to prevent this from happening. This claim is belied, however, by an e-mail (Attachment 8) showing that ATF knew that many of these 1,500 firearms would “eventually be used in criminal activity.” As clearly seen in Attachment 9, the Group VII Supervisor was fully aware that violence in Mexico was extremely high, yet failed to alter ATF’s approach. Attachment 10 is a forceful e-mail indicating that officials at ATF headquarters were “paying close attention” to Fast and Furious. Contained in Attachment 11 are detailed Reports of Investigation tracking suspected straw purchasers as part of Fast and Furious. These reports preceded the murders of Brian Terry and Jaime Zapata by several months.

It is nearly unfathomable that our government would allow straw purchasers to illegally acquire automatic weapons and transport them into Mexico, in furtherance of an ATF-led and -inspired investigation. As I understand Department of Justice operations, such programs would require the approval of top officials. The Committee’s experience in dealing with the Department is that it is a deliberate, methodical organization and is not agile. As such, officials at the highest levels of the Department more than likely made these decisions – with all due, if misguided, consideration.

Efforts by the Department of Justice and ATF to stonewall the Committee in its investigation by erroneously, but matter-of-factly, citing an internal department policy as a preventative measure for denying access to documents have only enhanced suspicions that such officials have played a role in reckless decisions that have put lives at risk. The Committee continues to pursue this matter vigorously, in part, because concerned individuals have indicated they do not have confidence in the Department’s ability to review the actions of its own top officials. The attachments to this letter represent but a small sample of myriad relevant and responsive documents.

The Committee’s request for documents has been pending since March 16, 2011. Senator Charles Grassley’s requests have been pending since January. Even if a legal basis did exist for withholding documents, the first step in evaluating this argument and the basis for a meaningful conversation between the Committee and the Department of Justice would be the production of a log of documents responsive to the subpoena with a specific explanation as to why you cannot produce each document. The Department has failed to provide any such log. Without such a log, the Committee is unable to consider the validity of any potential claim of privilege.

While I am certainly sensitive to protecting the integrity of pending criminal investigations, the Department has not provided information to substantiate its claims or produced other documents unrelated to specific cases. Therefore, I am hereby informing you that the Committee intends to enforce the subpoena issued to you on March 31, 2011. If you do not comply with the subpoena, the Committee will be forced to commence contempt proceedings.

Mr. Kenneth E. Melson
April 20, 2011
Page 6

If you have any questions about this matter, please contact Ashok Pinto or Henry Kerner of the Committee staff at (202) 225-5074.

Sincerely,

A handwritten signature in black ink, appearing to read "Darrell Issa", written over the word "Sincerely,".

Darrell Issa
Chairman

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Member

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

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April 20, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

Late on Friday April 15th, the Department of Justice (DOJ) notified the Committee of its apprehension regarding the safety and security of a witness it described as a "cooperating witness" in a pending federal criminal investigation. According to information provided by the Department, you believe the Committee may attempt to contact this witness as part of our investigation into the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner and Operation Fast and Furious.

When it comes to the safety of potential witnesses, we are as concerned as you. Please take every measure necessary to ensure the safety of any witness that the Department believes to be in danger. The Department has expertise when it comes to providing security, and we hope you will take this matter seriously. The Department owes all of its cooperating witnesses a duty of care.

Congress cannot abdicate its constitutional responsibility to engage in Executive Branch oversight based on notifications of potential threats to cooperating witnesses. Placing such obstacles to legitimate congressional inquiries could easily be interpreted as an attempt to obstruct our investigation. I trust you will do everything in your power to ensure the safety of all witnesses without interfering with our right to contact them.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Charles E. Grassley, Ranking Minority Member,
U.S. Senate Committee on the Judiciary

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

April 22, 2011

Via Electronic Transmission

Cynthia A. Schnedar
 Acting Inspector General
 U.S. Department of Justice
 Office of the Inspector General
 950 Pennsylvania Avenue, NW
 Washington, DC 20530

Dear Acting Inspector General Schnedar:

ATF Special Agent Vincent Cefalu advised my office that he filed a claim with the U.S. Equal Employment Opportunity Commission (EEOC) 2 years ago and has yet to receive a formal finding. In May 2010, CNN reported of Cefalu:

ATF managers turned against him after he reported in 2005 what he said was an illegal wiretap plan in a racketeering case. Records show ATF disputes his claims of the planned illegal wiretap. But he said that started a series of retaliatory measures that ended up in 2007 with him in a desk job. His only negative evaluation, he said, was the year after he criticized the planned wiretap.¹

Since the CNN broadcast, Agent Cefalu claims that he has been effectively idled. He advised my staff that he has been assigned "only 89 minutes of definable work since the May allegations became public." I request that your office evaluate Agent Cefalu's claim and provide me with an updated status.

Thank you for your attention to this important matter. I request that your agency provide a response no later than May 6, 2011. Should you have any questions regarding this letter, please contact Jason Foster at (202) 224-5225.

Sincerely,



Charles E. Grassley
 Ranking Member

¹ Abbie Boudreau and Scott Zamost, *ATF agents describe fear of retaliation*, CNN, May 26, 2010, available at http://articles.cnn.com/2010-05-26/politics/atf.whistleblowers_1_atf-wiretap.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 28, 2011

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

Dear Senator Grassley:

This responds to your letter to Acting Director Kenneth E. Melson of the Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), dated April 8, 2011, which raises questions about guidance ATF may have distributed regarding Congressional communications, either in writing or otherwise, to ATF personnel.

In answer to your first question, the guidance in the e-mail enclosed with your letter was not distributed to ATF field offices. Your letter also asked whether ATF distributes guidance to employees regarding contacts with Congress. Enclosed is a copy of ATF Order 9000.1A Office of Public and Governmental Affairs, issued on June 5, 2008, which provides general guidance to all ATF employees regarding contacts with Congress. The guidance informs ATF employees that they may not disclose non-public information, including sensitive criminal enforcement information, without approval of the appropriate Headquarters office.¹ The guidance further explains that if a congressional office requests such restricted information, the employee should refer the matter to ATF's Legislative Affairs Division.²

ATF has a compelling interest in ensuring that its investigative files are protected from unauthorized disclosure. ATF's disclosure restrictions comport with the longstanding and nonpartisan policy of the Department of Justice not to release materials contained in open criminal investigative files. ATF works to ensure that these disclosure restrictions are made known to and observed by all employees. These policies and practices are consistent with the statutes you have cited, as they have long been interpreted by the Executive Branch. *See Authority of Agency Officials to Prohibit Employees From Providing Information to Congress*, Letter Opinion for the General Counsel, Department of Health and Human Services, from Jack L. Goldsmith, III, Assistant Attorney General, Office of Legal Counsel (May 21, 2004) *available at* www.usdoj.gov/olc/opinions.htm.

¹ See ATF Order 9000.1A at A-3.

² See ATF Order 9000.1A at D-5.

The Honorable Charles E. Grassley
Page Two

In addition, ATF recognizes the importance of protecting employees from retaliation relating to protected disclosures under the Whistleblower Protection Act and the reporting of waste, fraud, and abuse generally. On February 9, 2011, ATF's Assistant Director for Field Operations issued the enclosed guidance regarding Rights and Duties under the Whistleblower Protection Act via e-mail to all Special Agents in Charge, for subsequent dissemination to all field supervisors.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance in this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Patrick J. Leahy
Chairman



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 28, 2011

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

Dear Senator Grassley:

We have recently learned that members of your staff are participating with staff from the House Committee on Oversight and Government Reform in contacting agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) as well as at least one witness involved in our pending investigation regarding gun trafficking along the Southwest Border. This investigation, known as Operation Fast and Furious, has resulted in the indictment to date of twenty individuals for drug trafficking, gun trafficking, and money laundering. Trial is scheduled to begin on June 7, 2011 and our investigation into this activity is continuing.

On several occasions in the past, we have expressed our concerns to Chairman Issa about the risks that his Committee's efforts to interview witnesses and agents pose to the successful prosecution of the pending case and other cases that may flow from our investigation. While we respect Chairman Issa's right to conduct oversight of ATF, we are confident that neither you nor he would want that oversight to jeopardize important law enforcement efforts that are directed at stemming the violence in the United States and Mexico emanating from the drug cartels in Mexico.

We are also confident that we can find a way to accommodate both Chairman Issa's oversight needs and the Department's needs in conducting successful investigations and bringing successful prosecutions. In this regard, we are working actively to assemble additional documents in response to Chairman Issa's request. And, because we want to resolve the allegations that have been raised, the Attorney General referred this matter to the Acting Inspector General.

The Attorney General looks forward to talking with you about this during your previously scheduled call on Monday, May 2, 2011. Thank you for your support of our law enforcement efforts. We hope this information is helpful. Please do not hesitate to contact this office if we may be of assistance with this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Weich".

Ronald Weich
 Assistant Attorney General

cc: The Honorable Patrick J. Leahy
 Chairman



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 28, 2010

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

Dear Mr. Chairman:

We have recently learned that Committee staff members are in the process of contacting agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) as well as an important witness involved in our pending investigation regarding gun trafficking along the Southwest Border. This investigation, known as Fast and Furious, has resulted in the indictment to date of twenty individuals for drug trafficking, gun trafficking, and money laundering. Trial is scheduled to begin on June 7, 2011 and our investigation into this activity is continuing.

On several occasions in the past, we have expressed our concerns about the risks posed to the successful prosecution of the pending case and others that may flow from our investigation by the Committee's current efforts to interview witnesses and agents. While we respect your right to conduct oversight of ATF, we are confident that you would not want that oversight to jeopardize important law enforcement efforts that are directed at stemming the violence both in the United States and Mexico that is emanating from the drug cartels in Mexico.

We are also confident that we can find a way to accommodate both your needs for oversight and the Department's needs in conducting successful investigations and bringing successful prosecutions. In this regard, we are working actively to assemble additional documents in response to your request. And, because we want to resolve the allegations that have been raised, the Attorney General referred this matter to the Acting Inspector General. We think it would be helpful for you and the Deputy Attorney General to meet to discuss these matters. We will contact your staff to schedule the meeting.

Thank you for your support for our law enforcement efforts. We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance with this or any other matter.

Sincerely,

Ronald Weich
 Assistant Attorney General

cc: The Honorable Elijah E. Cummings
 Ranking Member

May 2011

May 2011

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 2, 2011

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

Dear Senator Grassley:

This responds to your letter of April 13, 2011, referencing the allegations you have raised about the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF's) Project Gunrunner and Operation Fast and Furious, and requesting that the Senate Judiciary Committee receive access to the ATF documents reviewed by the House Committee on Oversight and Government Reform.

You have asked whether it remains our view that "ATF did not sanction or otherwise knowingly allow the sale of assault weapons to straw purchasers." In fact, my letter, dated February 4, 2011 said: "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." It remains our understanding that ATF's Operation Fast and Furious did not knowingly permit straw buyers to take guns into Mexico. You have provided to us documents, including internal ATF emails, which you believe support your allegation. As you know, we have referred these documents and all correspondence and materials received from you related to Operation Fast and Furious to the Acting Inspector General, so that she may conduct a thorough review and resolve your allegations. While we await her findings, the Attorney General has made clear to prosecutors and agents working along the Southwest Border that the Department should never knowingly permit firearms to cross the border.

Your letter also asks whether the Department will provide the Senate Judiciary Committee with access to the documents made available to the House Committee on Oversight and Government Reform. While we appreciate your interest in this matter, the Executive Branch over many Administrations has taken the position that only a chairman can speak for a committee in conducting oversight and we work to accommodate legitimate oversight needs of congressional committees as articulated in letter requests from chairmen. The Department's responses to such requests are sent to both the chairman and the ranking minority member, and

The Honorable Charles E. Grassley
Page Two

documents made available in response to a chairman's request may be reviewed by all members and staff on that committee. As we explained in our April 18, 2011 letter to Chairman Leahy, a copy of which was provided to you, there are ongoing criminal investigations in Arizona, as well as an indicted criminal case set for trial in June in which 20 people have been charged with gun trafficking, drug trafficking and money laundering crimes. We recognize the importance of congressional oversight and have continued to be as responsive as possible to Chairman Issa without jeopardizing important law enforcement efforts that are directed at stemming the violence in the United States and Mexico emanating from the drug cartels in Mexico. We are confident you understand the critical need of the Department to protect the pending criminal trial and ongoing investigation of alleged gun traffickers, drug traffickers, and money launderers along the Southwest Border.

We hope that this information is helpful. Please do not hesitate to contact this office if we can provide additional assistance regarding this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 2, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to your letter, dated March 16, 2011, and your subpoena issued on March 31, 2011, to Kenneth Melson, Acting Director of the Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Your letter and subpoena requested documents and other information relating to Project Gunrunner and Operation Fast and Furious, including materials concerning pending criminal investigations and the prosecution of twenty individuals on drug trafficking, gun trafficking, and money laundering charges that is scheduled for trial on June 7, 2011.

Enclosed are 92 pages of documents responsive to your request. In addition, we have identified 466 pages of responsive documents that we are prepared to make available for review at the Department by Committee staff at any convenient time. We have substantial confidentiality interests in these materials because of their law enforcement sensitivity. They include information about federal law enforcement strategies, policies, and practices, the disclosure of which would be helpful to individuals who seek to evade our efforts to combat drug and firearms trafficking.

We have made limited redactions in these documents to protect the identities of individuals who are involved in our investigations, law enforcement techniques, and other details relating to particular investigations. These redactions are important to protect the integrity of our law enforcement efforts as well as individual privacy interests.

The Honorable Darrell E. Issa
Page Two

Our efforts to identify documents responsive to your subpoena are continuing and we will supplement this response as soon as possible. We hope this information is helpful. Please do not hesitate to contact this office if we can provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ronald Weich', written in a cursive style.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

Congress of the United States
Washington, DC 20510

May 3, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Holder:

As Senator Grassley discussed on the phone with you yesterday, we are very concerned that the Department chose to send a letter containing false statements in response to his initial inquiry into the ATF whistleblower allegations related to Operation Fast and Furious. To be more specific, the Department sent a letter on February 4, 2011 claiming that the whistleblower allegations were “false” and that “ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.” When questioned in transcribed interviews last week in Phoenix, agents with first-hand knowledge of ATF operations contradicted that claim.

Specifically, in response to that exact quote, they said the Department’s letter was “false” and could not explain how such a representation could be made to Congress in light of what they witnessed on the ground in Phoenix in late 2009 and 2010, prior to the death of Border Patrol Agent Brian Terry. In fact, according to these witnesses, there was a specific strategy implemented to *not* “make every effort” but rather to avoid interdicting weapons in hopes of making a larger case against higher-ups in the trafficking organization.

Therefore, we were surprised and disappointed to see the Department repeat once again, in slightly different language, its denial in a letter received shortly after your telephone conversation with Senator Grassley. Yesterday’s letter reads, in part, “It remains our understanding that ATF’s Operation Fast and Furious did not knowingly permit straw buyers to take guns into Mexico.”

The Honorable Eric H. Holder, Jr.
 May 3, 2011
 Page 2 of 2

The documents and information previously provided to you demonstrate that the ATF urged gun dealers to go forward with sales to known straw buyers despite the concerns expressed by at least one dealer that the guns would be transferred to the border and possibly used against Border Patrol agents. ATF and Justice officials assured that dealer that unspecified safeguards were in place to ensure that did not happen. Yet, guns from that case were found at the scene of Border Patrol Agent Brian Terry's murder and at crime scenes in Mexico.

In its latest denial, the Department seems to focus more on whether ATF knew guns were being trafficked to Mexico than whether the ATF knew they were being purchased by straw buyers. While it might be typical in Washington for lawyers to narrowly parse statements and argue over fine distinctions to confuse the issue, those are not the kind of answers that we believe the Justice Department should give to Congress when asked straightforward questions about such a serious matter as this one.

You were asked to please explain whether you deny that the ATF allowed the sale of assault weapons to straw purchasers, and if so, why given the evidence that was attached. The reply was not signed by you, did not explain whether you stand by the denial, did not explain why, and did not meaningfully address the serious issues raised by the attached emails between a gun dealer and the ATF.

We are extremely disappointed that you do not appear to be taking this issue seriously enough to ensure that the Department's representations are accurate, forthcoming, and complete. We will continue to probe and gather the facts independently, as it has become clear that we cannot rely on the Department's self-serving statements to obtain any realistic picture of what happened.

Sincerely,



Darrell Issa, Chairman
 Committee on Oversight &
 Government Reform
 U.S. House of Representatives



Charles E. Grassley, Ranking Member
 Committee on the Judiciary
 United State Senate

*PS: you should check
 to see if you are getting
 accurate information
 from your staff
 you might be ill-served.*

**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Chief Counsel

Washington, DC 20226
www.atf.gov

May 5, 2011

Mr. Peter H. Noone
Avery Dooley Post & Avery, LLP
Attorneys at Law
90 Concord Avenue
Belmont, MA 02478

Dear Mr. Noone:

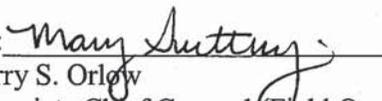
We understand that your client has sought guidance from the Department of Justice, through contact with a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Resident Agent in Charge, on the scope of what he is not permitted to disclose to congressional investigators concerning Operation Fast and Furious under grand jury secrecy rules and other such limitations. The following guidance is the same guidance this office has provided other ATF agents who have decided to submit to depositions or voluntary interviews in connection with this matter.

Your client is encouraged to answer fully and candidly all questions concerning matters within his personal knowledge. Your client's appearance before Committee staffers does not, of course, relieve him of any obligations of secrecy that are imposed upon him concerning certain matters arising from his official duties as an ATF Special Agent. For example, he may not reveal any information relating to matters or proceedings occurring before a grand jury, tax information, Title III information, or any other matters prohibited from disclosure by statute, regulation, or court rule. An extended, but not exhaustive, list of such matters may be found in 28 C.F.R. 16.26. These policies and regulations require that your client not reveal the existence of any ongoing investigation, the identity of individuals who were the subject of past investigations but never charged, any information that would identify or tend to identify a confidential informant or source, any information about investigative techniques, and classified information. In addition, with regard to any open or pending investigation, these policies and regulations require that your client not reveal information that would identify witnesses, subjects, or targets; evidence obtained in the course of the investigation and investigative leads; or the content of Reports of Investigation (ROIs).

We are available to assist with any questions you may have about this issue or any other aspect of your client's official duties as an ATF agent. Feel free to contact Barry Orlow at (202) 648-7043. Your cooperation in this matter is appreciated.

Sincerely,

STEPHEN R. RUBENSTEIN
Chief Counsel

By: 
for Barry S. Orlow
Associate Chief Counsel (Field Operations and
Information)
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE, Rm. 6E-441
Washington, DC 20226
(202) 648-7043
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ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

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CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPEIER, CALIFORNIA

May 5, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20520

Dear Attorney General Holder:

On the evening of May 2, 2011, your staff notified the Committee that the Department of Justice was planning to make approximately 400 pages of documents available for an *in camera* review at your headquarters. Members of my staff went to review those documents on May 4th, only to discover they were partially, or in some cases almost completely, redacted. Since these documents were only made available pursuant to our Committee's subpoena to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and only on an *in camera* basis, redactions were not necessary.

Furthermore, any documents made available pursuant to the Committee's lawfully issued subpoena to ATF are not permitted to have any redactions. To fully and properly investigate the decisions made by Department officials during ATF's wildly reckless Operation Fast and Furious, it is imperative that the Committee have access to documents in their entirety.

I ask that you produce all documents responsive to the Committee's subpoena forthwith.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member



U.S. Department of Justice

Office of the Inspector General

May 11, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

Dear Senator Grassley:

I am writing in response to your letter dated April 22, 2011, concerning your request on behalf of Vincent Cefalu, a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), that the Office of the Inspector General (OIG) provide you with a status update regarding Special Agent Cefalu's Equal Employment Opportunity (EEO) claims against the ATF. You also asked that we evaluate Special Agent Cefalu's claim that he has been "effectively idled" since May 2010 when CNN broadcasted Special Agent Cefalu's allegation that ATF retaliated against him for criticizing an ATF plan to undertake what he described as an illegal wiretap in a racketeering case.

When we asked ATF representatives about these matters, they told us that Special Agent Cefalu filed an EEO complaint with the agency on or about January 21, 2010. The complaint was based upon several issues, including age and disability discrimination. As you know, the agency's EEO staff investigates such matters before further action can be taken. The ATF officials also informed us that Special Agent Cefalu has amended his complaint on several occasions since he filed his initial EEO complaint. ATF officials stated that each amendment requires the EEO staff to conduct additional investigation, which has delayed completion of the initial stage of the EEO process for Special Agent Cefalu's complaint.

We brought Special Agent Cefalu's allegation that he has been effectively idled to ATF's attention so that ATF could address that allegation as a management issue. ATF officials informed us that after the CNN report aired in May 2010, ATF management took steps to ensure that Special Agent Cefalu's supervisors were providing him sufficient work assignments. ATF officials told us that they have been monitoring and will continue to monitor this situation to ensure that Special Agent Cefalu's supervisors give him sufficient work assignments. Because the status of Special Agent Cefalu's work assignments

relates to his pending EEO claim, we do not intend to investigate further this matter while his EEO claim is pending.

Thank you for bringing your concerns to our attention. If you have any questions about this letter or these issues, please contact me or Senior Counsel Jay Lerner at (202) 514-3435.

Sincerely,

A handwritten signature in blue ink that reads "Cynthia A. Schnedar". The signature is fluid and cursive, with the first name being the most prominent.

Cynthia A. Schnedar
Acting Inspector General

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

May 16, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
 Attorney General
 U.S. Department of Justice
 950 Pennsylvania Avenue, N.W.
 Washington, DC 20530

Dear Attorney General Holder:

Last week I submitted Questions for the Record (QFRs) following the Judiciary Committee hearing on Oversight of the Department of Justice (DOJ).

Historically, the Justice Department generally takes five to eight months to respond to QFRs. However, because of my ongoing investigation into the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), I would appreciate receiving responses to questions on this topic much sooner. Attached is a copy of those questions. Please provide responses as soon as possible.

Additionally, I would like to reiterate the requests that have remained unanswered from my previous letters on this matter.

a) In my letter of February 16, 2011, I requested that you provide:

- 1) All records relating to communications between the ATF and the Federal Firearms Licensee (FFL) who sold the weapons to Avila, including any Report of Investigation (ROI) or other records relating to the December 17, 2009 meeting "to discuss his role as an FFL during this investigation."
- 2) All records relating to communications between ATF headquarters and Phoenix Special Agent in Charge (SAC) William Newell from December 1, 2010 to the present, including a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of CBP Agent Brian Terry.
- 3) A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF Headquarters in the Spring of 2010.

The Honorable Eric H. Holder, Jr.
May 16, 2011
Page 2 of 4

4) Copies of all e-mails related to Operation Fast and Furious, the Jaime Avila case, or the death of CBP Agent Brian Terry sent to or from SAC Newell, Assistant Special Agent in Charge (ASAC) George Gillette, Group 7 Supervisor, or the Case Agent between November 1, 2009 and January 31, 2011.

I requested that these documents be provided on a rolling basis as they are identified and located. I also requested that you please prioritize your search for documents and produce them in the following order: (1) documents in response to requests one through three, (2) documents in response to request four dated between December 13, 2010 and January 31, 2011, and (3) documents in response to request four dated between November 1, 2009 and December 13, 2010.

b) After ICE Agent Jaime Zapata was brutally murdered in Mexico on February 15, I was shocked to learn that, like Border Patrol Agent Brian Terry, Agent Zapata had been killed with a weapon traced to an individual in the U.S. that the ATF had been aware was trafficking firearms. Accordingly, in my March 4, 2011 letter, I requested answers to the following questions:

(1) Although the gun used in the assault on Agent Zapata that has been traced back to the U.S. was purchased on October 10, 2010, how can we know that it did not make its way down to Mexico after the November investigation, when the arrest of these three criminals might have prevented the gun from being trafficked and later used to murder Agent Zapata?

(2) When did law enforcement first become aware that Morrison purchased the gun?

(3) Given that the likely recipients of any trafficked guns were so close to the border, did any ATF personnel raise concerns about the possibility of those guns being used against U.S. law enforcement? If so, how did the ATF address those concerns?

(4) Did any ATF personnel raise concerns about the wisdom of allowing individuals like the Osorio brothers or Morrison to continue their activities after the November weapons transfer? If so, how did the ATF address those concerns?

In addition to answering those questions, I also requested all records relating to:

The Honorable Eric H. Holder, Jr.
 May 16, 2011
 Page 3 of 4

(5) When law enforcement officials first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison;

(6) Surveillance that may have been conducted on the Osorio brothers or Morrison prior to the November transfer of weapons between the ATF's confidential informant and the Osorio brothers and Morrison;

(7) The November transfer; and

(8) Any surveillance that law enforcement continued to conduct on the Osorio brothers or Morrison after the November transfer.

Finally, I requested a briefing on the Zapata matter. I reiterated these requests in my letter of March 28, 2011, and am still awaiting both a response and a briefing.

c) In my letter of April 8, 2011, I requested written answers to three questions. The third read:

(3) What steps have you taken or do you plan to take to ensure that employees are aware of their right to communicate directly with Congress if they so choose?

In response, you provided me with information about the ATF providing its agents with information about the Whistleblower Protection Act in order to prevent retaliation against whistleblowers. While that is appreciated, it does not respond to my question. I asked about making employees aware of the appropriations provision that protects their right to communicate directly with Congress. As I outlined in that letter:

[A]ttempts to prevent direct communications with Congress are not a lawfully authorized activity of any officer or employee of the United States whose salary is paid with appropriated funds.¹ Specifically, no officer or employee may attempt to prohibit or prevent "any other officer or employee of the Federal Government from having *direct* oral or written communication or *contact* with any Member, committee, or subcommittee of the Congress" about a matter related to his employment or the agency "in any way, *irrespective of whether such communication or contact is at the initiative*" of the employee or Congress (emphasis added).²

I wrote to you on January 31 to ensure you were aware of these provisions and to express concerns that without proper guidance, managers might

¹ Consolidated Appropriations Act, 2010, P.L. 111-117, 123 Stat. 3034, § 714 (2010), as continued by §101 of continuing resolutions P.L. 111-242, 124 Stat. 2607 (2010) and P.L. 112-6, 125 Stat. 23 (2011)—which extends the funding levels in the 2010 appropriations bills, as well as "the authority and conditions provided in such Acts," through April 8, 2011.

² *Id.*

The Honorable Eric H. Holder, Jr.
May 16, 2011
Page 4 of 4

inappropriately intimidate employees to discourage them from speaking with Congress and thus unlawfully interfere with a Congressional inquiry.³ In order for Congress to exercise its oversight authority and act as a check on Executive power, it is crucial that agency employees are free to communicate directly with Members and Committee staff. Direct contact means contacts that do not necessarily involve Congressional liaison or agency management. Without such direct, unfiltered communications, Congress would still be unaware of, and unable to inquire about, the serious allegations involving the death of Border Patrol Agent Brian Terry and the sales of weapons to known and suspected gun traffickers.

Accordingly, please provide responses to the questions attached, as well as those outlined above, by May 30, 2011. If you have any questions regarding this letter, please have your staff contact Tristan Leavitt at (202) 224-5225. Thank you for your prompt attention these important issues.

Sincerely,



Charles E. Grassley
Ranking Member

Attachment

³ 18 U.S.C. § 1505 (providing criminal penalties for obstructing or impeding the power of Congressional inquiry).

Office of Congressional Relations

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



**U.S. Immigration
and Customs
Enforcement**

MAY 18 2011

The Honorable Charles E. Grassley
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

Thank you for your March 15, 2011 letter to U.S. Immigration and Customs Enforcement (ICE). You wrote regarding Operation "Fast and Furious," an ongoing Organized Crime Drug Enforcement Task Force investigation led by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

In response to your letter, representatives from ICE's Homeland Security Investigations (HSI) met with your staff on March 25, 2011. As a follow up, on April 13, 2011, your staff spoke via teleconference with the ICE Special Agent in Charge in Phoenix, Arizona. Additionally, at your staff's request, contact information for the HSI Group Supervisor responsible for overseeing the day-to-day activities for the sole ICE agent assigned to the operation was provided to your office on April 15, 2011. It is our understanding that these communications have clarified for your office ICE's limited involvement with regard to Operation "Fast and Furious."

Finally, you requested in your letter all communications between ICE supervisors and ICE headquarters related to the operation. Based on conversations with your staff, we conducted a thorough search for any communications between ICE supervisors and ICE headquarters that occurred between December 15, 2010 and January 27, 2011, and have found no communications that would be responsive to your inquiry.

We appreciate the opportunity to address these concerns and look forward to working with you and your office on other critical homeland security issues in the future.

Sincerely,

Elliot Williams
Assistant Director for
Congressional Relations

www.ice.gov

June 2011

June 2011

Congress of the United States
Washington, DC 20510

June 2, 2011

Joe Yahner
Chief of Police
Phoenix Police Department
620 West Washington Street
Phoenix, Arizona 85003

Dear Chief Yahner:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
- 2) All DRs that list Assistant U.S. Attorney Emory Hurley as the point of contact.
- 3) All DRs from September 2009 to the present where firearms were recovered attendant to investigations into homicide, aggravated assault, kidnapping, or home invasion.

If possible, please fax these records to (202) 224-3799 or (202) 225-2382. If you have any questions regarding this request, please contact Henry Kerner in Chairman

¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Roberto A. Villasenor
Chief of Police
Tucson Police Department
270 S. Stone Ave.
Tucson, AZ 85701

Dear Chief Villasenor:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Tom Ryff
Chief of Police
Tempe Police Department
120 E. 5th Street
Tempe, AZ 85281

Dear Chief Ryff:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

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- 3) All DRs from September 2009 to the present where firearms were recovered attendant to investigations into homicide, aggravated assault, kidnapping, or home invasion.

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¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives

Sincerely,



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Alan G. Rodbell
Chief of Police
Scottsdale Police Department
9065 E. Via Linda
Scottsdale, AZ 85258

Dear Chief Rodbell:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Frank Milstead
Chief of Police
Mesa Police Department
PO Box 1466
Mesa, AZ 85211

Dear Chief Milstead:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
- 2) All DRs that list Assistant U.S. Attorney Emory Hurley as the point of contact.
- 3) All DRs from September 2009 to the present where firearms were recovered attendant to investigations into homicide, aggravated assault, kidnapping, or home invasion.

If possible, please fax these records to (202) 224-3799 or (202) 225-2382. If you have any questions regarding this request, please contact Henry Kerner in Chairman

¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Steven Conrad
Chief of Police
Glendale Police Department
6835 N 57th Drive
Glendale, AZ 85301

Dear Chief Conrad:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
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If possible, please fax these records to (202) 224-3799 or (202) 225-2382. If you have any questions regarding this request, please contact Henry Kerner in Chairman

¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Tom Sheahan
Sheriff
Mohave County Sheriff's Office
P.O. Box 1191
Kingman, Arizona 86402-1191

Dear Sheriff Sheahan:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
- 2) All DRs that list Assistant U.S. Attorney Emory Hurley as the point of contact.
- 3) All DRs from September 2009 to the present where firearms were recovered attendant to investigations into homicide, aggravated assault, kidnapping, or home invasion.

If possible, please fax these records to (202) 224-3799 or (202) 225-2382. If you have any questions regarding this request, please contact Henry Kerner in Chairman

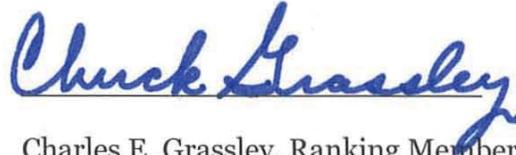
¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Steve Tucker
Sheriff
Greenlee County Sheriff's Office
Highway 191
Clifton, Arizona 85533

Dear Sheriff Tucker:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
- 2) All DRs that list Assistant U.S. Attorney Emory Hurley as the point of contact.
- 3) All DRs from September 2009 to the present where firearms were recovered attendant to investigations into homicide, aggravated assault, kidnapping, or home invasion.

If possible, please fax these records to (202) 224-3799 or (202) 225-2382. If you have any questions regarding this request, please contact Henry Kerner in Chairman

¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Tim Dorn
Chief of Police
Gilbert Police Department
75 E. Civic Center Drive
Gilbert, AZ 85296

Dear Chief Dorn:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
- 2) All DRs that list Assistant U.S. Attorney Emory Hurley as the point of contact.
- 3) All DRs from September 2009 to the present where firearms were recovered attendant to investigations into homicide, aggravated assault, kidnapping, or home invasion.

If possible, please fax these records to (202) 224-3799 or (202) 225-2382. If you have any questions regarding this request, please contact Henry Kerner in Chairman

¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Ralph E. Ogden
Sheriff
Yuma County Sheriff's Office
141 S. 3rd Avenue
Yuma, Arizona 85364

Dear Sheriff Ogden:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
- 2) All DRs that list Assistant U.S. Attorney Emory Hurley as the point of contact.
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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Steve Waugh
Sheriff
Yavapai County Sheriff's Office
255 E. Gurley
Prescott, Arizona 86301

Dear Sheriff Waugh:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Tony Estrada
Sheriff
Santa Cruz County Sheriff's Office
1250 N. Hohokam Drive
Nogales, Arizona 85621

Dear Sheriff Estrada:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Paul Babeu
Sheriff
Pinal County Sheriff's Office
P.O. Box 867
Florence, Arizona 85132

Dear Sheriff Babeu:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
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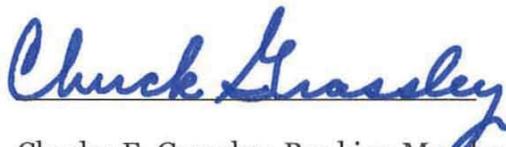
¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Clarence W. Dupnik
Sheriff
Pima County Sheriff's Office
1750 E. Benson Highway
Tucson, Arizona 85714

Dear Sheriff Dupnik:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Kelly Clark
Sheriff
Navajo County Sheriff's Office
P.O. Box 668
Holbrook, Arizona 86025

Dear Sheriff Clark:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Joe Arpaio
Sheriff
Maricopa County Sheriff's Office
100 W. Washington, Suite 1900
Phoenix, Arizona 85009

Dear Sheriff Arpaio:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Don Lowery
Sheriff
La Paz County Sheriff's Office
1109 Arizona Avenue
Parker, Arizona 85344

Dear Sheriff Lowery:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Preston Allred
Sheriff
Graham County Sheriff's Office
523 10th Avenue
Stafford, Arizona 85546

Dear Sheriff Allred:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

John Armer
Sheriff
Gila County Sheriff's Office
1100 South Street
Globe, Arizona 85501

Dear Sheriff Armer:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Larry A. Dever
Sheriff
Cochise County Sheriff's Office
205 North Judd Drive
Mile Post 345, Highway 80
Bisbee, Arizona 85603

Dear Sheriff Dever:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

David G. Murray
Sheriff
Apache County Sheriff's Office
P.O. Box 518
St. Johns, Arizona 85936

Dear Sheriff Murray:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Sherry Kiyler
Chief of Police
Chandler Police Department
PO Box 4008
Chandler, AZ 85244

Dear Chief Kiyler:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Bill Pribil
Sheriff
Coconino County Sheriff's Office
911 E. Sawmill Road
Flagstaff, Arizona 86001

Dear Sheriff Pribil:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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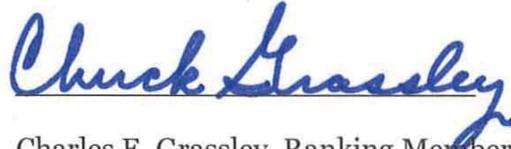
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Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20515

June 3, 2011

The Honorable Barack Obama
The White House
Washington, DC 20500

Dear Mr. President:

We are writing to express our serious concerns about the Administration's response to investigations of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) "Project Gunrunner" and its offshoot known as "Fast and Furious."

Reports of the tactics used in this operation are extremely troubling. The ATF allegedly encouraged gun store owners to sell thousands of firearms to customers whom store employees considered suspicious. Our concerns were heightened with news that one of the firearms sold may have been used in the murder of a Border Patrol agent. These allegations call into question the judgment of the agents involved. It is equally troubling that the Department of Justice has delayed action and withheld information from Congressional inquiries.

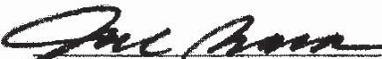
We stand firm in our support for our federal law enforcement agents, but concerned Americans—regardless of where they stand on gun control issues—deserve prompt and complete answers to the questions surrounding this operation. While the Department of Justice can and should continue its investigation, those activities should not curtail the ability of Congress to fulfill its oversight duties.

We urge you to instruct the Department of Justice to promptly provide complete answers to all Congressional inquiries on this issue. These investigations should not be used as a platform for partisan criticism of the Administration; rather, they should be an opportunity to get to the bottom of this serious allegation of federal law enforcement misconduct. We believe it is essential for you to seize this opportunity, and we stand willing to provide the Administration our support in any way we can.

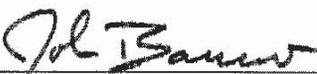
Sincerely,



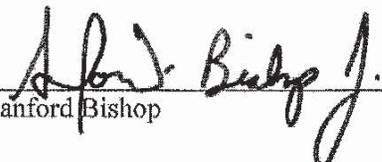
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Joe Baca



John Barrow

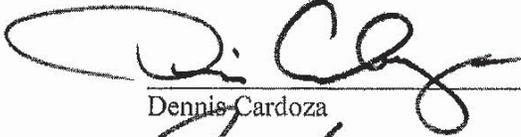


Sanford Bishop

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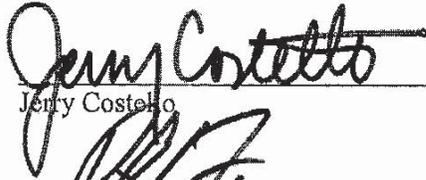
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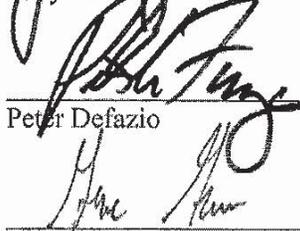
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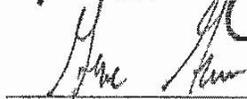
Jim Cooper



Jerry Costello



Peter Defazio



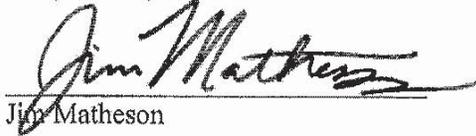
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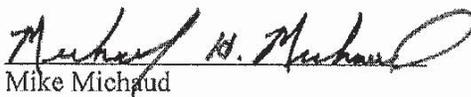
Tim Holden



Larry Kissell



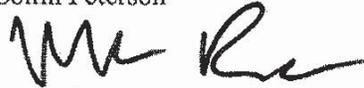
Jim Matheson



Mike Michaud



Collin Peterson



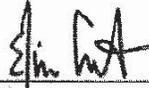
Mike Ross



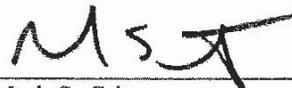
Leonard Boswell



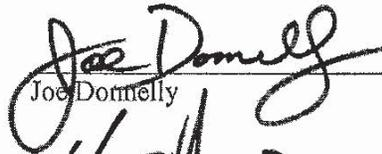
Ben Chandler



Jim Costa



Mark S. Critz



Joe Dormelly



Martin Heinrich



Ron Kind



Ben Ray Lujan



Mike McIntyre



Bill Owens



Nick Rahall



Tim Ryan


Kurt Schrader


Heath Shuler


Tim Walz



GRAHAM COUNTY SHERIFF'S OFFICE

523 10TH AVENUE • SAFFORD, ARIZONA 85546 • TELEPHONE: (928) 428-3141 • FAX: (928) 428-2487

SHERIFF
PRESTON "PJ" ALLRED

UNDERSHERIFF
C. JEFF McCORMIES

June 8, 2011

TO WHOM IT MAY CONCERN:

REF: Operation Fast and Furious

A records check has been completed on the above reference with negative results. If I can be of further assistance please contact me at (928) [REDACTED]

Respectfully,

Sheriff Preston J Allred

Maria Castro
Sheriff's Assistant/ Records

A handwritten signature in cursive script that reads "Maria Castro". The signature is written in black ink and is positioned to the right of the typed name and title.

DARRELL E. ISSA, CALIFORNIA
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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051

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June 8, 2011

Mr. Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

I write to further document your failure to comply with the Committee's March 31, 2011, subpoena. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and the Department of Justice's (DOJ) continued refusal to produce documents relevant to the Committee's investigation into Operation Fast and Furious is unacceptable and contrary to your lawful obligations. The Committee issued a subpoena to you in your capacity as the Acting Director of ATF on March 31, 2011. The Committee has also written seven letters to ATF and DOJ, dated March 16, April 8, April 11, April 20, April 20, May 3, and May 5. Further, Committee staff has had dozens of telephone calls with DOJ's Legislative Affairs office and officials in the Office of the Deputy Attorney General, with the most recent extensive conversations on May 22, 24, 25, and 26. The result of these communications, however, has been the production of no non-public documents by DOJ and ATF, and the presentation of largely unhelpful documents for *in camera* review.

At a May 5, 2011, meeting high-level officials assured Committee staff that both DOJ and ATF would cooperate with the Committee's investigation. The deliberate delay and refusal to comply with the subpoena have belied these assurances. At the meeting, an Associate Deputy Attorney General told my staff to identify any specific documents the Committee wished to obtain to ease the burden on DOJ to locate documents helpful to the Committee's investigation. Yet, after Committee staff identified two such documents to DOJ on May 11, 2011, the Department has continuously refused to produce those documents, only making them available for an *in camera* review.

This massive expenditure of Committee time and resources has resulted in neither full nor even partial compliance by DOJ – more than two months after you received the subpoena. This unacceptable result calls for further action. Ultimately, Congress must be able to obtain information from DOJ to properly exercise its constitutionally mandated duty to conduct oversight of the Executive Branch.

Mr. Kenneth E. Melson
June 8, 2011

Accordingly, I now ask that you produce all documents responsive to the March 31, 2011, subpoena by June 10, 2011, at 5:00 p.m. An *in camera* review of these documents will not suffice. I also request that you provide these additional documents to the Committee no later than Monday, June 13, 2011, at noon:

1. Reports ATF submitted to the Organized Crime Drug Enforcement Task Force (OCDETF) for the initiation of Operation Fast and Furious as an OCDETF operation, or any reports ATF provided to OCDETF with interim updates on the progress of Operation Fast and Furious.
2. Materials provided to you in preparation for all of your visits to Arizona field offices between January 2010 and November 2010, including, but not limited to, your trips to Tucson in June 2010 and Phoenix in September 2010.
3. Documents and communications between FBI personnel in Phoenix or Tucson and the FBI Laboratory relating to the firearms recovered during the course of the investigation of Agent Brian Terry's death.
4. Documents and communications relating to meetings from February to April 2011 that included David Voth, Tonya English, Jim Needles, Emory Hurley, Michael Morrissey, or Christopher Rapp.
5. Documents and communications relating to Operation Fast and Furious between ATF personnel and personnel in the United States Attorney's Office for the District of Arizona.
6. The presentation given by David Voth on or about March 5, 2010 on the southwest border, attended by DOJ official Joe Cooley and senior ATF officials.

Absent a complete production of documents pursuant to the subpoena by the dates mentioned, the Committee will be forced to evaluate whether contempt sanctions must be considered.

If you have any questions about these requests, please contact Ashok Pinto or Henry Kerner of the Committee staff at (202) 225-5074.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 10, 2011

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

Dear Mr. Chairman:

This letter provides additional information and documents responsive to the Committee's subpoena of March 31, 2011.

We fully appreciate the Committee's legitimate oversight interest in the genesis and strategy pertaining to *Fast and Furious*. We are committed to working with you to accommodate the Committee's information needs, consistent with our law enforcement responsibilities. Toward that end, we have delivered to your office 379 pages of documents to date and an additional 69 pages are enclosed with this letter. These documents were identified in our search of the emails of ATF Agents Newell, Gillett, and Voth. They bear limited redactions, like other documents we have previously provided, to protect specific details about the pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. We also have redacted text unrelated to the Committee's request in multi-subject documents. Many of these documents are not appropriate for public disclosure.

We understand your letter, dated June 8, 2011, requested the complete production of all documents by June 10, 2011. While this is not possible, we are continuing to work expeditiously to identify, process and provide or make available to the Committee additional information responsive to the its subpoena as quickly as possible and we intend to provide additional documents next week. We are also making available for review at the Department by Committee staff an additional 88 pages. This is in addition to the 800 pages of material that has previously been made available for review by Committee staff. We have substantial confidentiality interests in these documents because they contain information that relates to the pending criminal investigations. They bear limited redactions, similar to those set forth in the 466 pages reviewed by Committee staff on May 5.

The Honorable Darrell E. Issa
Page Two

To the extent that the Committee has already obtained many of the records covered by your subpoena, our search might be streamlined by your identification of any that you do not need from us. We welcome any suggestions about how we might accommodate your oversight needs efficiently, consistent with our own responsibilities.

We understand your interest in our completion of the document search as soon as possible and we share that goal. In light of the pending investigations, however, we ask for your understanding that we are making a substantial effort in the extraordinary context of pending criminal investigations. We will continue our efforts and ask that you continue to work with us to find accommodations that meet both the Committee's oversight needs and the Department's need to avoid harm to these pending investigations.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Elijah Cummings
Ranking Member

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 13, 2011

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

Dear Mr. Chairman:

This letter provides additional information and documents responsive to the Committee's subpoena of March 31, 2011. We also want to respond to questions raised by your letter, dated May 5, 2011, about redactions in documents that Committee staff reviewed at the Department on May 4, 2011.

We are delivering today to your office an additional 125 pages of material. These documents, which follow a production of 69 pages on Friday, make a total of 573 pages that we have physically produced to you to date. The documents being produced today again bear limited redactions, like other documents we have previously provided, to protect specific details about the pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Many of these documents contain non-public material and are not appropriate for public disclosure, even in their redacted form.

We are also making available for review at the Department by Committee staff an additional 36 pages. These pages are in addition to the nearly 900 pages of material that we have previously offered to make available for review by Committee staff — the bulk of which Committee staff has in fact reviewed. We have substantial confidentiality interests in these documents because they contain information that relates to sensitive law enforcement techniques and tactics. They bear limited redactions, similar to those set forth in the 466 pages reviewed by Committee staff on May 4.

Your letter of May 5, 2011 raised questions concerning redactions in the 466 pages made available to staff the previous day, May 4. Our re-review of those documents indicated that we made significant redactions of text, concerning specific investigative activities, in just 14 pages. These include redactions of information unrelated to Fast and Furious and text that would identify investigative subjects, targets, and the structure of a criminal organization. In another 65 pages, we made minor redactions of text identifying investigative file numbers, subjects, targets, witnesses, and personal information, such as cell phone numbers. We would be pleased to discuss these and any other specific redactions with Committee staff if that would be useful.

The Honorable Darrell E. Issa
Page Two

We hope this information is helpful and look forward to working with the Committee as this matter continues. Please do not hesitate to contact this office if we can provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Weich', written in a cursive style.

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Elijah Cummings
Ranking Member

**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Chief Counsel

Washington, DC 20226
www.atf.gov

Robert N. Driscoll, Esq.
Alston and Bird
The Atlantic Building
950 F Street, NW
Washington, DC 20004-1404

JUN 14 2011

Dear Mr. Driscoll:

We understand that the House Committee on Oversight and Government Reform has issued a subpoena for the testimony of your client, John Dodson, before the Committee at a hearing on June 15, 2011. The Committee's subpoena directs Mr. Dodson to testify about information derived from his employment with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and we understand that Mr. Dodson wishes to provide testimony.

In testifying at a hearing before the House Committee on Oversight and Government Reform, your client is encouraged to answer fully and candidly all questions concerning matters within his personal knowledge. His appearance before the Committee does not, of course, relieve him of any obligations of secrecy that are imposed upon him concerning certain matters arising from his official duties as an ATF Special Agent. For example, he may not reveal any information covered by Rule 6(e) of the Federal Rules of Criminal Procedure relating to matters occurring before a grand jury; tax information; Title III information, or any other matters prohibited from disclosure by statute, regulation, or court rule. An extended, but not exhaustive, list of such matters may be found in 28 C.F.R. 16.26.

These policies and regulations require that your client not reveal the existence of any ongoing investigation, the identity of individuals who were the subject of past investigations but never charged, any information that would identify or tend to identify a confidential informant or source, any information about investigative techniques, and classified information. In addition, with regard to any open or pending investigation or prosecution, these policies and regulations require that your client not reveal information unless the Department has already publicly disclosed the information, such as through pleadings or press releases. For example, your client should not identify witnesses, subjects, or targets; evidence obtained in the course of the investigation and investigative leads; or the content of Reports of Investigation (ROIs).

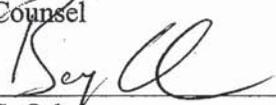
Robert N. Driscoll, Esq.

-2-

If you have any questions regarding this matter, please contact Acting Deputy Chief Counsel Greg Serres at (202) 648-7836. Your cooperation in this matter is appreciated.

Sincerely,

STEPHEN R. RUBENSTEIN
Chief Counsel

By:  _____

Barry S. Orlow

Associate Chief Counsel (Field Operations and
Information)

Bureau of Alcohol, Tobacco, Firearms and Explosives

99 New York Avenue, NE, Rm. 6E-441

Washington, DC 20226

(202) 648-7043

(202) 648-9620

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202-239-3300
Fax: 202-239-3333
www.alston.com

Robert N. Driscoll

Direct Dial: 202-239-3470

E-mail: bob.driscoll@alston.com

June 14, 2011

VIA Email: [REDACTED]

Barry S. Orlow
Associate Chief Counsel (Field Operations and Information)
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE, Room 6E-441
Washington, DC 20226

Dear Mr. Orlow:

Thank you for your letter of today. I find it strange that, hours before his scheduled testimony, this is the first communication that ATF has had with Special Agent Dodson regarding his purported obligation of confidentiality. Mr. Dodson spoke publicly about the matters being investigated by the House Committee on Oversight and Government Reform months ago; and the hearing at which Mr. Dodson will testify has been noticed for almost a week.

Mr. Dodson will appear before the Committee pursuant to a Congressional subpoena (attached) and intends to respond truthfully to any questions asked. If ATF does not recognize the validity of a subpoena to one of its Special Agents, or wishes to restrict the scope of the subpoena or limit the topics about which Mr. Dodson is compelled to testify, it seems that ATF should raise that matter with the Committee itself, not with its own employees.

I do not intend to minimize or ignore the fact that there are always complex separation of powers issues whenever Congressional oversight occurs. However, given that Special Agent Dodson is under Congressional subpoena, and given that it is unlawful to pay the salary of any federal employee who seeks to prevent or limit another federal employee from communicating with Congress,¹ I know that you are not seeking to prevent Special Agent Dodson from testifying or otherwise attempting to "chill" his testimony.

Therefore, it seem to me that your letter implicates the question of whether, with respect to particular questions, the Executive Branch's right to secrecy and confidentiality

¹ Consolidated Appropriations Act, 2010, P.L. 111-117, 123 Stat. 3034, § 714 (2010), as continued by subsequent continuing resolutions.

Barry S. Orlow
June 14, 2011
Page 2

trumps the Legislative Branch's right to conduct oversight of how ATF spends its appropriated funds. While I'm sure we could both exchange letters resembling law review articles to attempt to determine whether some questions might generate competing constitutional claims of co-equal branches of government, it is not Special Agent's Dodson's responsibility to resolve a question that has vexed constitutional scholars for over two hundred years in the hours remaining before the hearing.

I am therefore copying Chairman Issa on this letter and suggest that you direct any proposed restrictions on Special Agent Dodson's testimony to the Chairman or his staff. Unless some other arrangement is reached between ATF and the Committee, Special Agent Dodson will comply with the subpoena issued to him and answer the questions he is asked.

Sincerely,



Robert N. Driscoll

RND:dm

Enclosure

cc: Chairman Darrell Issa, Oversight and Government Reform Committee

LEGAL02/32687058v1



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 14, 2011

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

Dear Mr. Chairman:

This responds to your letter, dated June 8, 2011, to Acting Director Kenneth Melson of the Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) demanding that the Department "produce all documents responsive to [your] March 31, 2011 subpoena by June 10, 2011, at 5:00 p.m." That subpoena requires the review of an extremely large number of documents relating both to Operation Fast and Furious, an ongoing investigation into gun trafficking in which 20 defendants are charged and awaiting trial, and to the active investigation into the murder of Customs and Border Patrol Agent Brian Terry.

The Department has recognized the Committee's legitimate oversight interest in the genesis and strategy pertaining to Fast and Furious. Yet we also have recognized that the Committee's remarkable approach – holding public hearings and releasing documents related to an ongoing criminal investigation and pending criminal cases – could negatively impact our ability to successfully prosecute gun traffickers and violent criminals, and that your subpoena implicates our responsibilities, long recognized by Congress, not to disclose the names of cooperating witnesses, the identities of confidential informants, uncharged targets, the details of investigative techniques and other sensitive law enforcement information and to comply with legal requirements to maintain the secrecy of grand jury materials, sealed court information and other such records.

We have worked assiduously to meet the Committee's needs – there has been no "refusal to comply". Rather, we have surveyed ATF employees, and collected over a million pages of records potentially within the scope of your subpoena. We have had to hire a document processing company and IT vendors at a substantial cost to process the voluminous materials so they could be put in a format to be electronically reviewed. We have diverted ATF and DOJ attorneys and staff from their regular duties for thousands of hours to review documents – not just for responsiveness, but also to identify documents and portions of documents that must not

The Honorable Darrell E. Issa
Page 2

be disclosed because they contain the type of sensitive law enforcement information described above.

In addition to this substantial commitment of resources, since the issuance of your subpoena, we have had a number of productive discussions with the Committee about our ongoing efforts to respond to the subpoena and have kept the Committee apprised of the logistical challenges we face. We have worked with the Committee to prioritize those documents of greatest interest – and your staff identified 19 individuals. We immediately focused our attention on implementing a process to search their records, particularly emails related to those individuals. We also have also briefed the Committee on various aspects of Fast and Furious, and we have sought ways to try to accommodate the Committee’s need for information while at the same time working to ensure the confidentiality of sensitive law enforcement information. Towards that end, we have delivered documents to you and made additional sensitive documents, such as those relating to open criminal matters, available for review by Committee staff, consistent with the custom and practice of congressional committees under the leadership of both parties. And we have appreciated staff’s willingness to make these reviews.

As set forth below, despite the volume of materials involved and the logistical difficulties presented by the need to protect live investigations and pending trials, our goal remains to give the Committee the information it needs to conduct its oversight responsibilities, consistent with our responsibilities, and it is not correct to say the Department is doing otherwise.

Department Efforts to Date

The Department is taking your request for information very seriously and has dedicated substantial resources to meet the Committee’s needs. In the months since ATF began searching for the broad range of documents responsive to your subpoena, a team of Department attorneys and ATF professionals has been working on a full-time basis at ATF to preserve and identify responsive documents. We have undertaken this extraordinary process in order to respond to the Committee’s oversight interest in the strategies relating to firearms trafficking investigations even though we are in the midst of major law enforcement efforts relating to the same matter, because we share your interest in resolving the allegations that have been raised. Because these strategies overlap with pending law enforcement efforts, however, we must be careful in our document review to ensure that our responses to the Committee’s requests do not harm our pending prosecutions by prematurely disclosing information, by revealing investigative activities in a manner that would violate our legal and ethical duties, or by compromising the effectiveness of our investigations and the safety of the individuals involved. This means that all of the documents, including emails, that we identify as responsive to your subpoena, as well as the additional materials you have requested in other correspondence, must be carefully reviewed, evaluated and, in some instances, redacted.

These tasks have required extensive time and resources because the requested materials are voluminous. In addition to gathering, organizing, and processing data from the field in

The Honorable Darrell E. Issa
Page 3

response to your requests—at substantial additional cost for information technology expenses—our team has conducted a separate, targeted search for responsive documents in the emails of Agents William Newell, George Gillett, and David Voth, in accordance with guidance from Committee staff regarding your oversight priorities. In coordination with your staff, we also have implemented a process to search the emails of nineteen individuals at ATF (including Agents Newell, Gillett, and Voth) in whom staff has indicated a primary interest, and we have agreed with your staff to proceed with specified search terms in conducting the search of their email accounts.

In order to perform that search as quickly as possible, ATF has engaged an outside contractor at an additional expense. The contractor has recently completed the loading of the designated nineteen individuals' emails and attachments into its system and has advised us that the number of records loaded at this point exceeds 724,000. All of the potentially responsive emails must be reviewed to determine whether they are actually responsive in whole or in part, and then evaluated for disclosure to the Committee pursuant to our obligations as described above. We believe that these measures demonstrate our good faith efforts to respond to the Committee's subpoena as quickly as possible.

As you know, we have already made available ATF Agent Newell for an interview by Committee staff that took place on June 8th and we are prepared to make additional representatives available pursuant to the agreements we have reached regarding these interviews. In consultation with your staff we have focused our document search in a manner consistent with the Committee's priorities. In accordance with that guidance, we have delivered to your office 448 pages of documents to date, with limited redactions to protect the details of pending investigations, many of which are not appropriate for public disclosure.

To date, we also have made available for Committee staff review at the Department nearly 900 pages of material, also with limited redactions to protect our on-going law enforcement efforts. While our cover letters explain the basis for our redactions, we are always available to discuss them with Committee staff if that would be helpful. Committee staff should always feel free to raise any questions about redactions with us during their review of documents at the Department. We also expect to produce or make available additional documents later this week. We will keep your staff informed of our progress on other searches, including the email search described above and other searches.

The Six Numbered Requests Set Forth in Your Letter of June 8, 2011

In your June 8, 2010 letter you included six additional requests for documents. We have provided or are already working to provide you with most of the documents your June 8, 2011 letter itemizes, as follows. First, the reports that ATF submitted to the Organized Crime Drug Enforcement Task Force (OCDETF) in 2010 relating to Operation Fast and Furious have already been made available to your staff with limited redactions, and an ATF 2011 interim report to OCDETF is included in the materials to which we offered access yesterday. Second, the briefing books prepared for Acting Director Melson's trips to Arizona in 2010 have already been

The Honorable Darrell E. Issa
Page 4

provided to you electronically or otherwise made available to your staff, again with limited redactions to avoid compromise to our law enforcement efforts. Third, with respect to documents and communications between FBI personnel in Phoenix or Tucson and the FBI Laboratory related to firearms recovered during the investigation of Customs and Border Patrol Agent Terry's death, ATF will add this request to its ongoing search for records, but it would be helpful if you could identify ATF employees whom you believe are most likely to possess these records, if you have that information.

Your fourth and fifth requests, which relate to meetings, documents, and communications among ATF agents and Assistant United States Attorneys, also seek records from new individuals in addition to several who are already among the nineteen ATF employees whose email records are within our existing intensive search efforts. Since these two requests are likely to encompass communications that are central to our on-going investigation and pending prosecution, we would appreciate the opportunity to confer with your staff about how we can respond without jeopardizing the success of our law enforcement efforts. Finally, the March 5, 2010, presentation that you have requested is among the documents that we have offered to make available at the Department for your staff's review, as set forth in our letter of June 10, 2011.

Providing Access to Sensitive Documents Is a Standard Accommodation

Over the past two decades, we have on a number of occasions offered access to sensitive documents to congressional committee staff in a variety of oversight matters in order to provide committees with information of interest to them while preserving the confidentiality of the documents themselves. This has been a valuable tool in the accommodation process because it permits the Department to satisfy oversight needs for information while protecting the Department's confidentiality interests regarding further disclosure of the material. Committee staff have reviewed documents at the Department in oversight matters during Republican and Democratic Administrations, including the Committee on Government Reform and Oversight investigation pertaining to alleged FBI corruption in Boston (2002) as well as Judiciary Committee oversight investigations relating to the removal of United States Attorneys (2007), the New Hampshire Phone Jamming case (2008), and the replacement of a particular United States Attorney (2009). As in these and other oversight inquiries that involved committee subpoenas, we are also prepared to make particular documents to which we have provided access available for the Committee's use during interviews and hearings. We are prepared to discuss further accommodations regarding specific documents on a case by case basis if that is helpful to you.

As with previous oversight matters, we have not provided access to documents that contain detailed information about our investigative activities where their disclosure would harm our pending investigations and prosecutions. This includes information that would identify investigative subjects, sensitive techniques, anticipated actions, and other details that would assist individuals in evading our law enforcement efforts. Our judgments begin with the premise that we will disclose as much as possible that is responsive to the Committee's interests,

The Honorable Darrell E. Issa
Page 5

consistent with our responsibilities to bring to justice those who are responsible for the death of Agent Terry and those who violate federal firearms laws.

Conclusion

As indicated in our letter of June 10, 2011, we understand your interest in our completion of the document search as soon as possible, and we share that goal. In light of the pending investigations, however, we ask for your understanding that we are making an extraordinary effort in the extraordinary context of pending criminal investigations. We will continue our efforts and ask that you continue to work with us to find accommodations that meet both the Committee's oversight needs and the Department's needs to avoid harm to these pending investigations.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,



Ronald Weich
Assistant Attorney General

cc: The Honorable Elijah Cummings
Ranking Member



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 15, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, regarding Operation Fast and Furious.

Enclosed are an additional 56 pages of material. These documents make a total of 355 pages that we have physically produced to you within the last week, and a total of 734 pages that we have physically produced to date. Most of the enclosed documents bear limited redactions to protect specific details about the pending investigations, including text that would identify confidential informants, targets and sensitive techniques, plus information relating to line employees. One multi-subject document bears substantial redactions of text that is not responsive to the Committee's request. As in our production yesterday, we have not included wholly redacted pages in this multi-subject document in our page counts. Even with the redaction, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in cursive script that reads "M. Keith Burton for".

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

United States Senate

WASHINGTON, DC 20510

June 16, 2011

Via Electronic Transmission

Kenneth Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, & Explosives
U.S. Department of Justice
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

I write today in response to a June 10, 2011, article in *The Wall Street Journal* titled, "Mexican Guns Tied to U.S.", which cites a letter you sent to Senator Diane Feinstein, the Chairman of the Senate Caucus on International Narcotics Control ("Caucus"). As the Co-Chairman of the Caucus, and Ranking Member of the Senate Committee on the Judiciary ("Committee"), I have been investigating serious allegations raised by whistleblowers within the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) that agents knowingly allowed weapons to be sold to straw purchasers who then transferred those weapons to Mexican Drug Trafficking Organizations ("DTOs"). These allegations were the subject of two Congressional hearings this week and the timing of the release of this information raises questions about why the ATF would choose to release this information publicly now. Further, after reviewing the data presented in the article, I have questions about why ATF provided some select information, but not a more detailed analysis that would help Congress, and the American people, better understand the causes and sources of illegal firearms in Mexico.

Federal law prohibits the ATF from releasing firearm trace data or multiple handgun sales reports, but it does not prohibit the release of aggregate statistical data on illegal gun trafficking. However, I am concerned that the selective release of certain statistical data without further clarification and categorization may inaccurately reflect the scope and source of the problem of firearms in Mexico and the DTO violence. For example, the article states that ATF traced firearms in Mexico that were submitted for tracing by the Government of Mexico ("GOM") 21,313 firearms in 2009 and 7,971 firearms in 2010. The article further adds that of the firearms traced, 14,213 in 2009 were manufactured in the U.S. or imported to the U.S. from other countries. The article adds that 6,291 firearms in 2010 were either manufactured in the U.S. or imported from other countries. Taken together, these numbers provided the basis for the general estimate that 70% of firearms provided to the ATF from the GOM were traced back to the U.S.

The implication the article makes is that these firearms must come directly from U.S. manufacturers or U.S. Federal Firearms Licensees ("FFLs") selling guns to DTO members who smuggle the guns over the Southwest border. Unfortunately, this information paints a grossly inaccurate picture of the situation.

First and foremost, it is worth noting that the firearms data discussed in the article is based upon only the firearms that were submitted by the GOM to ATF for tracing. According to a May 6, 2009, article written by the Associated Press, over 305,424 confiscated weapons are locked in vaults in Mexico.¹ The weapons submitted for tracing represent only a small percentage of the number of weapons found to be part of the DTO related crime in Mexico. Further, there has been significant evidence in the media recently regarding the proliferation of weapons in Mexico smuggled out of Central America. For example, at a recent hearing before the Caucus on Central American security cooperation we heard testimony from witnesses that corrupt officers with access to unsecured arsenals in Guatemala and Honduras were an important source of weapons. In one recent media report, they discussed how over 1,100 fragmentation grenades, M-60 machine guns, and over a dozen grenade launchers were recovered in Guatemala at an alleged safe house of the Zetas DTO. That same article added that the Zetas had stolen over 500 weapons from a Guatemalan military base between 2007 and 2008.

Additional evidence regarding the source of weapons in Mexico is contained in an unclassified cable from the U.S. Department of State (“DOS”) dated July 2, 2010, obtained by my office and attached to this letter. The cable, titled, “Mexico Weapons Trafficking – The Blame Game” seeks to dispel rumors about the source of weapons trafficked to Mexico. The unclassified cable includes sections such as: “Myth: An Iron Highway of Weapons Flows from the U.S.,” “Myth: The DTOs Are Mostly Responsible,” “Myth: Mexico Aggressively Investigating Weapons Confiscated,” “Myth: Mexico Methodically Registers and Tracks Weapons,” and “Myth: The GOM Justice System is Tough on Violators of Gun Laws.” While this cable is very candid about the true problem of weapons smuggling inside Mexico, the cover emails forwarding this cable suggest that the ATF and officials associated with the ATF disagreed.

In fact, one email written by Special Agent in Charge William Newell states, “I could go on and on but once our ‘Fast and Furious’ case breaks it will change this.” Unfortunately, it now appears that Special Agent in Charge Newell’s prediction was correct, but instead of an “Iron Highway” operating on its own, it was ATF who fueled the flow of weapons through its “Fast and Furious” investigation which knowingly sanctioned the sale of nearly 2,000 firearms to straw purchasers.

I understand that agents working on tracing weapons in Mexico back to the U.S. routinely instruct GOM authorities to only submit weapons for tracing that have a likelihood of tracing back to the U.S. The purpose of this policy is to direct resources to tracing firearms that may have a U.S. nexus, instead of simply wasting resources on tracing firearms that will not trigger a U.S. source. So, based upon this background information, it is not surprising that reviewing a sample of weapons that is purposefully directed to increase the likelihood of U.S. generated weapons would in fact skew toward the direction of making it look like U.S. gun dealers provide more weapons than they actually do. However, further discussion of the data that is presented in the article is warranted.

¹ E. Eduardo Castillo, *AP Impact: Mexico’s Weapons Cache Stymies Tracing*, May 6, 2009, available at <http://www.brownsvilleherald.com/common/printer/view.php?db=brownsville&id=97742> (last visited June 13, 2011).

Looking specifically at the information provided by the ATF to Senator Feinstein and the *The Wall Street Journal* raises some questions when compared more detailed data provided to my office. ATF actually traced 26,813 firearms in 2009 and 9,443 in 2010. Further, that data indicates that of those firearms actually submitted for tracing, a vast majority of those firearms did not come from FFLs (either U.S. based or Mexican based). In fact, of the 26,813 weapons traced in 2009, only 5,800 actually traced back to U.S. or Mexican FFLs. Table 1 illustrates a more detailed breakdown of the firearms data for both 2009 and 2010. The most noteworthy portion of the information is that nearly 78% of firearms traced in 2009 and 66% of firearms traced in 2010 were assigned to a catchall category “No Final Sale Dealer” which means the firearms did not trace back to a United States FFL. This category of firearms includes firearms that have no nexus with U.S. commerce. It also includes firearms where the only nexus to U.S. commerce is that they were manufactured by U.S. companies. This means they are not sold by FFLs in the United States. Instead, they may be sold to foreign countries or militaries requiring approval of the State Department and Homeland Security. Additionally, this category includes firearms in the ATF’s Suspect Gun Database—a category which would include nearly 2,000 firearms as part of ATF’s Fast and Furious Investigation where the ATF knowingly authorized firearm sales to straw purchasers before the weapons were trafficked to Mexican DTOs.

Table 1: Firearms Tracing Information for 2009 and 2010

Year	Number of Firearms Submitted for Tracing by Government of Mexico	Number of Firearms Traced to Federal Firearm Licensees (FFLs)	Number of Firearms Assigned to “No Final Sale Dealer”
2009	26,813	5,800 (22%)	21,013 (78%)
2010	9,443	3,176 (34%)	6,267 (66%)

Because the numbers provided to my office indicate that the data provided to Senator Feinstein and *The Wall Street Journal* may not be entirely accurate and because further questions and breakdowns of that data are necessary for Congress to make an informed decision about the sources of weapons that are fueling the DTO related violence in Mexico, I ask that you provide responses to the following questions:

- (1) Of the 21,013 firearms in the “No Final Sale Dealer” category for 2009, how many of those firearms can be traced back to military sales to the GOM? How many can be traced to the military of Guatemala? How many can be traced to the military of Honduras? How many can be traced to the military of El Salvador? How many can be traced to other Central American and South American militaries? How many can be traced to other foreign militaries? How many are in that category because they were in the Suspect Gun Database?
- (2) Of the 6,267 firearms in the “No Final Sale Dealer” category for 2010, how many of those firearms can be traced back to military sale to the GOM? How many can be traced to the military of Guatemala? How many can be traced to the military of Honduras? How many can be traced to the military of El Salvador? How many can

be traced to other Central American and South American militaries? How many can be traced to other foreign militaries? How many are in that category because they were in the Suspect Gun Database?

- (3) How many of those weapons in the "No Final Sale Dealer" category for 2009 and 2010 were previously reported lost or stolen?
- (4) Has the ATF requested access to the 305,424 firearms held by the GOM military vault? How many of those firearms have been traced? How many of those firearms would trace back to the GOM and the Mexican military?
- (5) Data indicates that the top source dealer for illegal firearms traced in Mexico for 2009 was "Direccion General De Industria Milita" or the Directorate General of Military Industry in Mexico. They provided 120 firearms that were later traced back, likely after a crime. Why does this entity have a U.S. Federal Firearms License? Are sales to this and other foreign entities with U.S. FFL's included in the numbers the ATF provided as being a gun from a "U.S. Source". If so, why?
- (6) Why did the number of trace requests drop significantly from 2009 to 2010, but the percentage trace to U.S. FFLs go up? What is behind this trend?

Accordingly, as Co-Chairman of the Caucus and Ranking Member of the Committee, I request your prompt response to these important questions no later than June 23, 2011.

Sincerely,



Charles E. Grassley
Co-Chairman, Senate Caucus on International Narcotics Control
Ranking Member, Senate Committee on the Judiciary

Attachment

Gilbert Police Department
75 E. Civic Center Drive
Gilbert, Arizona 85296

Fax Transmittal
Please Deliver Immediately

To: Tristan Leavitt
Henry Kerner

Fax: 202 [REDACTED]
202 [REDACTED]

From: Kate Weiby, Gilbert Police Department

Date: 6/16/11

Re: Public Records Request (Operation Fast & Furious)

Total number of pages, including cover page: 2

- (1) We have not identified any reports that we have reason to believe may be connected to Operation Fast and Furious.
- (2) We did not identify any report wherein Assistant U.S. Attorney Emory Hurley was listed as a point of contact.
- (3) The attached list identifies the Gilbert departmental reports for the type of crimes as requested (September 1, 2009 – June 14, 2011), and in which the property module indicates a weapon was impounded as evidence.

If you need copies of the reports that have been identified, please advise.

Sincerely,
Kate Weiby
Police Legal Advisor
Gilbert Police Department
[REDACTED] or direct line 480 [REDACTED]

Confidentiality Notice: The materials enclosed with this facsimile transmission are private and confidential and are the property of the Gilbert Police Department. The information contained in the material is privileged and is intended only for the use of the above named party. If you are not the intended recipient, be advised that any unauthorized disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone to arrange for return of the forwarded documents.



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 16, 2011

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

Dear Mr. Chairman:

This letter supplements our previous responses to the Committee's subpoena of March 31, 2011, relating to Operation Fast and Furious.

We are delivering today to your office an additional 39 pages of material. These documents make a total of 396 pages that we have physically produced to you within the last week, and a total of 775 pages that we have physically produced to date. The documents being produced bear limited redactions to protect specific details about the pending investigations, including text that would describe targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 44 pages of law-enforcement sensitive documents that we are prepared to make available at the Department for review by Committee staff. Some of these also bear limited redactions of text that would identify investigative subjects, sensitive techniques and the portion of a multi-subject document that is not responsive to your request.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in cursive script that reads "M. Patrick Burton for".

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

Congress of the United States
Washington, DC 20510

June 21, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Arturo Sarukhán
Embassy of Mexico
1911 Pennsylvania Avenue, NW
Washington, D.C. 20006

Dear Ambassador Sarukhán:

As you may be aware, we are conducting an investigation into a reckless program by the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) known as Operation Fast and Furious. In Operation Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers.

We are attempting to identify all victims from Operation Fast and Furious on both sides of the border. Therefore, out of the firearms that have been submitted to the U.S. eTrace system, whether by agencies in the Mexican government (such as CENAPI) or by ATF agents in Mexico on behalf of the Mexican government, we respectfully request that you provide us with the serial numbers of all those which were recovered in substantial violent crimes. In addition, we would appreciate you providing the serial numbers of any other firearms that you have reason to believe may be connected with Operation Fast and Furious, as well as the circumstances under which each was recovered.

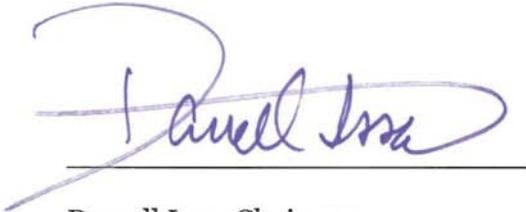
This information would be immensely helpful to us in determining the full scale of the effects of Operation Fast and Furious, which includes the deaths of both Mexican and American citizens. Just last week it came to light that two weapons from Operation Fast and Furious may have been used in the kidnapping and murder of Mario Gonzalez Rodriguez, a Mexican citizen and brother of former Attorney General of Chihuahua, Patricia Gonzalez Rodriguez.¹

¹ William La Jeunesse, "Two AK-47s Used to Murder Mexican Lawyer Were 'Fast and Furious' Guns From U.S., Sources Say," *Fox News*, Jun. 17, 2011, available at <http://www.foxnews.com/politics/2011/06/17/two-ak47s-used-to-murder-mexican-lawyer-were-fast-and-furious-guns-sources-say>.

We have a shared interest with you in getting to the bottom of this matter. We have also contacted most law enforcement jurisdictions in Arizona with this same request.

If you have any questions regarding this request, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner in Chairman Issa's office at (202) 226-5049. Thank you very much for your assistance with this matter.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

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LAWRENCE J. BRADY
STAFF DIRECTOR

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Congress of the United States
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CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPEIER, CALIFORNIA

June 21, 2011

Mr. William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, N.E.
Washington, D.C. 20226

Dear Deputy Director Hoover:

I write to request your assurance that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will not retaliate against witnesses who have provided information to this Committee. I make this request in light of the fact that on June 15, 2011, in a hearing before the Committee entitled "Operation Fast and Furious: Reckless Decisions, Tragic Outcomes," three veteran ATF special agents gave testimony highly critical of the ATF. They should not face reprisals of any kind for their testimony. No other ATF employees who cooperate with Congress should face retaliation either.

The Committee relies on whistleblowers to conduct unvarnished and thorough oversight. Witnesses who choose to cooperate with the Committee must be confident that they can provide information without fear of punishment. I am sure you agree.

During a meeting on May 5, 2011, you assured my staff that ATF leadership would see to it that witnesses would not suffer for choosing to have communications with our staff. I was encouraged by this because, as you know, there has already been at least one questionable internal affairs inquiry into what appears on its face to be a months-old *de minimis* infraction. Retaliation can take many forms – disciplinary action, less desirable duties and assigned tasks, and assignment transfers that affect personal lives and uproot families, to name a few. Such insidious actions debilitate agency morale.

Mr. William J. Hoover
 June 21, 2011
 Page 2

In his testimony at the June 15 hearing, Assistant Attorney General Ronald Weich promised in no uncertain terms that there will be no retaliation against the witnesses who testified: “I want to assure the committee – I think a number of Members raised this – that **the Department of Justice will not, would never, retaliate against whistleblowers.**”¹

Despite these assurances, I remain interested in seeing that this is carefully monitored by ATF.

During the course of the Committee’s investigation, several ATF agents related that they have already experienced retaliation. Two agents stated they were removed from Group VII after reporting their misgivings about Operation Fast and Furious up the chain of command.² One agent stated he and several other agents in Group VII who expressed unease with the operation received negative performance evaluations.³

Having witnessed these incidents, you might expect that the witnesses who testified on June 15, and other ATF employees with information relevant to this investigation, fear reprisal. In fact, they do. One special agent testified that he was initially reluctant to speak to the Committee because he feared retaliation:

[T]here has been a lot of undertones of retaliation. Like I took the schism as, hey, you don't like what we are doing here, quit, or we will fire you or whatever. . . . ATF is just – they have been known historically from my experience . . . just depending on the supervisor, to be **a very retaliatory agency**. And that’s why when . . . your office reached out to me, I wanted to talk back then, but it would have been under the guise of a whistleblower. And . . . this is important enough to blow a whistle on, but **I would be afraid of the retaliation that still might be coming down.**⁴

A second special agent testified that individuals who have information are reluctant to come forward for fear of retaliation:

[T]here are many people that I know of still with firsthand information about this case who want to cooperate, have expressed that to me, that have information that they feel you need to further your investigation, but **are afraid of ATF and retaliation for talking to you.** . . .⁵

¹ *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. 153 (testimony of Hon. Ronald Weich) (emphasis added).

² Transcript of interview with Special Agent Number 1 at 61, 72 [hereinafter Agent 1 Tr.]; Transcript of interview with Special Agent Number 2 at 125 [hereinafter Agent 2 Tr.].

³ Agent 1 Tr. at 124.

⁴ Transcript of interview with Special Agent Number 3 at 104-105 (emphasis added).

⁵ Agent 2 Tr. at 124 (emphasis added).

Mr. William J. Hoover
June 21, 2011
Page 3

A special agent also testified that he feared his cooperation with the Committee would jeopardize his job. He stated that he was “concerned that being here and providing this testimony puts me in a very precarious position in my career.”⁶ A fourth special agent told Committee investigators that he feared he would be deemed “**retroactively incompetent**” by his bosses because the agency has “**a long and rich history of retaliation.**”⁷

These statements reveal a worrying cycle: a history of retaliation by ATF management causes its employees to fear reprisals, which in turn prevents them from coming forward to the Committee. This needs to end.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Darrell Issa', written in a cursive style.

Darrell Issa
Chairman

⁶ Agent 1 Tr. at 76.

⁷ Interview with Special Agent 4.

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 21, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, relating to Operation Fast and Furious.

We are delivering today to your office an additional 65 pages of material. These documents bear limited redactions to protect specific details about the pending investigations, including text that would describe targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 6 pages of law-enforcement sensitive documents that we are prepared to make available at the Department for review by Committee staff. These pages bear no redactions.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Weich".

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

DARRELL E. ISSA, CALIFORNIA
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JACKIE SPEIER, CALIFORNIA

June 22, 2011

Ms. Cynthia A. Schnedar
Acting Inspector General
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Acting Inspector General Schnedar:

I write to ensure that the ongoing Department of Justice (DOJ) Office of Inspector General (OIG) investigation into Operation Fast and Furious is being conducted free from any political and other improper considerations. Because (1) Fast and Furious may have been inspired by guidance published by your office; (2) your office took no action in response to concerns expressed by an ATF agent in December 2010; and, (3) you may be seeking the position of permanent Inspector General (IG), your investigation of Fast and Furious appears susceptible to improper influence.

To address the appearance that your investigation of Fast and Furious could be unduly influenced by your career aspirations, I request that you refrain from pursuing the position of full-time IG at the justice department.

1. An OIG report may have inspired Fast and Furious.

In September 2009, your office released an interim report questioning ATF's implementation of Project Gunrunner.¹ Operation Fast and Furious began in the fall of 2009, as a part of Project Gunrunner. A final report issued in November 2010 was equally critical of ATF's strategy.² The report found "weaknesses in how ATF implemented Project Gunrunner."³ It stated:

Although . . . ATF has increased some program activities during Project Gunrunner, ATF's focus remains largely on inspections of gun dealers and

¹ See DOJ OIG, *Interim Review of ATF's Project Gunrunner*, Report I-2009-006 (Sept. 2009), available at <http://www.justice.gov/oig/reports/ATF/e0906.pdf> (last visited Jun. 21, 2011).

² See DOJ OIG, *Review of ATF's Project Gunrunner, Evaluation and Inspections*, Report I-2011-001 (Nov. 2010), available at <http://www.justice.gov/oig/reports/ATF/e1101.pdf> (last visited Jun. 21, 2011) (hereinafter OIG Report).

³ *Id.* at v.

Ms. Cynthia A. Schnedar
 June 22, 2011
 Page 2

investigations of straw purchasers, rather than on high-level traffickers, smugglers, and the ultimate recipients of trafficked guns.

For example, we found that 68 percent of Project Gunrunner cases are single-defendant cases, and some ATF managers discourage field personnel from conducting the types of complex conspiracy investigations that target higher-level members of trafficking rings. . . .⁴

The report laments how cases brought against straw purchasers are difficult to prove and do not carry stringent penalties.⁵ It states that the Federal Sentencing Guidelines categorize straw-purchasing-related crimes as lesser offenses.⁶

ATF officials cited this report as one of the factors that prompted the shift to a riskier strategy of allowing guns to be trafficked rather than arresting straw buyers.⁷ Knowledge that a report published by your office led to a change in strategy which resulted in increased violence may hamper your ability to make findings critical of Fast and Furious.⁸

In his June 15, 2011, appearance before the Committee, ATF Special Agent John Dodson testified that he believes OIG may have a conflict because of its role in inspiring the Fast and Furious strategy:

Mr. Chaffetz: Do you think that there is a conflict between the OIG, given that maybe this started as a result of a recommendation? Or do you see any sort of conflict that the [inspector] general has in this case?

Mr. Dodson: Well, I can see a conflict between the office of the OIG, yes, sir. The actual individuals that are working the case, my interaction with them, since I have been interviewed by them, is that I think that they get it.

However, those two offices, being what they are and how they are aligned, there is inherently a conflict of interest there. If, in fact, someone at DOJ authorized this, knows about it, is as well versed in it as everyone at ATF, that thereby creates the conflict with OIG.⁹

⁴ *Id.*

⁵ *Id. at vi.*

⁶ *Id.*

⁷ Letter from Sen. Charles E. Grassley to Kevin L. Perkins, Chair, Integrity Committee, Council of Inspectors General on Integrity and Efficiency (Mar. 8, 2011).

⁸ *See id.*

⁹ *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong., June 15, 2011 at 74 [hereinafter Hearing Tr.].

Ms. Cynthia A. Schnedar
 June 22, 2011
 Page 3

2. The OIG did not respond to a December 2010 complaint from an ATF Agent.

In December 2010, after the murder of Customs and Border Patrol Agent Brian Terry, Special Agent Dodson contacted your office to allege that Fast and Furious was misguided and dangerous. Your office took no action in response to his allegations. In fact, he received no response until Senator Grassley's staff contacted your office on February 1, 2011.¹⁰ The failure to take these allegations seriously at the outset may encourage OIG to minimize the severity of Operation Fast and Furious in its current investigation.

3. The Fast and Furious investigation may implicate individuals positioned to influence the selection of a permanent IG at the Justice Department.

Your involvement in the OIG investigation creates a potential conflict of interest. If you are pursuing the role of permanent Inspector General, your personal career aspirations may influence your independence and ability to conduct an unbiased investigation. This investigation involves probing into wrongdoing and mismanagement by executive branch officials at the highest levels. Because the DOJ Inspector General is a presidentially-appointed position, you may feel compelled to produce a result palatable to those who will ultimately decide whether you will receive the permanent IG position.

A complete and objective OIG investigation is critical because White House and DOJ officials frequently cite it as a reason for us not to conduct oversight of Fast and Furious. Assistant Attorney General Ronald Weich testified about the OIG investigation at the Committee hearing last week.¹¹ Mr. Weich also questioned the value of congressional oversight in an April 18, 2011, letter to Chairman Leahy of the Senate Judiciary Committee:

Given the ongoing criminal investigations in Arizona and the Inspector General's ongoing review of allegations regarding those investigations, we do not believe that such oversight, or hearings, would be helpful at this time.¹²

In light of the ways in which DOJ has relied on your investigation, the Committee seeks assurances that it is free from political pressure and other influences. For the aforementioned reasons, I believe it is necessary to assuage the doubts of the Committee and the public for you to declare that you will forego any pursuit of the permanent IG job. I request that you reveal to the Committee your intentions regarding the permanent position.

¹⁰ See OIG Report, *supra* note 1, at 2.

¹¹ Hearing Tr. at 123.

¹² Letter from Asst. Att'y Gen. Ronald Weich to Sen. Charles E. Grassley (Apr. 18, 2011).

Ms. Cynthia A. Schnedar
June 22, 2011
Page 4

Accordingly, I request that you respond to the following questions no later than Friday, July 1, 2011, at noon:

1. Are you interested in being nominated by the President to be the permanent Inspector General? If so, to whom have you expressed this interest?
2. Have you had any communications with any member of the White House staff relating to your interest in the appointment? If so, when and with whom? Who initiated the communication?
3. Have you had any communications with any member of the Attorney General's staff or other Justice Department officials relating to your interest in being appointed permanently to the position? If so, when and with whom? Who initiated the communication?
4. Has anyone else asked you whether you have any interest in or intention of pursuing the position of Inspector General? If so, who and when?
5. To remove the appearance of a conflict of interest, will you remove yourself from consideration as a candidate for the position of permanent Inspector General? If not, why not?

The Committee has a responsibility to protect the independence and integrity of the Inspector General's office at the Department of Justice.

If you have any questions about these requests, please contact Henry Kerner or Jean Humbrecht of the Committee staff at (202) 225-5074. Thank you for your attention to this important matter.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

The Honorable Charles E. Grassley, Ranking Minority Member
Committee on the Judiciary, U.S. Senate

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 22, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, relating to Operation Fast and Furious.

We are delivering today to your office an additional 9 pages of material. The documents bear limited redactions to protect specific details about a pending investigation, the identity of an unindicted suspect in a closed case, and information relating to line employees. The collection includes the cover page from one document that has been previously reviewed at the Department by Committee staff. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 17 pages of law-enforcement sensitive documents that we are prepared to make available at the Department for review by Committee staff. These pages bear limited redactions to protect the identity of an unindicted suspect in a closed case.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in black ink, appearing to read "m w", written over a white background.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

**Police Department**

June 23, 2011

Honorable Darrell Issa, Chairman
Committee on Oversight & Government Reform
U.S. House of Representatives

Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

U.S. House of Representatives
Committee on Oversight and Government Reform
Washington, DC 20515-6143

Re: June 2, 2011 Public Records Request

Dear Mr. Issa and Mr. Grassley,

This letter is in response to your public records request dated June 2, 2011, regarding records associated with, "Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)."

Generally, the Mesa Police Department (MPD), objects to your June 2, 2011, request as it is overly broad, unduly burdensome, and voluminous, which prevents a proper review of the documents requested and response thereto.

However, without waiving its objections, the MPD responds as follows:

1. All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.

The MPD has no record of "Operation Fast and Furious" or any known involvement, either formal or informal or otherwise.

2. All DRs that list Assistant U.S. Attorney Emory Hurley as a point of contact.

The MPD does not have any records listing assistant U.S. Attorney Emory Hurley as a point of contact.

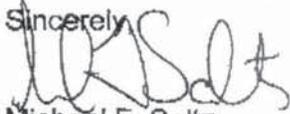
3. All DRs from September 2009 to the present where firearms were recovered attendant to investigations to homicide, aggravated assault, kidnapping, or home invasion.

The MPD is unable to comply with your request with the information provided. As I am sure you are aware, in 2009 MPD responded to 23,020 crimes involving persons or property; in 2010 responded to 21,518 crimes involving persons or property; and so far in 2011 responded to 6,836 crimes involving persons or property, all of which makes it difficult to determine what you are requesting. This is not to say your request will not be disclosed, but more specific information is needed in order to make that determination (i.e., date(s), location(s)).

Also, "kidnapping" generally is not the primary offense listed in a departmental report, which would make it impossible to comply with your request without additional information and "home invasion" is not an enumerated crime in Arizona.

Upon consideration, if you have any concerns please do not hesitate to contact me at (480) 644-2008.

Sincerely,



Michael F. Saltz
Sergeant - Attorney
Mesa Police Department
Office of Legal Services

Cc:

Nancy Sorensen
MPD Staff Attorney

**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

Washington, DC 20226

JUN 23 2011

The Honorable Charles E. Grassley
Co-Chairman, Senate Caucus on International Narcotics Control
Ranking Member, Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This is in response to your inquiry dated June 16, 2011, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) relative to Mexico trace data. As you may be aware, this information was requested by Senator Dianne Feinstein and provided by ATF. The information was based on a query of ATF's Firearms Tracing System and was vetted by ATF's Violent Crime Analysis Branch (VCAB).

There are no United States Government sources that maintain any record of the total number of criminal firearms seized in Mexico. Any ATF release of information relative to Mexico trace data relates only to firearms recovered in Mexico and subsequently traced by ATF based upon firearms identifiers supplied by the Government of Mexico (GOM). Further, these ATF releases of information have centered on United States-sourced firearms and not necessarily those traced back to an initial purchaser.

In your letter, a number of assertions are made that challenge the accuracy of the ATF trace data provided to Senator Feinstein. The assertions appear to be based upon trace data provided to your office by an unknown source. The discrepancies in the vetted VCAB release and unknown sourced data with respect to the total number of firearms recovered and traced in Mexico in calendar years 2009 and 2010 can be explained. The data you reference in your letter appears to be an ATF eTrace-generated data report that is not designed to provide the actual number of firearms submitted for tracing by the Government of Mexico, but is intended to identify the retail Federal Firearms Licensees (FFL) that sold a firearm to an unlicensed purchaser. This report entitled "Top Source Dealers of Firearms Traced," has a documented issue wherein the sub-category for "No Final Sale Dealer" is displaying an inaccurate count, which subsequently impacts the overall total trace count. This discrepancy can result in a single trace request being counted two or more times, thus erroneously increasing the reported total number of firearms traced. Therefore, this report is not intended to provide an accurate portrayal of aggregate trace results or the number of United States-sourced firearms.

-2-

The Honorable Charles E. Grassley

A June 2011 release of ATF Mexico trace data, vetted by VCAB, indicated a total of 21,313 firearms recovered in Mexico in 2009 and traced by ATF. Of these, 10,945 were manufactured in the United States; 3,268 were imported into the United States; and 7,100 were of undetermined origin due to insufficient information provided. In addition a total of 7,971 firearms recovered in Mexico in 2010 were traced by ATF. Of these firearms, 4,186 were manufactured in the United States; 2,105 were imported into the United States; and 1,680 were of undetermined origin due to insufficient information provided. So, in aggregate, of the 29,284 firearms recovered in Mexico in 2009 and 2010 that were subsequently submitted to ATF's National Tracing Center for tracing, 20,504 are United States-sourced firearms. A country or origin for the remaining firearms could not be determined because of a lack of information supplied on the trace request.

In order to accurately respond to your inquiries, we will apply the June 2011 release of ATF Mexico trace data in response to your submitted questions.

Question 1: Of the 21,013 firearms in the "No Final Sale Dealer" category for 2009, how many of those firearms can be traced back to military sales to the GOM? How many can be traced to the military of Guatemala? How many can be traced to the military of Honduras? How many can be traced to the military of El Salvador? How many can be traced to other Central American and South American militaries? How many can be traced to other foreign militaries? How many are in that category because they were in the Suspect Gun Database?

Of the 21,313 firearms recovered in Mexico in 2009 and submitted to ATF for tracing, 204 traced to either foreign firearm dealer/importer or military sale in Mexico; 9 traced to either foreign firearm dealer/importer or military sale in Guatemala; 1 traced to either foreign firearm dealer/importer or military sale in Honduras; 0 traced to either foreign firearm dealer/importer or military sale in El Salvador; 12 traced to either foreign firearm dealer/importer or military sale in other Central American and South American countries; 18 traced to either foreign firearm dealer/importer or military sale in Africa, Asia, Europe and North America; and 2 traced to either foreign firearm dealer/importer or military sale in unknown countries.

ATF's National Tracing Center is notified only of the name of the foreign entity, not its status as foreign government or private entity, therefore the designation "foreign firearm dealer/importer or military sale". There is no Federal law requiring a report to ATF of any firearms sales to foreign countries. There is no "suspect gun" data included in any eTrace statistical report or in a trace result. None of the trace results relating to the above foreign firearm dealer/importer or military sale traces were listed as "suspect guns."

Question 2: Of the 6,267 firearms in the "No Final Sale Dealer" category for 2010, how many of those firearms can be traced back to military sale to the GOM? How many can be traced to the military of Guatemala? How many can be traced to the military of Honduras? How many can be traced to the military of El Salvador? How many can be traced to other Central American and South American militaries? How many can be traced to other foreign militaries? How many are in that category because they were in the Suspect Gun Database?

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The Honorable Charles E. Grassley

Of the 7,971 firearms recovered in Mexico in 2010 and submitted to ATF for tracing, 89 traced to either foreign firearm dealer/importer or military sale in Mexico; 1 traced to either foreign firearm dealer/importer or military sale in Guatemala; 3 traced to either foreign firearm dealer/importer or military sale in Honduras; 1 traced to either foreign firearm dealer/importer or military sale in El Salvador; 4 traced to either foreign firearm dealer/importer or military sale in other Central American and South American countries; and 5 traced to either foreign firearm dealer/importer or military sale in Australia, Europe and North America.

ATF's National Tracing Center is notified only of the name of the foreign entity, not its status as foreign government or private entity, therefore the designation "foreign firearm dealer/importer or military sale." There is no Federal law requiring a report to ATF of any firearms sales to foreign countries. There is no suspect gun data included in any eTrace statistical report. None of the trace results relating to the above foreign firearm dealer/importer or military sale traces were listed as "suspect guns."

Question 3: How many of those weapons in the "No Final Sale Dealer" category for 2009 and 2010 were previously reported lost or stolen?

A trace of the firearm will only yield information regarding the status of a firearm as lost or stolen if reported by an FFL or transit carrier, not a private citizen. For the firearms recovered in Mexico in calendar year 2009 and traced by ATF, 41 can be categorized as lost/stolen; for calendar year 2010, 14 can be categorized as lost/stolen.

Question 4: Has the ATF requested access to the 305,424 firearms held by the GOM military vault? How many of those firearms have been traced? How many of those firearms would trace back to the GOM and the Mexican military?

ATF personnel in Mexico continue to encourage comprehensive tracing for all criminal firearms recovered in Mexico. For calendar years 2009 and 2010, Mexico recovered 29,284 firearms and subsequently submitted them to ATF for tracing. ATF cannot comment or speculate on any possible other recoveries or sources of those possible recoveries.

Question 5: Data indicates that the top source dealer for illegal firearms traced in Mexico for 2009 was "Direccion General De Industria Milita" or the Directorate General of Military Industry in Mexico. They provided 120 firearms that were later traced back, likely after a crime. Why does this entity have a U.S. Federal Firearms License? Are sales to this and other foreign entities with U.S. FFLs included in the numbers the ATF provided as being a gun from a "U.S. Source". If so, why?

There are no foreign entities that possess an FFL. The firearms attributed to Directorate General of Military Industry were sold by United States FFLs to the Directorate. There is a default within the "Top Source Dealers of Firearms Traced" report in ATF eTrace, for record keeping purposes only, that merely lists the foreign entities as "Z-FFLs". All firearms that are sold by an FFL or imported by an FFL (and thereby bear the U.S. importer stamp on the firearm) are said to

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The Honorable Charles E. Grassley

be U.S.-sourced firearms. As recorded in our responses to questions 1 and 2 above, 349 firearms (of the 29,284 recovered in Mexico in calendar years 2009 and 2010 and traced by ATF) fit into this category.

Question 6: Why did the number of trace requests drop significantly from 2009 to 2010, but the percentage trace to U.S. FFLs go up? What is behind this trend?

In September 2009, the government of Mexico provided ATF with electronic files containing firearms identifiers and recovery data. The electronic files contained information that initiated over 43,000 firearms traces with most having recovery years ranging from calendar year 2007 to 2009. Once each trace was initiated, it was organized by year of recovery. With this influx of traces from the electronic files, the number of firearms listed as recovered in 2009 and traced increased from earlier releases of information. Many of the initiated trace requests contained incomplete data thereby reducing the number of traces linked to an FFL.

We hope this information is responsive to your inquiry. Please let me know if we can be of further assistance.

Sincerely yours,



Kenneth E. Melson
Acting Director

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 23, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, relating to Operation Fast and Furious.

We are delivering today to your office an additional 62 pages of material. These documents bear limited redactions to protect specific details about the pending investigations, including text that would describe targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 29 pages of law-enforcement sensitive documents that we are prepared to make available at the Department for review by Committee staff. These pages also bear limited redactions of text that would identify investigative subjects and sensitive techniques.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in black ink, appearing to read "mud".

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN
 DIANNE FEINSTEIN, CALIFORNIA
 CHARLES E. SCHUMER, NEW YORK
 RICHARD J. DURBIN, ILLINOIS
 SHELDON WHITEHOUSE, RHODE ISLAND
 AMY KLOBUCHAR, MINNESOTA
 AL FRANKEN, MINNESOTA
 CHRISTOPHER A. COONS, DELAWARE
 RICHARD BLUMENTHAL, CONNECTICUT

CHARLES E. GRASSLEY, IOWA
 ORRIN G. HATCH, UTAH
 JON KYL, ARIZONA
 JEFF SESSIONS, ALABAMA
 LINDSEY O. GRAHAM, SOUTH CAROLINA
 JOHN CORNYN, TEXAS
 MICHAEL S. LEE, UTAH
 TOM COBURN, OKLAHOMA

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

June 23, 2011

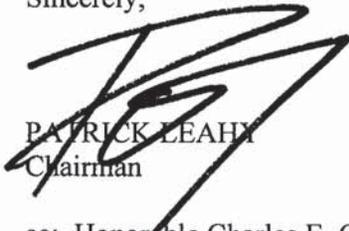
The Honorable Eric Holder Jr.
 Attorney General of the United States
 United States Department of Justice
 950 Pennsylvania Ave, N.W.
 Washington, D.C. 20001

Dear Attorney General Holder:

I write to request that copies of all documents delivered to the Chairmen and Ranking Members of the House Committee on Oversight and Government Reform and the House Committee on the Judiciary in connection with the Bureau of Alcohol, Tobacco, Firearms and Explosives' Project Gunrunner and Operation Fast and Furious be delivered to the Senate Committee on the Judiciary, to me as its Chairman and Senator Grassley as our Ranking Republican Member. I also request that any documents made available for inspection by the bipartisan staff of those two House Committees in this regard likewise be made available for inspection by the bipartisan staff of the Senate Committee on the Judiciary under the same terms and conditions as made available to the House Committees. Finally, I request that any witnesses made available for interviews by the staffs of the House Committees in this regard be made available for interviews by bipartisan staff of the Senate Committee on the Judiciary.

Since I have prepared this letter in an effort finally to allow the Senate to vote on the President's nominations of Jim Cole to be Deputy Attorney General, Lisa Monaco to be Assistant Attorney General for National Security and Virginia Seitz to be Assistant Attorney General for the Office of Legal Counsel, my request is not intended to become operative until after the Senate Majority Leader has proceeded to those nominations, the debates are concluded and the Senate has voted on each of them.

Sincerely,



PATRICK LEAHY
 Chairman

cc: Honorable Charles E. Grassley
 Ranking Republican Member

Congress of the United States
Washington, DC 20510

June 24, 2011

Via Electronic Transmission

The Honorable Janet Napolitano
Secretary
Department of Homeland Security
3801 Nebraska Avenue, N.W.
Washington, D.C. 20528

Dear Secretary Napolitano:

As you are aware, we are conducting a joint investigation into the program of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) known as Operation Fast and Furious. This case involved a special agent from an agency within your department, the U.S. Immigration and Customs Enforcement (ICE), who was assigned to ATF's Phoenix Group VII for deconfliction purposes and operated as a member of that group. Reportedly, this agent functioned as a co-case agent. In your testimony to Congress on March 9, you stated that you had no knowledge of this case. We need to know at what level and in what detail Operation Fast and Furious was briefed and authorized by officials in the Department of Homeland Security.

We have also been made aware of alleged incidents involving another agency within your Department, the U.S. Customs and Border Protection (CBP). In a March 16 letter to CBP Commissioner Alan Bersin, enclosed as an attachment, Senator Grassley requested information on whether CBP officials had the opportunity to seize weapons from straw purchasers yet were requested not to do so. The letter referenced two separate incidents in which CBP allegedly conducted traffic stops of individuals possessing firearms, yet received requests from either the ATF or the U.S. Attorney's Office for the District of Arizona to allow the individuals to proceed.

The first incident referred to in the letter involved a January 14, 2010 traffic stop of Blas Gutierrez and Miguel Carrillo, who were found to be in possession of eight weapons, including three AK-47-type pistols. The incident was detailed in a March 8, 2011 indictment of 11 defendants, including the Mayor and the Police Chief of Columbus, New Mexico, for conspiring to smuggle weapons from the United States into Mexico.¹ The second incident outlined in the letter involved Jaime Avila, whom CBP allegedly stopped in the spring or summer of 2010 in possession of over thirty weapons, including the two WASR-10 rifles which would later be found at the scene of Agent Brian Terry's murder.

¹ Indictment, *United States v. Villalobos*, No. 11-cr-487 (D.N.M. Mar. 8, 2011).

Although CBP officials briefed Senator Grassley's staff on March 17, 2011 they refused to provide any information related to the above issues. Instead, Commissioner Bersin later responded in an April 13 letter that "any CPB records relating to these individuals would be covered by the *Privacy Act of 1974*, Title 5 USC § 552a, which limits CBP's ability to provide information in response to this request."

On May 17, 2011 Commissioner Bersin and ICE Director John Morton appeared at a hearing before the Senate Judiciary Committee. Senator Grassley broadened his inquiry to ask Commissioner Bersin whether CBP agents had ever stopped *any* suspect with weapons near the border and were instructed by ATF or the U.S. Attorney's Office to let them go. Commissioner Bersin responded that he had no personal knowledge on that matter.

As you know, Congress is explicitly exempt from the Privacy Act. Specifically, Section 552a(b)(9) of the Privacy Act permits the Executive Branch to provide to Congress or a "committee or subcommittee thereof" information that would otherwise be protected by the Privacy Act. Therefore, we write to reiterate the above questions with reference to all of the agencies under your direction:

- (1) Which agency conducted the January 14, 2010 vehicle stops of Blas Gutierrez and Miguel Carrillo referenced in their March 8, 2011 indictment? Why were these individuals not arrested?
- (2) Did any agency under your direction stop Jaime Avila near the border at any time in 2009 or 2010? If so, why was Avila not arrested at that time? Did the ATF or any U.S. Attorney's Office request at the time of the stop(s) that Avila be allowed to proceed without having his weapons seized?
- (3) Has any agency under your direction ever stopped *any* suspects with weapons near the border but received direction from the ATF or any U.S. Attorney's Office to let them go? If so, please explain each incident in detail.

Additionally, please provide the following:

- (4) The serial numbers of all weapons from September 2009 to the present that any agency under your direction encountered but did not seize along the U.S.-Mexico border.

Please provide this information, including the requested documentation, no later than July 8, 2011. If you have any questions regarding this request, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner in Chairman Issa's office at (202) 226-5049. We look forward to receiving your response.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight & Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
U.S. Senate

Attachment

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight & Government Reform
U.S. House of Representatives,

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



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 24, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, and your letter of June 8, 2011, relating to Operation Fast and Furious.

We are delivering today to your office an additional 97 pages of material. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional page of law-enforcement sensitive material that we are prepared to make available at the Department for review by Committee staff. This also bears limited redactions of text that would disclose specific details about the pending investigation.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in cursive script that reads "M. Keith Burton for".

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

EMBAJADA DE MÉXICO

Washington, DC
June 24, 2011

The Honorable Charles Grassley
United States Senate
135 Hart Senate Building
Washington, DC 20510

Dear Senator Grassley,

Thank you for your June 21, 2011, letter in which you request information regarding weapons seized in Mexico and connected to violent crimes, as part of the investigations that the Committee on Oversight and Government Reform of the House of Representatives and the Committee on the Judiciary of the Senate are currently conducting on Operation "*Fast and Furious*".

Allow me first to convey my recognition and appreciation for your interest in and commitment to the cooperation between our two countries as we jointly combat transnational organized crime operating on both sides of our border. Confronting this challenge certainly demands unequivocal actions from both our governments, based on the principle of shared responsibility. In this regard, we are certainly encouraged by the important and decisive steps that the U.S. Administration has taken these past years in deepening and widening cooperation with Mexico. Particularly encouraging are the results of our on-going intelligence-sharing efforts that have resulted in the arrests of key kingpins in Mexico and retail level distribution networks in the U.S.

The Government of Mexico is closely following the investigations under way and being conducted by the U.S. Department of Justice as well as by the U.S. Congress, and we evidently share the same interest in learning about the full scale and scope of the aforementioned operation. We too have requested a comprehensive investigation from the Department of Justice regarding Operation "*Fast and Furious*", and to be informed of the findings once the investigation concludes.

EMBAJADA DE MÉXICO

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The results of said investigation are deemed vital to complement Mexico's own evaluation of the repercussions of this Operation. We are aware of the fact that these are ongoing investigations, but we are confident that the U.S. Government will honor its commitment to fully and forcefully investigate what transpired, and if probable cause is determined, apply the law to its fullest extent. Doing so would further strengthen our unprecedented cooperation in security matters.

In your letter you request specific information regarding identification of all firearms that were traced and recovered in connection to violent crimes in Mexico through the *eTrace* program. As you are certainly aware, Mexico and the U.S. are parties to a Mutual Legal Assistance Cooperation Treaty (MLAT), which establishes the mechanisms to provide, among other types of assistance, information relevant to the purposes of criminal investigations. Under the terms of the Treaty, the designated Coordinating Authorities of each country, Mexico's Attorney General's Office (PGR) and the U.S. Department of Justice respectively, will promptly comply with the requests of their counterpart, or will convey them to the national competent agencies to do so. Therefore, the Mexican Executive branch would not have the legal authority to provide that information to an entity other than the U.S. Executive branch, under the provisions of the MLAT.

Both our governments are committed to the security, the prosperity and well-being of our peoples. I am certain that the working visit of the Codell, headed by Chairman Issa, to Mexico will further strengthen our shared commitment, the important and constructive relationship between Mexico and the U.S Congress, and will help to underscore the efforts that Mexico is implementing to combat transnational organized crime.

Thank you for your leadership and commitment to enhancing the U.S.-Mexico relationship, and improving our ability to develop a holistic strategy to confront transnational organized crime and the key drivers that propel drug-related violence, drug trafficking, and drug consumption. I take this opportunity to renew to you the assurances of my high esteem and consideration.

Sincerely,



Arturo Sarukhan
Ambassador of Mexico

Best wishes,

Cc: The Honorable Darrell Issa
United States House of Representatives

**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

Washington, DC 20226

JUN 28 2011

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

Dear Mr. Chairman:

This is in response to your letter to me dated June 21, 2011. As stated in your letter, on May 5, 2011, I assured your staff that the leadership of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) would not engage in any reprisals against any ATF employee who testified before the Committee on Oversight and Government Reform.

I write here to memorialize that commitment: ATF will not engage in any reprisal against any ATF employee because of his or her having testified before the Committee on Oversight and Government Reform, and will in all respects act towards such employees exactly as they would have had such employee not so testified.

Sincerely yours,



William J. Hoover
Acting Deputy Director

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 27, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, relating to Operation Fast and Furious.

We are delivering today to your office an additional 22 pages of material. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. We also have redacted text unrelated to the Committee's request in one multi-subject document. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in cursive script, appearing to read "m. weich".

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 29, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 35 pages of documents that we produced to the House Oversight and Government Reform Committee on June 29, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. Most of the enclosed documents bear limited redactions to protect specific details about the pending investigations, including text that would identify confidential informants, targets and sensitive techniques, plus information relating to line employees. The collection also includes multi-subject documents that bear substantial redactions of text that is not responsive to the House Oversight and Government Committee's request. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

In addition, we have located eight additional pages of law-enforcement sensitive documents that we are prepared to make available at the Department for review by Committee staff. Some of these also bear limited redactions of text that would identify investigative subjects, sensitive techniques, and portions of multi-subject documents not responsive to the House Oversight and Government Reform Committee's request. We have offered the same access to the House Oversight and Government Reform Committee and, in response to Chairman Smith's request, we will extend the same offer to the House Judiciary Committee.

The Honorable Patrick Leahy
Page Two

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R Weich', written in a cursive style.

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Charles Grassley
Ranking Minority Member

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 30, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, and your letter of June 8, 2011, relating to Operation Fast and Furious.

We are delivering today to your office an additional 39 pages of material. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ronald Weich".

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member