



Part I of III

Fast and Furious: The Anatomy of a Failed Operation

JOINT STAFF REPORT

Prepared for

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United States House of Representatives
Committee on Oversight and Government Reform
&
Senator Charles E. Grassley, Ranking Member
United States Senate
Committee on the Judiciary**

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Exposed

Preface

This report is the first of three completing the investigative work of the House Committee on Oversight and Government Reform and the Senate Committee on the Judiciary. This report chronicles the fundamentally flawed firearms trafficking case from the perspective of the United States Attorney's Office and the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Part two will look at the devastating failure of supervision and leadership by officials at Justice Department headquarters, principally within the Office of the Deputy Attorney General, and within the Criminal Division. Part three will address the unprecedented obstruction of the investigation by the highest levels of the Justice Department, including the Attorney General himself. Part two will be released shortly, and part three can only be prepared after the Justice Department fulfills its obligations to cooperate with the Congress and produce documents. Soon, the U.S. House of Representatives will commence legal proceedings to enforce its prerogatives following the June 27, 2012, vote holding Attorney General Eric H. Holder, Jr. in criminal and civil contempt.

I. Executive Summary

A new policy revives an old tactic.

During the summer of 2009, the Obama Administration created a new strategy to stem the flow of illegal weapons from the United States to Mexican drug cartels. Operation Fast and Furious was born from this strategy. The Administration's plan shifted the emphasis in combating Mexican drug cartels from "merely seizing firearms" to identifying the networks that traffic them.

Since 2006, William Newell, the Special Agent in Charge of the Phoenix Field Division for the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), had already been experimenting with various new tactics. However, his efforts met with only mixed success. The U.S. Attorney's Office declined to prosecute one case because of the number of weapons ATF allowed to "walk" during the investigation. Yet the Justice Department under the new Administration began efforts in 2009 to resurrect and prosecute this case. The Department sent a prosecutor to Phoenix to revive this dormant case at the exact same time ATF began Fast and Furious. There had also been criticism of ATF's primary focus on gun dealer inspections and straw purchaser investigations rather than reaching into the higher levels of trafficking rings. These factors, along with the new Administration's change in policy, may have emboldened Newell. In Operation Fast and Furious, he saw an opportunity to run a large scale operation intended to bring down an entire gun trafficking network—now with the support of the upper echelons of the Justice Department in Washington, D.C.

As part of its new strategy, the Justice Department authorized the opening of an Organized Crime Drug Enforcement Task Force ("OCDETF") Strike Force office in Phoenix. This office would allow ATF to coordinate with other law enforcement agencies in implementing the Department's new strategy. ATF Phoenix Group VII, dedicated to firearms trafficking investigations, was housed at the Strike Force office. The Group Supervisor, David Voth, was a first-time supervisor who had recently moved to Phoenix from Minnesota.

Gun dealers become unwitting partners with ATF in walking guns.

In the fall of 2009, the Phoenix Field Division opened an investigation into a suspected firearms straw purchasing ring. As part of the investigation, ATF relied heavily on support from cooperating Federal Firearms Licensees ("FFLs"). Sometimes, these gun dealers would inform ATF when suspected straw purchasers entered their stores to acquire weapons. On other occasions, ATF would alert the FFLs in advance that straw purchasers were heading to their stores and requested that the FFLs stock up on certain models of firearms.

These FFLs became increasingly worried about selling firearms to obvious straw purchasers. ATF Group Supervisor Voth assuaged their fears by arranging meetings with the U.S. Attorney's Office and promising them that ATF was closely monitoring and ultimately

interdicting the purchased weapons. Since the FFLs depended on ATF's regulatory arm for their livelihood, they agreed to make these sales.

In reality, ATF agents in Phoenix had no intention of interdicting these firearms, even though Group VII agents often received contemporaneous, or even advance, notice of illegal firearms purchases. In some cases this was because ATF believed due to instruction from the U.S. Attorney's Office that sufficient legal grounds didn't exist. In other cases it was because ATF refused to "compromise the bigger case" by taking any steps that might allow the straw purchasers to become aware ATF was watching them—even if that meant the straw purchasers were allowed to transfer the guns to traffickers. Group VII abandoned the traditional law enforcement techniques of disruption and deterrence by failing to confront or question the vast majority of the straw purchasers in Fast and Furious, preferring instead to watch and wait. Agents would often follow the firearms to a parking lot or stash house where they would be transferred into another vehicle or simply deposited for later pickup. Group VII continued merely monitoring the illegal activity even after it believed it could arrest the most prolific straw purchasers.

ATF used flawed legal advice from the U.S. Attorney's Office as an excuse to allow the transfer of weapons to take place. ATF could argue that its hands were tied by prosecutors, who would not let it seize weapons from straw purchasers early on in the case. Moreover, both ATF and the U.S. Attorney's Office wanted to focus on identifying the entire trafficking network rather than arresting straw purchasers. ATF stockpiled all of the intelligence it obtained by watching both the straw purchases as well as through the eventual recovery of guns in Mexico, hoping to establish a direct link between the drug cartels and the straw purchasers. Group Supervisor Voth directed the agents in Group VII to try to link weapons recoveries in Mexico to a cartel or drug trafficking organization. Special Agent in Charge Newell quickly forwarded information about such recoveries to ATF headquarters, where ATF senior officials became fully informed of the early "successes" of the operation.

The "big case" strategy leads to big problems with coordination and information sharing.

In February 2010, just a few months after ATF discovered the straw purchasing ring that this investigation centered on, the operation received a coveted OCEDEF Strike Force designation from the Justice Department and officially became Operation Fast and Furious. This meant it would be multi-jurisdictional, multi-agency, and prosecutor-led, allowing for greater cooperation among law enforcement agencies. U.S. Immigration and Customs Enforcement (ICE) became heavily involved in the operation.

ATF believed early in the case that the head of the straw purchasing ring was an individual named Manuel Celis-Acosta. As part of identifying the entire trafficking network being supplied by the straw purchasing ring, the Strike Force sought to identify the individuals to whom Celis-Acosta was providing weapons. ATF was hoping to use federal wire intercepts, a tool rarely used in firearms trafficking investigations, to accomplish this goal. The DEA, however, already knew who these individuals were. The DEA had acquired their names and

monitored their interactions with Celis-Acosta by using an Arizona state wire intercept in a separate investigation. The DEA began a separate joint investigation with the Federal Bureau of Investigation (“FBI”) into these individuals, and provided all of their information to the ATF. Despite the inter-agency cooperation, however, ATF failed to understand the connection to these individuals until a year later. Meanwhile, Fast and Furious suspects continued to acquire weapons under ATF surveillance at an alarming rate.

In the spring of 2010, concern was mounting among ATF leadership in Washington about the large volume of weapons being sold under Fast and Furious. The case became so large that the ATF Deputy Director, William Hoover, requested an exit strategy for the case—something he had never done before. Despite Hoover’s request, the drafting of the exit strategy was delayed for more than a month.

In May 2010, Group VII agents caught a break. Manuel Celis-Acosta was stopped attempting to cross the border from Lukeville, Arizona into Mexico, and law enforcement agents found ammunition in the vehicle. Fast and Furious case agents were summoned to the scene. During the subsequent interrogation, Celis-Acosta promised to call the lead case agent later and cooperate. The case agent allowed Celis-Acosta to continue his trip to Mexico. He never called.

During the summer of 2010, Strike Force agents continued observing known straw purchasers illegally acquiring weapons, only to then terminate surveillance. By the fall and winter of 2010, the U.S. Attorney’s Office for the District of Arizona continued to drag its feet on an indictment of the straw purchasers, even though prosecutors had likely acquired enough evidence to get an indictment months earlier.

A tragic death ends the case as the search for answers and accountability begins.

Fast and Furious finally came to a close in January 2011, one month after guns from Fast and Furious were found at the scene of the fatal shooting of U.S. Border Patrol Agent Brian Terry. Many people up and down the chain of command in ATF share the blame for the case’s tragic failures.

Bill Newell was a major promoter of the strategy in Fast and Furious. Though he had been the Special Agent in Charge in Phoenix for several years, he somehow failed to understand the basic legal standards needed for interdicting firearms and questioning potential suspects. According to testimony of the other ATF agents, Bill Newell did not have significant experience as a case agent or working street operations. His inexperience at the field agent level may have been a contributing factor to his ignorance of legal thresholds. Instructing his agents to abide by incorrect standards was a costly mistake that prevented interrogation, disruption, and possible arrest of straw purchasers.

In the ATF organizational hierarchy, Newell reported to Deputy Assistant Director (“DAD”) William McMahon, whose supervisory responsibilities included the field offices along the Southwestern border. McMahon served as the main link between the Phoenix Field Division

and ATF Headquarters, and therefore should have played an important role in relaying information both up and down the chain of command. McMahon knew that no operational safeguards were in place to prevent the firearms from traveling to Mexico. However, he did not make any effort to stop the flow of guns, believing that it was not his job to interfere in Bill Newell's investigations.

Assistant Director Mark Chait and his superior, Deputy Director Hoover, had several opportunities to put an end to the operation but failed to do so. Hoover knew that Newell had employed risky tactics in the past as SAC yet failed to monitor him closely. Either Hoover did not ask the right questions or simply turned a blind eye to the unavoidable reality that reckless gunwalking tactics were being used again in Fast and Furious.

Though he had a distinguished background, knew little of the operational details of Fast and Furious, and was committed to full cooperation with Congress, ultimately Acting Director Kenneth Melson, as head of ATF, still bears a significant measure of responsibility for failing to ensure that ATF headquarters personnel adequately supervised the Phoenix Field Division.

Extensive evidence informs this review despite hurdles and stonewalling.

This report presents an extensive, detailed narrative to aid in assessing the culpability of each of the aforementioned individuals. This narrative is based on transcribed interviews with 24 individuals, some covering multiple days; informal interviews with more than 50 individuals; and the review of more than 10,000 pages of documents, 6,989 of them produced by the Justice Department pursuant to subpoena.

It must be noted, however, that the Committees' access to information has been incomplete. The Justice Department has withheld tens of thousands of pages of documents and denied access to numerous witnesses, including ATF Case Agent Hope MacAllister, ATF Co-Case Agent Tonya English, and AUSA Emory Hurley—the central individuals running the case. As of January 2012, the Justice Department had produced 80,000 pages to its Office of the Inspector General ("OIG"), which also has virtually unfettered access to Department employees, and interviewed them on multiple occasions. In fact, of the small number of documents the Justice Department produced to the Committees, a substantial portion were heavily redacted, and many pages related to investigations other than Fast and Furious, including approximately 1,200 pages on other operations. Accordingly, the reasonable inferences drawn from the available evidence in this report could be viewed differently if critical information has been concealed in the documents and testimony withheld from Congress. Nevertheless, this report—the first in a series of three—presents the best information available as of now.

II. Table of Names

Brian Terry

U.S. Border Patrol Agent

Brian Terry was an agent with the U.S. Border Patrol's Tactical Unit, known as BORTAC. He served his country as a United States Marine and was a Border Patrol agent for three years. On December 14, 2010, during a routine patrol, Terry was confronted by armed bandits. He was shot once and killed. Two weapons found at the scene traced back to Operation Fast and Furious.

ATF Phoenix Field Division

William Newell

Special Agent in Charge, ATF Phoenix Field Division

As Special Agent in Charge, William Newell had a history of using reckless gunwalking tactics during his investigations. Newell still believes that he did nothing wrong in Fast and Furious, other than failing to conduct "risk assessments" to measure the possibility of harm to public safety.

George Gillett

Assistant Special Agent in Charge, ATF Phoenix Field Division

George Gillett was the Assistant Special Agent in Charge supervising Fast and Furious at the inception of the case. He was out of the office from mid-April 2010 until the beginning of June 2010.

James Needles

Assistant Special Agent in Charge, ATF Phoenix Field Division

James Needles was the Assistant Special Agent in Charge supervising Fast and Furious from mid-way through Fast and Furious until its conclusion.

David Voth

Phoenix Group VII Supervisor

David Voth was the former supervisor of the Phoenix Group VII, which conducted Operation Fast and Furious. As Group VII Supervisor, Voth controlled many operational aspects of Fast and Furious. Voth is no longer in Phoenix. He is now assigned to ATF headquarters.

Hope MacAllister

Special Agent, ATF Phoenix Field Division

Hope MacAllister was the lead case agent for Fast and Furious.

John Dodson

Special Agent, ATF Phoenix Field Division

John Dodson is the original whistleblower who exposed Operation Fast and Furious. A seven-year veteran of ATF, Dodson also worked in the sheriff's offices in Loudoun County and other Virginia municipalities for 12 years. Agent Dodson was removed from Phoenix Group VII in the summer of 2010 for complaining to ATF supervisors about the dangerous tactics used in Operation Fast and Furious.

Gary Styers

Special Agent, ATF Dallas Field Division

Gary Styers was temporarily assigned to Phoenix Group VII and worked on Fast and Furious. On February 3, 2011, he wrote a memo documenting dissension among Group VII agents and his personal knowledge of agents being ordered off of surveillance resulting in illegally purchased guns being transferred rather than interdicted. Styers' memo was shared with ATF leadership and officials at the Justice Department.

ATF Headquarters

Kenneth Melson

Acting Director, ATF

Kenneth Melson was concerned about the size of Fast and Furious but never ordered it shut down. Melson grew frustrated with how the Department of Justice was responding to the congressional investigation into Fast and Furious, but Department officials instructed him not to discuss the case with Congress.

William Hoover

Deputy Director, ATF

Realizing that Fast and Furious had become an enormous case, William Hoover ordered an exit strategy for the investigation. It was never followed. Hoover was also instrumental in briefing Department of Justice personnel about the status of Fast and Furious, and had previously discussed gunwalking concerns in another case with Bill Newell.

Mark Chait

Assistant Director for Field Operations, ATF

Mark Chait had several opportunities to put an end to the operation but failed to do so. He ultimately played a passive role during Fast and Furious, allowing those above him to make decisions and those below him to implement those decisions. Chait supervised William McMahon.

William McMahon

Deputy Assistant Director for Field Operations – West, ATF

William McMahon was Bill Newell's supervisor at ATF headquarters. He received a wealth of information about Fast and Furious, but did not view it as his role as supervisor to ask questions about events in the field. He has publicly admitted to having failed in his duty to read information presented to him about the case. McMahon was the highest official in ATF to authorize the use of wire intercepts in Fast and Furious.

Steve Martin

Deputy Assistant Director, ATF Office of Strategic Intelligence and Information

Steve Martin and his team would brief ATF leadership each week about weapons seizures and Fast and Furious. Over time, ATF leadership ignored the concerns expressed by Martin, and his office eventually stopped briefing management about the case because of those concerns.

Ray Rowley

Southwest Border Coordinator, ATF

Ray Rowley was the ATF Southwest Border Coordinator who worked at ATF headquarters. In December 2009 he became alarmed at the size of Fast and Furious and wanted to know when the operation was going to be shut down. His concerns were ignored.

U.S. Attorney's Office for the District of Arizona

Dennis Burke

U.S. Attorney for the District of Arizona

Dennis Burke was the U.S. Attorney for the District of Arizona during Fast and Furious. He frequently met with Bill Newell and received updates on the case. In the early stages of Fast and Furious, instead of arresting the straw purchasers and closing the investigation, Burke wanted to hold out for a bigger case. Burke resigned on August 30, 2011, as a result of the fallout from Operation Fast and Furious.

Patrick Cunningham

Criminal Division Chief, U.S. Attorney's Office for the District of Arizona

Patrick Cunningham was the Criminal Division Chief in the U.S. Attorney's Office. When issued a subpoena to testify in front of Congress about his role in the operation, he invoked his Fifth Amendment right against self-incrimination to avoid answering any questions.

Michael Morrissey

National Security Section Chief, U.S. Attorney's Office for the District of Arizona

Michael Morrissey was Emory Hurley's supervisor at the U.S. Attorney's Office. Morrissey reported to Patrick Cunningham.

Emory Hurley

Assistant United States Attorney, U.S. Attorney's Office for the District of Arizona

Emory Hurley was the lead federal prosecutor in Fast and Furious. ATF supervisors allowed Hurley to dictate when ATF agents were allowed to interdict weapons during the case. Hurley delayed the indictments in Fast and Furious for months, frustrating ATF officials.

Fast and Furious Suspects

Manuel Celis-Acosta

Leader of Fast and Furious Straw Purchasing Ring

Manuel Celis-Acosta was the leader of the straw purchasing ring Operation Fast and Furious was targeting. As the leader of the ring, Celis-Acosta acquired over 2,000 firearms at a cost of over \$1 million. Celis-Acosta provided at least some of these firearms to two associates of the Sinaloa Cartel. Celis-Acosta was arrested on April 2, 2010, and October 9, 2010. He was also detained in Lukeville, Arizona on May 29, 2010, crossing the border into Mexico with ammunition and an illegal alien. However, he was never charged on any of the three occasions and was released each time. Not until January 19, 2011, was Celis-Acosta finally indicted on 42 counts of conspiracy and straw purchasing.

Jaime Avila

Straw Purchaser

Jaime Avila was the straw purchaser who bought the two AK-47 variant weapons that were found at the murder scene of U.S. Border Patrol Agent Brian Terry. Avila bought the weapons on January 16, 2010. ATF, however, began conducting surveillance of Avila as early as November 25, 2009. Avila was arrested the night of December 15, 2010, as soon as ATF agents realized the guns found at the scene of Terry's death had been purchased by Avila. On January 19, 2011, Avila was indicted on three counts of "lying and buying" for weapons purchased in January, April, and June 2010.

Jacob Chambers

Straw Purchaser

Jacob Chambers was one of the earliest individuals identified in the straw purchasing ring. Fast and Furious was originally known as the “Jacob Chambers” case. Chambers had been arrested in 2008 for felony burglary and trafficking stolen property, yet no criminal complaint was issued until December 17, 2009. On January 19, 2011, Chambers was indicted on 4 counts of conspiracy, dealing in firearms without a license, and “lying and buying.”

Uriel Patino

Straw Purchaser

Uriel Patino was the most prolific straw buyer in the Fast and Furious straw purchasing ring, purchasing over 700 weapons. On January 19, 2011, Patino was indicted on 22 counts of conspiracy, “lying and buying” and aiding and abetting.

Department of Justice

Lanny Breuer

Assistant Attorney General, Criminal Division

As head of the Criminal Division, Lanny Breuer’s office decided to resurrect Operation Wide Receiver although guns were allowed to walk in that case. Breuer dedicated staff resources to the U.S. Attorney’s Office for the District of Arizona to help in Operation Fast and Furious. His staff also authorized at least six wiretap applications on his behalf.

III. Findings

The Committees' 18-month investigation into Operation Fast and Furious has included four Full Committee hearings, 24 transcribed interviews, two prior interim staff reports, approximately 74 letters sent to the Justice Department, ATF, the Drug Enforcement Agency, the Department of Homeland Security, the Federal Bureau of Investigation, Immigrations and Customs Enforcement, the White House, and other parties, several briefings, telephone conversations with confidential witnesses, and review of thousands of documents received from the Department of Justice, the Department of Homeland Security, and other sources, including whistleblowers. Importantly, while the Department of Justice has provided many more documents to its internal Inspector General's (IG) office, the Committees are in receipt of materials received confidentially which the IG may not have received.

These findings are based on the information learned by the Committees.

- **A new policy:** The Deputy Attorney General's 2009 draft "Strategy for Combating the Mexican Cartels" guided the ATF Phoenix Field Division's strategy in Operation Fast and Furious.
- **A new investigation:** In the fall of 2009, ATF opened an investigation into a group of straw buyers. ATF began receiving contemporaneous notice from cooperating FFLs of the straw buyers' firearms purchases. The pace of the straw purchases quickly escalated as the straw buyers bought hundreds of firearms in a short period of time. Many of these firearms turned up in Mexico shortly thereafter.
- **A missed hand-off:** DEA believed there was probable cause to arrest Manuel Celis-Acosta for gun crimes based on evidence it had collected from its state wire intercept in a December 2009 drug case. DEA does not have jurisdiction over gun crimes. Though DEA shared all of its evidence with ATF, ATF "dropped the ball" by failing to review or act on any of it.
- **Concerns dismissed:** Both cooperating FFLs and some ATF officials expressed concerns about the growth of Fast and Furious as early as December 2009. Senior ATF officials, however, refused to heed these concerns as they allowed the straw purchasers to continue to arm the Sinaloa Cartel. ATF reassured cooperating FFLs and encouraged them to continue selling.
- **Going for the "big fish":** When faced with an opportunity to end Fast and Furious in its early stages, the U.S. Attorney's Office for the District of Arizona and ATF deliberately decided to hold out for a bigger case. At this point, U.S. Immigration and Customs Enforcement became heavily involved, assigning a dedicated co-case agent to the operation.

- **A costly mistake:** Fast and Furious became an OCDETF multi-agency task force case, giving it additional clout and funding. Yet ATF was struggling to find out for whom the straw purchasing ring was acquiring weapons. The FBI began identifying two of these individuals as early as January 2010 in conjunction with DEA, but did not directly coordinate with ATF. ATF obtained at least seven wire intercepts while attempting to identify the same targets FBI and DEA had already identified. Wiretaps are incredibly expensive, resource-intensive, and rare for a firearms trafficking case. Senior Justice Department officials authorized submitting these applications to the court for wire intercepts.
- **A blank page:** The full extent of the responsibility of the U.S. Attorney's Office for the District of Arizona in directing Operation Fast and Furious has yet to be discovered because the Department of Justice has stonewalled the congressional investigation.
- **Red flags ignored:** Senior ATF officials became concerned about the number of weapons purchased under Fast and Furious and requested an exit strategy for closing down the case. The drafting of the exit strategy was severely delayed, and the strategy itself was ultimately ignored.
- **Mistakes compounded:** In the spring of 2010, FBI and DEA positively identified the two individuals for whom the straw purchasing ring had acquired weapons. However, FBI and ATF missed another opportunity to share information and coordinate their cases. Later, the FBI targets—drug kingpins with a long history of violence—became FBI informants. Questions about inadequate coordination remain unanswered, and the Committees will need to further pursue the role of classified matters related to Fast and Furious.
- **An outrage concealed:** In April 2010, senior Justice Department officials told ATF about gunwalking in Operation Wide Receiver, a case that ended in 2007. However, the Justice Department's focus was on press implications instead of accountability. As a result, ATF's response was that it was "nothing terrible." The Justice Department prosecuted the case and ATF continued to use similar reckless tactics in Fast and Furious.
- **Arrests delayed:** The Fast and Furious exit strategy acknowledged that enough evidence existed to arrest the key straw buyers, but argued that doing so would not cripple the organization. The straw purchasers continued to buy hundreds of additional firearms.
- **Gun dealers misled and the ring-leader released:** The Fast and Furious exit strategy was ignored as the case dragged into the summer of 2010. ATF continued to mislead FFLs about the interdiction of weapons, and ATF investigative agents acted recklessly by crossing the line into ATF's regulatory function. Manuel Celis-Acosta was stopped and interviewed at the border, but was still allowed to cross into Mexico.

- **Risk without reward:** ATF's wire intercepts failed to reveal anyone "up the chain" for whom the Fast and Furious straw buying ring was acquiring weapons. Thus, ATF only obtained charges against the straw purchasers, most of whom were known to ATF from the beginning of the case. The U.S. Attorney's Office for the District of Arizona was irresponsible and negligent in delaying the indictment of the straw purchasers for so long. In December 2010 the lead federal prosecutor was still contemplating novel ways of charging the suspects even though enough evidence had been gathered for an indictment at least six months earlier.
- **"Ugh...things will most likely get ugly":** ATF knew that any deaths tied to Fast and Furious weapons would cause an immediate public outcry. ATF tried to minimize this fallout by limiting access to information and avoiding discussions of links between any deaths and firearms associated with the case.
- **A pre-planned defense:** Even before allegations of gunwalking were made public in the media, ATF officials knew that the risky gunwalking tactics in Operation Fast and Furious would be criticized and prepared to respond to that criticism.
- **Repeatedly risky:** When he became a SAC, Bill Newell consistently pushed the envelope of permissible investigative techniques. He had been reprimanded by William Hoover before for crossing the line, but under a new Administration and new Attorney General he reverted back to the use of risky gunwalking tactics.
- **Rubber stamp signatures and false denials:** Though he served as the crucial link between ATF headquarters and the Phoenix Field Division, Bill McMahon admittedly rubber stamped critical documents that came across his desk without reading them. In McMahon's view, it was not his job to ask any questions about what was going on in the field. McMahon gave false testimony to Congress about signing applications for wiretap intercepts in Fast and Furious.
- **A failure to supervise:** Though he was a senior ATF official and got frequent updates on Fast and Furious, Mark Chait played a surprisingly passive role during the operation. He failed to provide the supervisory oversight that his experience should have dictated and his position required.
- **Danger signs ignored:** Though he ordered the Fast and Furious exit strategy, William Hoover failed to make certain the strategy was executed. Hoover knew that Bill Newell had employed the use of risky gunwalking tactics in the past, but simply allowed Newell to continue to conduct Operation Fast and Furious. Hoover was derelict in his duty to ensure that public safety was not jeopardized during Operation Fast and Furious.

- **Where the buck stops:** ATF Acting Director Ken Melson was concerned that Fast and Furious did not end sooner. He even offered to travel to Phoenix and write the indictments himself. Still, he never ordered it be shut down. Once the scandal broke in the media, despite Melson's desire to cooperate with Congress, Justice Department headquarters muzzled him.

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IV. The Story of Operation Fast and Furious

1. New Strategy

FINDING: A new policy: The Deputy Attorney General’s 2009 draft “Strategy for Combating the Mexican Cartels” guided the ATF Phoenix Field Division’s strategy in Operation Fast and Furious.

The genesis of the strategy employed in Operation Fast and Furious goes back to the summer of 2009. On August 19, 2009, Lanny Breuer, Assistant Attorney General for the Criminal Division of the Department of Justice, sent a memorandum to the attention of the Attorney General that reported recommendations of the Firearms Trafficking Working Group (“FTWG”).¹ The FTWG’s mission was to formulate a plan to improve the U.S. government’s efforts in stemming the illegal flow of weapons, which was fueling escalating violence along both sides of the Southwestern border. The working group’s first recommendation was that the “Attorney General and Secretary of Homeland Security should form an interagency Southwest Border (“SWB”) firearms trafficking strategy group.”² According to the Justice Department, “the Deputy Attorney General responded to the specific proposals in this memorandum by forming the Southwest Border Strategy Group, which he chaired.”³

On October 22, 2009, Deputy Attorney General David Ogden disseminated a draft of a new “Strategy for Combating the Mexican Cartels.”⁴ The Southwest Border Strategy group was tasked with executing this strategy. The strategy focused on targeting key cartel leaders by “mov[ing] past merely addressing the symptoms of our problems along the Southwest Border and attack[ing], instead, the underlying causes.”⁵ The plan also advocated fighting criminal organizations through the creation of intelligence-based, prosecutor-led task forces composed of agents from ATF, the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), the U.S. Marshals Service, and other federal agencies.⁶ The official strategy was formally released on January 7, 2010.⁷

While Deputy Attorney General Ogden proposed a new intelligence-based approach, he did not dispense with the established law enforcement framework entirely. The new strategy still

¹ Memorandum for the Attorney General from Lanny A. Breuer (Aug. 19, 2009) [HOCR 6706-6717] [Exhibit 1].

² *Id.*

³ Letter from Assistant Attorney General Ronald Weich to Chairman Darrell E. Issa (Apr. 3, 2012). (All correspondence cited is contained in Appendix II).

⁴ *Draft Department of Justice Strategy for Combating the Mexican Cartels* (Oct. 22, 2009) [HOCR 001451-001459] (Exhibit 2).

⁵ *Id.* at 3.

⁶ *Id.*

⁷ Office of National Drug Control Policy, *National Southwest Border Counternarcotics Strategy Implementation Update* (2010), at 13, available at http://www.whitehouse.gov/sites/default/files/ondcp/policy-and-research/swb_implementation10_0.pdf.

claimed to support the efforts of law enforcement and prosecutors in “stopping and seizing the flow of massive amounts of narcotics, firearms, and bulk cash from flowing across the border in both directions.”⁸ Nevertheless, the new strategy urged law enforcement to focus its resources on identifying networks of drug traffickers rather than interdicting weapons from individual, low-level straw buyers:

[M]erely seizing firearms through interdiction will not stop firearms trafficking to Mexico. We must identify, investigate, and eliminate the sources of illegally trafficked firearms and the networks that transport them.⁹

This strategy was disseminated throughout the ATF Phoenix Field Division, with Special Agent in Charge (“SAC”) William Newell telling his Assistant Special Agents in Charge (“ASACs”) to read the strategy.¹⁰ It would become the blueprint applied in Operation Fast and Furious, a specific firearms trafficking case. As ASAC George Gillett, who supervised Voth, testified:

- A. The content of that plan specifically addressed **wanting ATF not to focus on straw purchasers**, but to focus on cartels and larger complex conspiracy type investigations.
- Q. How did that initiative trickle down to the agents in the Phoenix field office?
- A. Well . . . ATF here was not able to get any straw purchase prosecutions at the time because of an interpretation of the law by the U.S. Attorney’s Office here in the District of Arizona. **So this strategy in October 2009 handed down by the [Deputy Attorney General]’s office, actually from the Phoenix perspective, was well timed and provided us with direction on how to proceed in these types of firearms trafficking investigations.**¹¹

The new strategy came against the backdrop of ATF’s difficulty in working with the U.S. Attorney’s Office for the District of Arizona, which raised numerous excuses to avoid prosecuting straw purchase cases. All firearms purchasers are required to fill out an ATF Form 4473 (“4473”) and swear to the fact that the gun is for their own use, rather than on behalf of someone else. “Straw purchasing” is when a buyer lies about this fact. Federal law provides that

⁸ *Draft Department of Justice Strategy for Combating the Mexican Cartels* (Oct. 22, 2009) [HOCR 001451-001459], at 5 (Exhibit 2).

⁹ *Id.* at 7.

¹⁰ E-mail from William Newell to George Gillett, Nancy Cook, and James Needles (Oct. 27, 2009) (Exhibit 3).

¹¹ Transcript, Interview of George Gillett by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (May 17, 2011), at 12-13 [hereinafter Gillett Transcript] (Exhibit 4).

whoever “knowingly makes any false statement or representation with respect to the information required . . . to be kept in the records”¹² of an FFL can be fined \$250,000, imprisoned up to five years, or both.¹³ Additionally, 18 U.S.C. § 922(a)(6) makes it unlawful “for any person in connection with the acquisition or attempted acquisition of any firearm . . . knowingly to make any false or fictitious oral or written statement . . . intended or likely to deceive [an FFL] with respect to any fact material to the lawfulness of the sale”¹⁴ It is punishable by up to ten years, a fine of \$250,000, or both.¹⁵ The prison term accompanying the violation of either 18 U.S.C. § 924(a)(1)(A) or 18 U.S.C. § 922(a)(6) may in some instances be stacked for each time a straw purchaser lied.

ATF’s Phoenix Field Division allegedly faced two primary hurdles in making straw purchase cases. First was the Arizona U.S. Attorney’s Office requirement that ATF have possession of the gun even though it had often already been trafficked to Mexico. Second was that some believed ATF had to show the straw purchaser transferred the gun directly to someone who wasn’t legally allowed to possess it. Neither of these hurdles, however, are actually imposed by the law.

First, the U.S. Attorney’s Office for the District of Arizona believed that in order to prosecute a straw purchasing case, ATF had to have possession of the straw purchased firearm as the *corpus delicti* (“body of the crime”)—even if the whole reason for the prosecution was that the gun had been trafficked to Mexico following a straw purchase. This analysis arose from an erroneous reading of a case in the U.S. Court of Appeals for the Ninth Circuit, of which the District of Arizona is a part, which merely held that when the government relies on a defendant’s confession to meet its burden of proof, it must also introduce sufficient independent evidence that the criminal conduct at the core of the offense has occurred and that the confession is trustworthy.¹⁶ ATF Counsel Thomas Karmgard sent a memo to the U.S. Attorney’s Office for the District of Arizona in February 2010 pointing out that such independent evidence need not include the gun itself, and that the Arizona U.S. Attorney’s Office was imposing unnecessary requirements on gun trafficking cases.¹⁷ In response to questions from Congress about the *corpus delicti* issue, the Justice Department stated that based on an informal survey of Arizona U.S. Attorney’s Office cases between January 1, 2010, and July 11, 2011, only three of the hundreds of cases presented were subsequently declined due to concerns about possession of the trafficked firearm.¹⁸

Second, due to an apparent misreading of case law, some officials in Arizona believed that in order to bring a straw purchase prosecution for lying under 18 U.S.C. § 922(a)(6), the

¹² 18 U.S.C. § 924(a)(1)(a) (2006).

¹³ 18 U.S.C. § 924(a)(1) (2006).

¹⁴ 18 U.S.C. § 922(a)(6) (2006).

¹⁵ 18 U.S.C. § 924(a)(2) (2006).

¹⁶ See *United States v. Lopez-Alvarez*, 970 F.2d 583 (9th Cir. 1992).

¹⁷ See Memorandum from ATF Phoenix Field Division Counsel Thomas Karmgard to U.S. Attorney’s Office for the District of Arizona (Feb. 24, 2010) (Exhibit 5).

¹⁸ Department of Justice Responses of Jul. 22, 2011, Questions for the Record from S. Comm. on the Judiciary Hearing, *Oversight of the Department of Justice*, 112th Congress (May 4, 2011), at 8.

straw purchaser had to be buying for a prohibited possessor rather than for someone who also has a clean record and could have legally purchased the firearms directly.¹⁹ However, the statute simply says that the false statement has to be intended or likely to deceive an FFL with respect to any fact “*material* to the lawfulness of the sale.” In *Fast and Furious*, the straw buyers were being paid to lie on the form by individuals intent on trafficking the gun to Mexico. Thus, the lies by the straw buyers were clearly material. They were part of a scheme to thwart the purpose of the federal regulation of firearms dealers. Regardless, another portion of the law, 18 U.S.C. § 924(a)(1)(A), makes it a crime to simply lie on the 4473.²⁰ This portion imposes no materiality requirement, and the Ninth Circuit has recently rejected any attempt to read one in to the statute.²¹ Although this section of the law has a lower penalty, the U.S. Attorney’s Office could use it to prosecute straw purchasers.²² The Arizona U.S. Attorney’s Office ultimately charged the defendants in *Fast and Furious* with violating 18 U.S.C. § 924(a)(1)(A).²³

Nevertheless, these two issues had historically resulted in the U.S. Attorney’s Office in Arizona giving little attention to prosecuting straw purchase cases. Yet, rather than focusing on disruption and deterrence of straw purchases that ATF could accomplish without the U.S. Attorney’s Office, ATF’s Phoenix Field Division viewed the Deputy Attorney General’s draft strategy as representing approval from the highest levels of the Department of Justice to allow known straw buyers to continue to acquire weapons without attempting to disrupt the trafficking network and interdicting the guns. In doing this, ATF hoped to be able to identify, as outlined in the draft Justice Department “Strategy for Combating the Mexican Cartels,” the network of traffickers who transported weapons across the border and sold them to drug cartels.

This new strategy was similar to an approach that had been tried in ATF’s Phoenix Field Division before under SAC Newell. From the summer of 2006, around the time that Newell became the SAC of the Phoenix Field Division, until mid-2007, a case called Operation Wide Receiver allowed known straw purchasers to acquire guns for transport to Mexico. In *Wide Receiver*, ATF was working with a cooperating FFL who provided contemporaneous notice of purchases by the suspected straw purchasers, yet still failed to interdict the guns. When ATF subsequently wrapped up the case and prepared for indictments, the Assistant U.S. Attorneys responsible for the case became aware that ATF had not been forthcoming with them about the level of cooperation with the FFL in the case.²⁴ The U.S. Attorney’s Office for the District of Arizona refused to prosecute the case. As one prosecutor concluded: “I don’t like the case. I

¹⁹ *United States v. Moore*, 109 F.3d 1456 (9th Cir. 1997), cert. denied, 522 U.S. 836; *Arizona v. Iknadosian*, Case No. CR2008-006471-001 DT (Sup. Ct. Az., Maricopa Cty., Mar. 18, 2009).

²⁰ 18 U.S.C. § 924(a)(1)(a) (2006).

²¹ *United States v. Johnson*, 680 F.3d 1140, 1144 (9th Cir. 2012) (“[U]nder the ordinary rules of statutory construction, we presume that Congress acted intentionally when it chose to include the word ‘material’ in § 922(a)(6) but to omit it from § 924(a)(1)(A), which is part of the same Act. We should give meaning to that difference in congressional intent.”)

²² 18 U.S.C. § 924(a)(1) (2006).

²³ Indictment, *United States v. Avila*, United States District Court, District of Arizona, Case No. 2:11-cr-00126-JAT (Jan. 19, 2011) (Exhibit 6).

²⁴ E-mail from [FFL4] to Laura Gwinn (Sep. 22, 2011) [HOCR 006278] (Exhibit 7).

think it is wrong for us to allow 100s of guns to go into Mexico to drug people knowing that is where they are going.”²⁵

Later, under the Obama Administration, the Justice Department’s Criminal Division in Washington, D.C., reached out to U.S. Attorney’s offices along the southwest border in the summer of 2009 with an offer to assist with gun trafficking cases as “part of the Department’s SWB gun trafficking strategy. . . .”²⁶ When ATF’s Phoenix Field Division carried out the search for “lingering prosecutions,” it identified Operation Wide Receiver, although it also noted internally, “AUSA was also pushing back w/ moral dilemma w/ the G allowing the targets to traffic 300+ firearms to Mexico.”²⁷ The case was subsequently proposed to the Justice Department, which sent a prosecutor to Arizona to review the case.²⁸ Although the prosecutor quickly realized that “a lot of those guns ‘walked,’”²⁹ the Justice Department nevertheless accepted the case on September 30, 2009.³⁰ SAC Newell and ASAC Gillett e-mailed each other about a Justice Department official wanting, “to see if they [the Justice Department] were missing something” because the Justice Department believed the case was straightforward and did not understand why it hadn’t been prosecuted.³¹ Thus, the Justice Department’s acceptance of the case may have been interpreted by ATF’s Phoenix Field Division as a signal that using such tactics was no longer an obstacle to getting the cases prosecuted in the future.

2. Initiation of Fast and Furious

| | |
|-----------------|---|
| FINDING: | <u>A new investigation:</u> In the fall of 2009, ATF opened an investigation into a group of straw buyers. ATF began receiving contemporaneous notice from cooperating FFLs of the straw buyers’ firearms purchases. The pace of the straw purchases quickly escalated as the straw buyers bought hundreds of firearms in a short period of time. Many of these firearms turned up in Mexico shortly thereafter. |
|-----------------|---|

On October 31, 2009, the newly formed Group VII in the ATF Phoenix Field Division opened an investigation into five suspected straw purchasers.³² The case, named after suspected straw purchaser Jacob Chambers, would eventually be renamed Operation Fast and Furious. Another suspected straw purchaser was Uriel Patino. Patino drew ATF investigative attention in November 2009 because cooperating Federal Firearms Licensees (FFLs) had advised ATF that

²⁵ E-mail from [Assistant U.S. Attorney, District of Arizona] to [Assistant U.S. Attorney, District of Arizona] (Dec. 19, 2008) [HOCR 005430] (Exhibit 8).

²⁶ E-mail from [Executive Office of U.S. Attorneys] to [Southwest Border U.S. Attorney’s Offices] (Jul. 22, 2009) [HOCR 003369-003370] (Exhibit 9).

²⁷ E-mail from James Small to George Gillett (Aug. 3, 2009) [HOCR 005432] (Exhibit 10).

²⁸ E-mail from [Executive Office of U.S. Attorneys] to James Trusty (Aug. 12, 2009) [HOCR 003371] (Exhibit 11).

²⁹ E-mail from Laura Gwinn to James Trusty (Sep. 3, 2009) [HOCR 003377] (Exhibit 12).

³⁰ E-mail from Kevin Carwile to William Newell (Sep. 30, 2009) [HOCR 003389] (Exhibit 13).

³¹ E-mail from George Gillett to William Newell (Sep. 26, 2009) [HOCR 005441] (Exhibit 14).

³² CHAMBERS Trafficking Case IN#785115-10-[redacted] (Dec. 2, 2009) (Exhibit 15).

he had purchased numerous AK-47 rifles and pistols within a relatively short amount of time.³³ FFLs provided ATF with Patino's purchase history as documented in "Firearms Transaction Records" (4473s).³⁴

Group Supervisor Voth arrived in Phoenix in early December 2009. By that time, the investigation was already underway. When he was first informed a month prior to that of the facts surrounding Patino's early firearms purchases, Voth sent the following e-mail to the case agent, Hope MacAllister, on November 9, 2009.³⁵

From: Voth, David J. <[REDACTED]>
Sent: Monday, November 9, 2009 11:28 AM
To: MacAllister, Hope A. <[REDACTED]>; Medina, Jose L. <[REDACTED]>
Subject: New case requires action, maybe Joe...?
Attach: Doc1.docx

Hope,

Sorry I don't mean to interfere when I am not even in the State of Arizona yet but this one screams actions...!

- 23 year old Hispanic male
- Lives in Phoenix; buying guns at [REDACTED] in Glendale. [REDACTED] has an in-house policy to always get a phone number plus they should have a corporate contact to get information without risking getting burned by FFL.
- In the month of November 2009 (9 days) he has purchased eleven (11) FN 5.7, one (1) 7.62, and one (1) .40 caliber = total 13 guns (12 of which are high profile guns for DTO.)
- Let's get something going on this guy, no surveillance or other enforcement action, but let's start looking into phone numbers, border crossings, method of payment especially if credit card or check...etc.

If it looks good I will send down a "go-by" for a pen register we used up here on our current SWB trafficker turned T-III.

Thanks, sorry for micro managing but I can't help myself when I see this kind of activity.

Voth

"I am not even in the State of Arizona yet but this one screams actions . . . !"

As agents from the Phoenix Field Division began conducting surveillance on Patino, they quickly identified associates of Patino who appeared to be part of a straw-buying ring. By November 16, 2009, the Phoenix Field Division had identified seven such associates of this ring.³⁶ At the same time, several cooperating FFLs began faxing 4473s detailing these suspected straw purchasers' gun purchases. These FFLs would also call ATF when one of the ATF targets

³³ Operation Fast and Furious, OCEDEF Proposal Narrative (Jan. 26, 2010) (Exhibit 16).

³⁴ CHAMBERS Trafficking Case IN#785115-10-[redacted], "INVESTIGATIVE STEPS TAKEN/INVESTIGATIVE PLAN" (Dec. 2, 2009), at 2 (Exhibit 15).

³⁵ E-mail from David Voth to Hope MacAllister (Nov. 9, 2009) (Exhibit 17).

³⁶ Supplemental Statement of William Newell (Sept. 21, 2011), H. Comm. on Oversight & Gov't Reform Hearing, *Operation Fast and Furious: The Other Side of the Border*, 112th Cong. (Jul. 26, 2011), at 2 (Exhibit 18).

was in their respective stores.³⁷ The FFLs usually faxed the 4473s to ATF within a couple of days; often, the faxes arrived immediately after the purchases.³⁸

Although not legally required to send in these forms, some FFLs continued this arrangement throughout the duration of Fast and Furious. The 4473s included serial numbers of all purchased firearms, and ATF added these serial numbers into its Suspect Gun Database. The advantage of the Suspect Gun Database to ATF is that when firearms are recovered, ATF can instantly compare the serial numbers against those in the Suspect Gun Database. This process saves ATF the effort of having to go through the full manual tracing process, which can take weeks. The contemporaneous notice from FFLs of alleged straw purchases allowed ATF to stay current on the activity of its suspects.

ATF kept the U.S. Attorney's Office for the District of Arizona closely informed of its investigative work in Fast and Furious from the very beginning. On November 20, 2009, Assistant U.S. Attorney ("AUSA") Emory Hurley reported up his chain of command: "ATF S/A Hope MacAllister is working on a trafficking case involving multiple straw purchasers ("hub and spokes conspiracy"). This case is just starting out and she will be looking for GJ subps. and pen & trap orders next."³⁹

That same day, November 20, 2009, marked the first known recovery of weapons purchased by Fast and Furious straw purchasers. ATF and U.S. Immigration and Customs Enforcement ("ICE") agents recovered 42 weapons in Naco, Sonora, Mexico. Although trace results from the seizure were not officially completed until November 30, 2009,⁴⁰ ATF had entered some of the recovered weapons into the Suspect Gun Database two weeks *before* the seizure, since suspected Fast and Furious straw purchasers had bought them.⁴¹ This allowed ATF agents to learn almost immediately that the weapons seized in Naco were connected to the Chambers straw-purchasing ring.

On November 24, 2009, SAC Newell informed Dennis Burke, the U.S. Attorney for the District of Arizona, of the large weapons recovery in Mexico a few days earlier.⁴² Burke responded, "Wow, frickin-A. They were already across the Border heading south?"⁴³ That morning Newell also e-mailed William McMahon, Deputy Assistant Director for Field Operations, and Steve Martin, Assistant Director for Strategic Information and Intelligence:

³⁷ See, for example, e-mail from [FFL2] to David Voth (Jun. 11, 2010) (Exhibit 19).

³⁸ *Id.*

³⁹ E-mail from Emory Hurley to Michael Morrissey (Nov. 20, 2009) [HOCR 002954] (Exhibit 20).

⁴⁰ ATF Firearms Trace Summary (Nov. 30, 2009) (Exhibit 21).

⁴¹ ATF Suspect Gun Summary, Uriel Patino (entered Nov. 13, 2009) (Exhibit 22).

⁴² E-mail from William Newell to Dennis Burke (Nov. 24, 2009) [HOCR 002344] (Exhibit 23).

⁴³ E-mail from Dennis Burke to William Newell (Nov. 24, 2009) [HOCR 002344] (Exhibit 23).

Friday's Agua Prieta, Sonora (across from Douglas, AZ) gun seizure. 45 semi-auto rifles, mags, ammo, etc. Woman and juvenile from Florida. Mexican Customs dog alerted. Curious to see if it was one of our dogs.⁴⁴

Following up on his e-mail to McMahan and Martin, Newell e-mailed ASAC George Gillett: "I know you're off but I don't want to cut you out of the loop on this since this seizure has the potential of being a 'hot' issue in many ways."⁴⁵

The Fast and Furious case management log is the Phoenix Field Division's internal summary of all significant actions in the case. According to the log, Newell reviewed the Fast and Furious case file the same day he was informing others of the Naco recovery.⁴⁶

| | | |
|------------|-----------------|---|
| 11/24/2009 | DIVISION REVIEW | SAC Newell file review. Recent Multiple Sales info relayed to IRS Zicha with understanding that they were related to this case. |
|------------|-----------------|---|

That same day Uriel Patino and Jacob Chambers showed up at the store of a cooperating gun dealer with an associate of theirs name Jaime Avila. After this FFL called ATF to alert them to the presence of the three individuals, agents rushed to the scene but arrived after the suspects had left. Nonetheless, the management log shows that ATF immediately obtained the 4473s from their purchases.⁴⁷

| | | |
|------------|------------------------|--|
| 11/24/2009 | INVESTIGATIVE ACTIVITY | Chambers, Patino and Avilla bought f/a's from [redacted]. Obtained 4473's. Attempted to conduct surveillance but subjects left loc prior to agents arrival. Obtained add. of auto shop, [redacted]. Checked Patino's 4473 address but no vehs @loc. Rcvd corrected 4473 from [redacted] ref 11/22/09 deal via fax. #4926 |
|------------|------------------------|--|

Had ATF agents decided to utilize the traditional law enforcement method of a "knock-and-talk," going to the home of Avila to inquire about the firearms he'd just purchased, they would have discovered that the address on his 4473 was false, an offense for which he could be arrested. In fact, Avila hadn't lived at the address for 1-2 years at that point, a fact he would admit a year later in his post-arrest interview.⁴⁸

The next day, Newell e-mailed U.S. Attorney Burke and AUSA Emory Hurley:⁴⁹

⁴⁴ E-mail from William Newell to William McMahan and Steve Martin (Nov. 24, 2009) [HOCR 002023] (Exhibit 24).

⁴⁵ E-mail from William Newell to George Gillett (Nov. 24, 2009) [HOCR 002023] (Exhibit 24).

⁴⁶ ATF Management Log, Case 785115-10-[redacted] (Nov. 24, 2009) (Exhibit 25).

⁴⁷ *Id.*

⁴⁸ See Memorandum from Emory Hurley to Dennis K. Burke, "Jaime Avila, Jr." (Jan. 28, 2011), at 2-3 [HOCR 002348-002351] (Exhibit 26).

⁴⁹ E-mail from William Newell to Dennis Burke and Emory Hurley (Nov. 25, 2009) [HOCR 002957] (Exhibit 27).

“Due to traces ‘pinging’ off our Suspect Gun system we just discovered Friday’s 42 gun seizure in Naco directly links to an ongoing ATF Phoenix case by SA Hope MacAllister, OCDETF Strike Force.”

From: Newell, William D. (ATF)
Sent: Wednesday, November 25, 2009 12:37 PM
To: Burke, Dennis (USAAZ); Hurley, Emory (USAAZ)
Subject: Friday’s Naco gun seizure

Due to traces “pinging” off our Suspect Gun system we just discovered Friday’s 42 gun seizure in Naco directly links to an ongoing ATF Phoenix case by SA Hope MacAllister, OCDETF Strike Force. We are advising ICE to stand down on their current proactive activity in Arizona in order not to compromise our case. We are meeting with them on Monday to discuss.

Bill Newell
Special Agent in Charge
ATF Phoenix Field Division (AZ and NM)
Cell [REDACTED]

Later that afternoon, Burke e-mailed Hurley about the case, asking, “Thoughts?”⁵⁰ Hurley’s response was an early indication of the U.S. Attorney’s Office’s desire to turn Fast and Furious into a big case by avoiding any interaction with the straw purchasers that might deter them from continuing to illegally acquire weapons. Hurley wrote:

I spoke with the ATF case agent this am and suggested calling ICE SA Hamel (at the meeting yesterday) to fend off any **premature interview attempts** by other ICE agents[.] This is associated with several straw purchasers ATF is investigating[.] **The greatest risk to the larger investigation will be tipping our hand to the suspects too soon[.]** I think that this will be an excellent opportunity for the agencies to make good on what they have been telling us about cooperating and doing what’s best for the case[.] This case will take time to build into an indictable case[.] We will not be able to see the purchasers arrested immediately[.] But its [sic] a great case for ATF and ICE collaboration[.]⁵¹

That same afternoon, ATF Assistant Director for Field Operations Mark Chait e-mailed Newell about the November 20 seizure, stating, “In light of how hot this info is I just wanted to make sure we pull all resources on this and get a solid interview with the transporter.”⁵² Eleven minutes after receiving Chait’s e-mail Newell responded, “On it, it’s part of an active Phoenix case belonging to SA Hope MacAllister, OCDETF Strike Force.”⁵³ Two weeks later Chait forwarded Newell’s response to ATF Deputy Director William Hoover, explaining, “Phoenix was already on two of the straws and have an ocdetf case open [sic] prior to the event.”⁵⁴ These e-mail exchanges indicate that Phoenix ATF knew about the Fast and Furious straw purchasers even before some of the weapons they purchased were first recovered in Mexico.

As indicated in AUSA Hurley’s e-mail above, ATF and the U.S. Attorney’s Office sought to prevent ICE from stopping suspects in the case even in the early stages of the

⁵⁰ E-mail from Dennis Burke to Emory Hurley (Nov. 25, 2010) [HOCR 006805] (Exhibit 28).

⁵¹ E-mail from Emory Hurley to Dennis Burke (Nov. 25, 2010) [HOCR 006805] (emphasis added) (Exhibit 28).

⁵² E-mail from Mark Chait to William Newell (Nov. 25, 2009) [HOCR 001983-001984] (Exhibit 29).

⁵³ E-mail from William Newell to Mark Chait, et al. (Nov. 25, 2009) [HOCR 001983] (Exhibit 29).

⁵⁴ E-mail from Mark Chait to William Hoover (Dec. 9, 2009) [HOCR 001983] (Exhibit 29).

investigation. In Newell's November 25, 2009, e-mail to Burke and Hurley, he wrote: "We are advising ICE to **stand down on their current proactive activity in Arizona** in order not to compromise our case. We are meeting with them on Monday to discuss."⁵⁵ On November 30, 2009, Newell met with ICE Agent Ed Hamel regarding Fast and Furious. In that meeting, Hamel agreed to serve as the ICE point of contact for the case.⁵⁶

That same day, Newell e-mailed his ASACs:⁵⁷

"Due to the high-profile nature of this event and all the info/intel out there . . . showing the known potential links between suspects, straws, etc and an investigative plan of action – one involving ICE . . . I will then fwd to HQ."

From: Newell, William D.
Sent: Monday, November 30, 2009 8:18 AM
To: Gillett, George T. Jr.
Cc: Needles, James R.
Subject: Fw: FOTOS DE NUMERO DE SERIE ARMAS SONORA (segunda parte)

Due to the high-profile nature of this event and all the info/intel out there I want the FIG and Grp 7 to put together an analysis of the case to date with a chart showing the known or potential links between suspects, straws, etc and an investigative plan of action - one involving ICE. (Jim, today let's discuss your conversation with Matt Allen on Wed.) I will then fwd to HQ. Thank you

Bill Newell
Special Agent in Charge
ATF Phoenix Field Division (AZ and NM)

At the same time, the Arizona U.S. Attorney's Office continued to work closely with ATF's Phoenix Field Division on the case. On December 1, 2009, U.S. Attorney Burke followed up with AUSA Hurley on the case, asking: "Where are we w/ this one?"⁵⁸ Hurley responded:⁵⁹

⁵⁵ E-mail from William Newell to Dennis Burke and Emory Hurley (Nov. 25, 2009) [HOCR 002957] (emphasis added) (Exhibit 27).

⁵⁶ ATF Management Log, Case 785115-10-[redacted] (Dec. 2, 2009) (Exhibit 25).

⁵⁷ E-mail from William Newell to George Gillett (Nov. 30, 2009) [HOCR 001956] (Exhibit 30).

⁵⁸ E-mail from Dennis Burke to Emory Hurley (Dec. 1, 2009) [HOCR 002958] (Exhibit 31).

⁵⁹ E-mail from Emory Hurley to Dennis Burke (Dec. 1, 2009) [HOCR 002958] (Exhibit 31).

From: Hurley, Emory (USAAZ)
To: Burke, Dennis (USAAZ)
Sent: Tue Dec 01 13:15:17 2009
Subject: RE: Friday's Naco gun seizure

We have a file open and [REDACTED] to start linking the conspirators together. ATF has requested a specific ICE agent, Ed Hamel (who was at last week's meeting) be assigned to the case. Ed is the case agent in Theresa Rassas' trafficking case and understands how to build a trafficking case. Hope MacAllister believes there may be as many as [REDACTED] straw buyers involved in this conspiracy. They will need to each be identified through traces and/or phone records. She also needs to identify the trafficker for whom they are buying and develop evidence to prove the connection to the buyers. Mike and I spoke with Hope and ASAC Jim Needles yesterday at ATF about the case and some of the 9th Cir. hurdles we have to overcome. We have assured her that we will work with her to find creative ways to overcome the *corpus delicti* challenges that accompany these straw purchasing cases.

The odds are that this will be a hub-and-spokes conspiracy and we will need to indict and secure the cooperation of the straw buyers before we are able to indict the trafficker(s). This case is one of Hope's priority cases right now.

“The odds are that this will be a hub-and-spokes conspiracy and we will need to indict and secure the cooperation of the straw buyers before we are able to indict trafficker(s).”

Burke responded: “Excellent, excellent and excellent. Whatever you need to keep this moving forward, let me know.”⁶⁰

On December 2, 2009, Newell sent Deputy Assistant Director McMahon a comprehensive briefing paper on Fast and Furious:⁶¹

[INTENTIONALLY BLANK]

⁶⁰ E-mail from Dennis Burke to Emory Hurley (Dec. 1, 2009) [HOCR 002958] (Exhibit 31).

⁶¹ E-mail from William Newell to William McMahon (Dec. 2, 2009) (Exhibit 15).

“This is a good overview of the efforts of SA Hope MacAllister and crew to date on her case which directly relates to the recent seizure in Naco, Sonora, Mexico of 42 AK-47 type firearms.”

From: Newell, William D.
Sent: Wednesday, December 02, 2009 4:01 PM
To: McMahon, William G.
Subject: Phoenix VII Firearms Trafficking Case, ref: Naco, Sonora Seizure Case of 42 AK-47 type firearms
Attachments: American Auto Body.pdf, Phoenix Naco Seizure Case.docx

Bill, FYI. This is a good overview of the efforts of SA Hope MacAllister and crew to date on her case which directly relates to the recent seizure in Naco, Sonora, Mexico of 42 AK-47 type firearms. This case is evolving daily and they are doing a great job keeping on top of this considering it's only 3 of them and this is not the only case they are working on. Dave Voth, the new Group VII supervisor, arrives on Monday and that will allow Hope to not have to be the acting sup anymore. I'll keep you posted as this case develops but for now we've got it handled.

The attached briefing paper identified the investigative steps taken as of that date. One investigative step stated, “Surveillance conducted on several purchases identifying a stash residence and involved business.”⁶² The document also discussed the early cooperation of FFLs: “Received all known video of purchases from FFLs. . . . Working relationship established with FFL’s [four FFLs redacted], notifying ATF of suspect purchases/orders.”⁶³ Finally, the document stated, “All known purchased firearms have been entered into ATF suspect gun database.”⁶⁴

[INTENTIONALLY BLANK]

⁶² CHAMBERS Trafficking Case IN#785115-10-[redacted], “INVESTIGATIVE STEPS TAKEN/INVESTIGATIVE PLAN” (Dec. 2, 2009), at 2 (Exhibit 15).

⁶³ *Id.*

⁶⁴ *Id.*

INVESTIGATIVE STEPS TAKEN/INVESTIGATIVE PLAN

Investigate Steps Taken

- Grand Jury Subpoena's have been served for phone records on the originally identified six straw purchasers ([REDACTED] PATINO, CHAMBERS, [REDACTED], [REDACTED], [REDACTED]). Agents are in the process of obtaining subpoenas for the remaining individuals.
 - Agents provided the names of the original straw purchasers (above) to Financial Investigator [REDACTED] who has thus far identified several Cash Transaction Reports connected to PATINO and CHAMBERS.
 - Agents have conducted general background checks on all suspects, identified vehicles and residences
 - DEA Quick Check on the originally identified six straw purchasers, some have been preliminarily linked to DEA investigations.
 - Surveillance conducted on several purchases identifying a stash residence and involved business.
 - Received ATF Form 4473's and 3310.4 for all known purchases.
 - Received all known video of purchases from FFLs.
 - Took custody of a "side folder" AK-47 style rifle as evidence. The firearm was returned to an FFL by [REDACTED] to be traded for an "under folder" he had purchased earlier in the day. The actual returned AK-47 rifle was previously purchased by straw purchaser PATINO on a previous date.
 - Working relationship established with FFL's [REDACTED], [REDACTED], [REDACTED] and [REDACTED] notifying ATF of suspect purchases/orders
- All known purchased firearms have been entered into ATF Suspect Gun database

"Working relationship established with FFL's [redacted], [redacted], [redacted], and [redacted] notifying ATF of suspect purchases/orders."

By December 2009, the FFLs already knew the names of most of the suspected straw purchasers ATF was surveiling. The FFLs had initially told ATF about several of the straw purchasers, and ATF agents shared the names of other purchasers they were following with these FFLs. Accordingly, not only did ATF frequently receive contemporaneous notice of many straw purchases, but sometimes FFLs even gave ATF *advance* notice of the straw purchasers' activities.⁶⁵

By December 2009, ATF also had developed reasonable suspicion to stop and question straw purchasers. For example, on December 8, 2009, agents watched as straw purchaser Sean

⁶⁵ See, for example, e-mail from [FFL2] to David Voth (Jun. 15, 2010) (Exhibit 19).

Steward dropped firearms off at two different locations—neither of which was his home.⁶⁶ Later that day, Steward showed up at another FFL with two unidentified individuals and loaded firearms into a truck.⁶⁷ Steward left the FFL as a passenger in the truck. ATF agents from Group VII did not question the suspects. Instead, ATF instructed the Phoenix Police Department to stop the truck for a speeding violation.⁶⁸ The other passenger in the truck was an individual by the name of Manuel Celis-Acosta. Unsurprisingly, when questioned about the firearms in the bed of the truck, Steward stated that he had purchased the firearms and that they belonged to him.⁶⁹ Steward, however, had not been confronted about the fact that he had been seen dropping off firearms. ATF Agents did not even question Steward, which might have made him more concerned about the consequences of his actions.

ATF also knew the guns were making their way to the Mexican border in extremely short periods of time. On December 10, 2009, Voth wrote to another agent about to join Group VII: “On Tuesday we followed a guy who purchased 40 AK-47s, 9 of them were already recovered near the border in Douglas, AZ on Wednesday night... 24 hours!”⁷⁰ ATF knew the weapons being purchased by the straw purchasers were ending up in Mexico shortly after the transactions were completed, yet these straw purchasers were neither stopped nor questioned. On December 8, 2009, an ATF official in Tucson wrote to ASAC Gillett:

I would only recommend that some action is taken in attempts to slow down the purchasing and exportation of the firearms and ammunition. Our agents have now been involved in two incidents that have had major seizures relating to this case. We are being told that they have documented over 300 firearms being purchased by this group. Our investigative efforts reflect that the suspect in this recent seizure is responsible for purchasing over \$25,000 in ammunition. Only \$10,000 worth of ammo was seized.⁷¹

Instead, the pace of the case continued to escalate. By December 13, 2009, ASAC Gillett informed SAC Newell that 175 firearms had been purchased in just one week.⁷²

⁶⁶ ATF Management Log, Case 785115-10-[redacted] (Dec. 8, 2009) (Exhibit 25); ATF Suspect Gun Summary, Sean Christopher Steward (entered Dec. 17, 2009) (Exhibit 32).

⁶⁷ Report of Investigation, CHAMBERS, Jacob, et al., Report #36, at 5 (Exhibit 33).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ E-mail from David Voth to Mark Sonnendecker (Dec. 10, 2009) [HOCR 002277] (Exhibit 34).

⁷¹ E-mail from Sigberto Celaya to George Gillett (Dec. 8, 2010) [HOCR 000885] (Exhibit 35).

⁷² E-mail from George Gillett to William Newell (Dec. 13, 2009) [HOCR 001461] (Exhibit 36).

From: Gillett, George T. Jr.
Sent: Sunday, December 13, 2009 11:24 AM
To: Newell, William D.
Subject: Re: Hope's case status?

At least 17 of the guns recently recovered in TJ are from Hope's purchasers.

The OCDETF proposal was drafted yesterday.

Total purchased last week (including yesterday) were approximately 175.

George T. Gillett
Assistant Special Agent in Charge
ATF - Phoenix Field Division

Rather than confronting the straw purchasers, the Phoenix Field Division made plans to expand the case. As the above e-mail indicates, on December 12, 2009, Phoenix ATF drafted a proposal to submit Fast and Furious to become an Organized Crime Drug Enforcement Task Force (OCDETF) program. The Justice Department created OCDETF to provide additional funding for cases aimed at disrupting and dismantling major drug trafficking and money laundering organizations. If Fast and Furious were to become an OCDETF case, it would no longer be just an ATF case, but rather a multi-agency task force case run by ATF. Such a designation would provide additional clout in the form of increased funding and enhanced reputation for ATF.

Meanwhile, on December 17, 2009, a criminal complaint for Jacob Chambers was issued for offenses he committed in November 2008.⁷³ Both counts, burglary in the second degree and trafficking in stolen property, were Class 3 felonies. Chambers was not sentenced until September 2010.⁷⁴ The Committees, however, have no record of him purchasing firearms after December 2009.

⁷³ Criminal Complaint, Arizona v. Chambers, Case No. CR2009-177644-003 DT (Sup. Ct. Az., Maricopa Cty., Dec. 18, 2009) (Exhibit 37).

⁷⁴ Suspension of Sentence, Arizona v. Chambers, Case No. CR2009-177644-003 DT (Sup. Ct. Az., Maricopa Cty., Sep. 3, 2010) (Exhibit 38).

3. The DEA Wiretap

FINDING: A missed hand-off: DEA believed there was probable cause to arrest Manuel Celis-Acosta for gun crimes based on evidence it had collected from its state wire intercept in a December 2009 drug case. DEA does not have jurisdiction over gun crimes. Though DEA gave ATF access to this evidence, ATF “dropped the ball” by failing to review or act on any of it.

On November 28, 2009, the ATF case agent for Fast and Furious, Special Agent Hope MacAllister, e-mailed the Drug Enforcement Administration (DEA) with twelve telephone numbers to deconflict.⁷⁵ Deconfliction is the process by which one agency checks its target phone numbers against target phone numbers from other agencies to determine if there is any overlap. On December 14, 2009, DEA special agents contacted MacAllister and her co-case agent, Special Agent Tonya English.⁷⁶ DEA advised that one of the telephone numbers ATF had submitted for deconfliction was related to Operation Flaco Feo, an ongoing DEA investigation in which DEA had an active state wiretap.⁷⁷ An internal DEA e-mail from December 14, 2009 illustrates the level of detailed information available to DEA and ATF:⁷⁸

From: [REDACTED]
Sent: Monday, December 14, 2009 6:12 PM
To: [REDACTED]
Subject: RE: Wire Schedule

Still pending. They may do a payment tonight, but likely tomorrow. We checked with ATF and they have the gun source and the courier identified. They have a pole cam on the gun source's house. We scheduled a meeting tomorrow with the case agent to make sure we don't inadvertently step on each other. We have enough to get them up on the gun source and courier's phones. Hopefully, that will be the route they want to take.

[REDACTED]

The following day, ATF Group Supervisor Voth and Special Agents MacAllister and English attended a meeting in which DEA agents shared information they had acquired on one of ATF's targets, Manuel Celis-Acosta.⁷⁹ DEA provided ATF with a packet of the wire intercepts DEA had gathered to date on Celis-Acosta.⁸⁰ According to DEA, it also agreed to thereafter provide ATF agents access to the DEA wire room, where live wiretap intercepts from the state

⁷⁵ E-mail from Hope MacAllister to [DEA] (Nov. 28, 2009) (Exhibit 39).

⁷⁶ Briefing by Justice Department staff to Senate Judiciary Committee and House Oversight and Government Reform Committee staff (Oct. 5, 2011) [hereinafter October 5 Briefing].

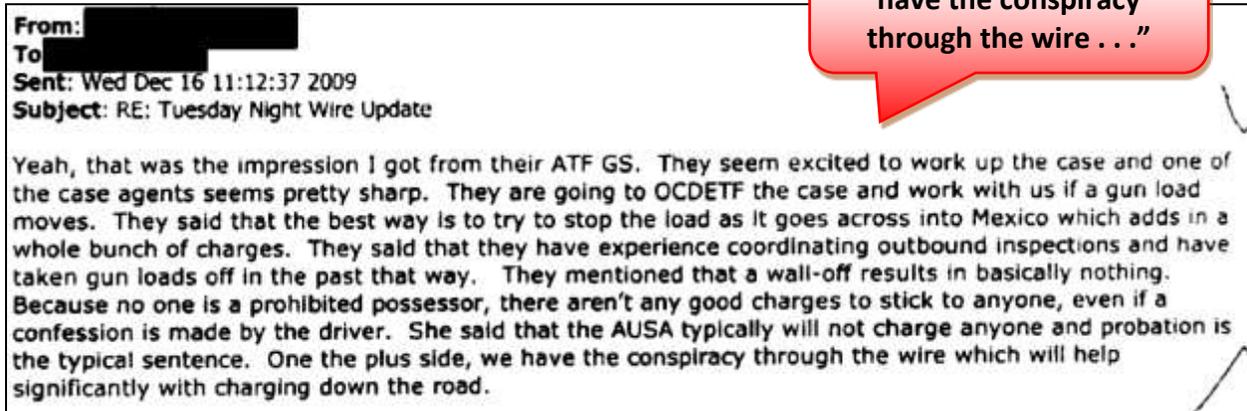
⁷⁷ See Operation Fast and Furious, OCDETF Proposal Narrative (Jan. 26, 2010), at 3 (Exhibit 16).

⁷⁸ E-mail from [DEA] to [DEA] (Dec. 14, 2009) (Exhibit 40).

⁷⁹ DEA Report of Investigation (ROI) 50, “Deconfliction Meeting with DEA Personnel on December 15, 2009” (Exhibit 41).

⁸⁰ *Id.*

wiretap were received and archived for analysis.⁸¹ An internal DEA e-mail from December 16, 2009, recounted the meeting with ATF:⁸²



According to multiple law enforcement sources both in ATF and in other agencies, ATF could have and should have employed additional investigative techniques to disrupt the targets' illegal activities based on information in the DEA wire intercept. In mid-December 2009, DEA wire intercepts may have even provided probable cause for ATF to make arrests of Fast and Furious suspects. According to a later ATF document, “On December 21, 2009, an intercepted telephone call between CELIS-ACOSTA and an Operation FLACO FEO target revealed that firearms recently purchased in Phoenix were going to be driven to El Paso, TX and trafficked into Mexico.”⁸³ Specifically, the DEA wire intercepts showed that Celis-Acosta was receiving money to traffic the weapons, and that although they were destined for Juarez, Mexico, he did not want to be asked to take them there in person. These intercepts were stronger than any of the evidence on ATF's targets that had been gathered to date, and DEA officials have told congressional investigators they believe this evidence constituted probable cause for arrests by ATF.⁸⁴

Yet, Group VII apparently failed to act on these more specific intercepts. Voth has claimed that DEA did not share that evidence with ATF “when the information was actionable,” although he acknowledged that he himself was out of the office from December 19 to December 27, 2009.⁸⁵ Still, the Case Management Log states that ATF received the information on December 21, 2009, the morning of the intercept:⁸⁶

⁸¹ October 5 Briefing (supra note 76).

⁸² E-mail from [DEA] to [DEA] (Dec. 16, 2009) (Exhibit 42).

⁸³ Operation Fast and Furious, OCDETF Proposal Narrative (Jan. 26, 2010), at 3 (Exhibit 16).

⁸⁴ Drug Enforcement Administration Briefing of the Majority Staff of the House Oversight and Government Reform Committee and Minority Staff of the Senate Judiciary Committee (Oct. 20, 2011).

⁸⁵ Letter from Joshua Levy to Chairman Darrell Issa and Ranking Member Grassley (Mar. 14, 2012), Attachment 3, Declaration of David Voth at 5 (other attachments omitted) (Exhibit 43).

⁸⁶ ATF Management Log, Case 785115-10-[redacted] (Dec. 23, 2009) (Exhibit 44).

12/23/2009 INTER AGENCY CONTACT Received a call from Glendale Det. [REDACTED] on 12/21/2009 at approximately 0930 hours that 32 firearms were scheduled to be transported to El Paso within 11/2 hours and then possibly transported to Juarez MX.

The Glendale detective whose name is redacted was a DEA Task Force Officer (TFO) who had also provided ATF with wire intercept information on December 16, 2009.⁸⁷ Based on the TFO's December 21, 2009, phone call, Group VII should have had enough actionable information to intercept the firearms on their way to El Paso, as well as connect the trafficking with evidence of intent from the DEA wire. ATF agents apparently squandered this information. ATF continued to press forward, prolonging the case even though, according to DEA, ATF already had enough evidence to charge the suspects with conspiracy.

DEA continued to communicate and share materials with ATF. The Case Management Log indicates that someone in Group VII talked to DEA on December 24, 2009.⁸⁸

12/24/2009 INTER AGENCY CONTACT Spoke to [REDACTED] DEA on 12/24/09, no further activity on the DEA investigation pertaining to F/A trafficking

Later, DEA says it provided ATF with a thumb drive of wire intercepts from December 15 to December 29, 2009.⁸⁹ DEA also provided the materials a third time in mid-January after Voth requested that all the call summaries and transcripts be provided to him in order to assist with the writing of Group VII's federal wiretap application. In a January 14, 2010, e-mail, DEA personnel wrote to Voth about getting him the materials again:⁹⁰

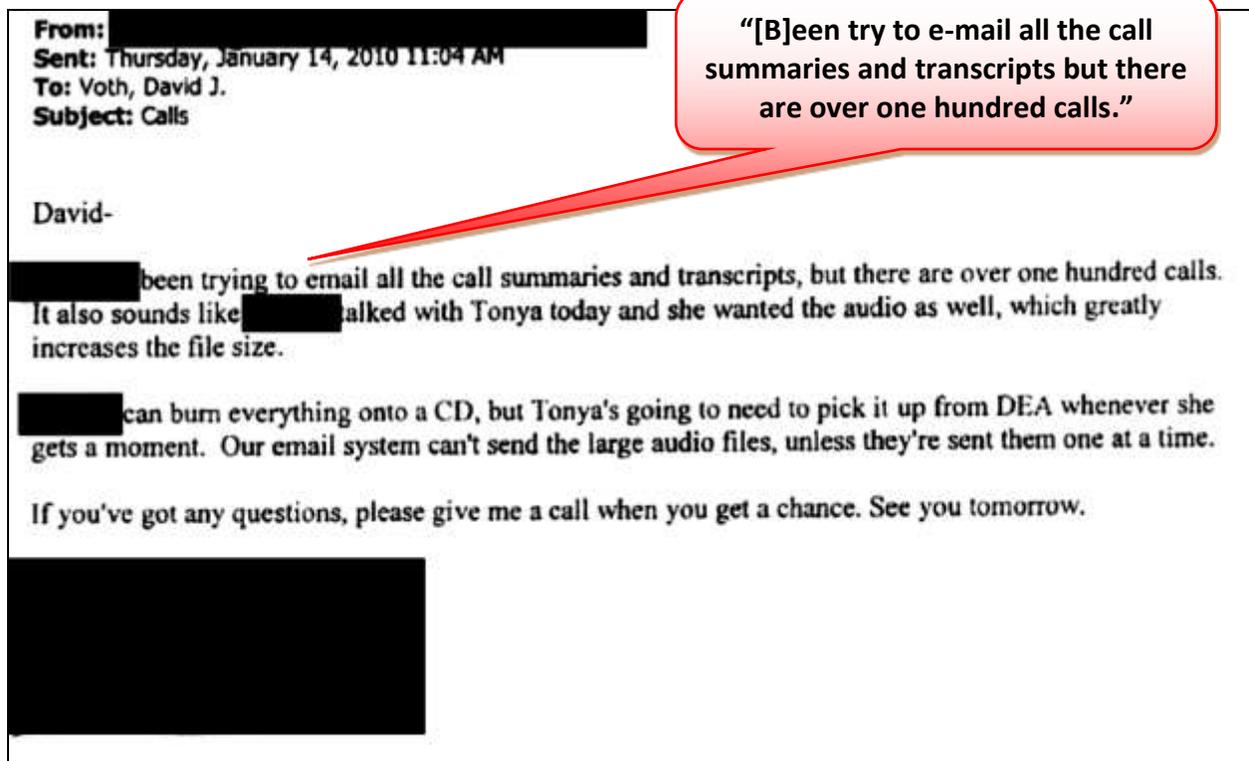
[INTENTIONALLY BLANK]

⁸⁷ ATF Management Log, Case 785115-10-[redacted] (Dec. 16, 2009) (Exhibit 44).

⁸⁸ ATF Management Log, Case 785115-10-[redacted] (Dec. 24, 2009) (Exhibit 44).

⁸⁹ October 5 Briefing (supra note 76).

⁹⁰ E-mail from [DEA] to David Voth (Jan. 14, 2010) (Exhibit 45).



A January 17, 2010 FBI document provides more detail of what had been gathered through the DEA wire by that point:

- “The guys [Target A] had there were ready to start working hard at the beginning of the year. . . . [Target B’s] guy Acosta is coming over. Acosta is source of supply for guns.”
- “[Target C] asked [Target A] about the toys (guns). [Target C] has 32 Romanian assault rifles, with folding stocks—new in the box. ‘1 buck each’ (\$1000).”
- “[Target A] has third party interested in the guns. Wants them transported to El Paso. [Target A] will wire money in the morning. Set up transport of guns in trailer.”
- “[Target C] has guy who will transport guns to [Target A] in El Paso. \$1300 each gun. Acosta and [Target C’s] cousin will bring the guns. Sending them in morning. [Target A] will wire money via Western Union Right now.”
- “More conversation regarding the guns and wire transfer. The guns are ready to go via transport. . . .”⁹¹

⁹¹ FBI Form FD-302, at 4 (Jan. 17, 2010) (Exhibit 46).

| | |
|------|---|
| 749 | Third party left money. Discussed sending money via courier. The guys ██████ had there were ready to start working hard at the beginning of the year. ██████ tells ██████ to put some effort into it. ██████ acknowledged. ██████'s guy Acosta is coming over. Acosta is source of supply for guns. |
| 1136 | ██████ asked ██████ about the toys (guns). ██████ has 32 Romanian assault rifles, with folding stocks - new in the box. "1 buck each" (\$1000). |
| 1137 | ██████ has third party interested in the guns. Wants them transported to El Paso. ██████ will wire the money in the morning. Set up transport of guns in trailer. |
| 1139 | ██████ has guy who will transport guns to ██████ in El Paso. \$1300 each gun. Acosta and ██████'s cousin will bring the guns. Sending them in morning. ██████ will wire money via Western Union right now. |
| 1148 | Does ██████ want more guns? ██████ waiting for a call back. ██████ can send 2 pesos under a couple names. |
| 1221 | More conversation regarding the guns and wire transfer. The guns are ready to go via transport. ██████ will fly to El Paso and get there at the same time. |
| 1227 | ██████ sending \$500 or \$800 via western Union. |

- "Guns en route. Acosta doesn't want to be asked to take the guns into Juarez."
- "[Target A] sending \$2200 for guns to Bank of America account" ⁹²

Continuation of FD-102 of DEA Title III Call Summary Log . On 01/17/2010 . Page 5

| | |
|------|---|
| 1265 | Third party about to make a deposit, but too many requirements to deposit money gram. ██████ can send 2,3,4 or even 5. Whatever ██████ needed. Guns are coming with Acosta in 3 or 4 cars. |
| 1287 | ██████ waiting on ██████. ██████ has appointment with lawyer at 2:00 pm. ██████ coming to El Paso via plane. One hour flight from Phoenix. Guns en route. Acosta doesn't want to be asked to take the guns into Juarez. |
| 1305 | Arrange payment through Bank of America. |
| 1310 | ██████ sending \$2200 for guns to Bank of America account # ██████ to ██████. |

⁹² *Id.* at 5.

- “[Target C] and [Target A] discuss the price and availability of the .50 caliber rifles. They can be sent to [Target A]. Further discussion about the amount of profit they will make on the rifles.”⁹³

| Continuation of FD-302 of <u>DEA Title III Call Summary Log</u> . On <u>01/17/2010</u> . Page <u>6</u> | |
|--|--|
| 1657 | <p>██████ and ██████ discuss the price and availability of the .50 caliber rifles. They can be sent to ██████. Further discussion about the amount of profit they will make on the rifles.</p> |

As these summaries show, the DEA wiretap information available to ATF provided detailed information about Celis-Acosta and several other suspects. Target A, the trafficker who was purchasing firearms from Celis-Acosta and transporting them to Mexico, was one of the main targets of Fast and Furious. The DEA wire intercepts identified Target A by the January 17, 2010 document, if not sooner.

DEA says that only after January 14, 2010, did ATF start showing up to the joint wire room on a daily basis.⁹⁴ Later that month ATF recognized the significance of the earlier intercepts. According to one document Group VII put together that month:

During a Deconfliction [sic] meeting with the DEA on December 15, 2009, the [DEA agents] advised that numerous telephone calls had been intercepted involving [redacted] and the [DEA] targets. [Redacted] is believed to be in Agua Prieta, Mexico, and has been intercepted orchestrating different amounts of US currency being illegally brought into the US for the purpose of purchasing firearms via the [DEA] targets. **Those targets were intercepted making arrangements with telephone numbers utilized by CELIS-ACOSTA, CHAMBERS, and STEWARD to obtain the firearms for [redacted]. On December 21, 2009, an intercepted phone call between CELIS-ACOSTA and a [DEA] target revealed that firearms recently purchased in Phoenix were going to be driven to El Paso, TX and trafficked into Mexico.**⁹⁵

Inexplicably, ATF failed to make use of the most critical information DEA shared. Instead of focusing on individuals above Celis-Acosta in the firearms trafficking network, ATF continued to focus on the straw purchasers *below* Celis-Acosta.

ATF would spend the next eight months trying to establish a connection between Celis-Acosta’s straw purchasing and Mexican drug cartels. Yet the DEA wire intercepts had already established this connection by January 2010. The DEA wire would later be thrown out of court.⁹⁶ However, ATF didn’t know in early 2010 that that would happen. If ATF had bothered

⁹³ *Id.* at 6.

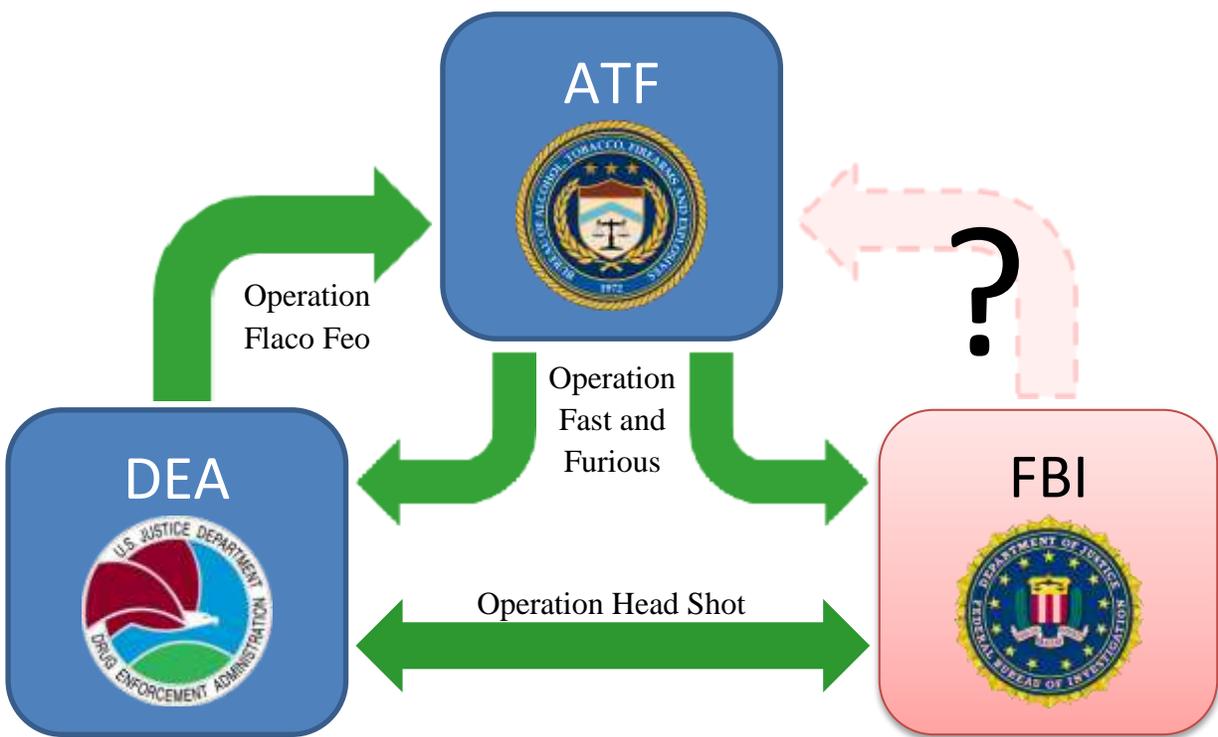
⁹⁴ October 5 Briefing (supra note 76).

⁹⁵ Operation Fast and Furious, OCDETF Proposal Narrative (Jan. 26, 2010), at 3 (emphasis added) (Exhibit 16).

⁹⁶ October 5 Briefing (supra note 76).

to conduct a thorough review of all the information contained in the DEA wire intercepts, Fast and Furious might have concluded a year earlier than it did. According to former ATF Deputy Director Hoover, ATF simply “dropped the ball” during this crucial time in the investigation.⁹⁷ Celis-Acosta would not be indicted until January 19, 2011.

There appears to have been a greater level of communication and coordination with ATF by the DEA than by the FBI. The DEA actively shared information repeatedly. It made the gun trafficking information gleaned from its state wiretap available to ATF on multiple occasions. Since it lacks jurisdiction over gun cases, DEA had no incentive to hoard information about gun trafficking from any other agency. Conversely, the FBI had cooperated with DEA in another operation, but did not aggressively push gun trafficking information to ATF. Unlike DEA, the FBI shares concurrent jurisdiction over gun trafficking cases with ATF, which creates a disincentive to share information and may have had an impact on the effectiveness of coordination between the two agencies.



⁹⁷ *Id.*

4. Early Concerns Expressed

FINDING: Concerns dismissed: Both cooperating FFLs and some ATF officials expressed concerns about the growth of Fast and Furious as early as December 2009. Senior ATF officials, however, refused to heed these concerns as they allowed the straw purchasers to continue to arm the Sinaloa Cartel. ATF reassured cooperating FFLs and encouraged them to continue selling.

On December 18, 2009, the bi-weekly update from the ATF Phoenix Field Division's Intelligence Group supplied considerable data about the case:

Jacob Chambers et al: This case is a large scale conspiracy of over a fifteen [sic] interconnected straw purchasers. Thus far in the investigation (September through present) the group has purchased over 500 firearms; most of which are the AK-47 variant 7.62 assault rifles and or [sic] the F.N. Herstal 5.7 mm pistols. Of those 500 firearms purchased by the group approximately 50 have been recovered in Mexico or near the Mexican Border (the serial numbers are continually being updated and changed thus affecting the trace results) with a short time-to-crime; some as little as one day.⁹⁸

A short "time-to-crime," the time between purchase of a gun and its use in a crime, is a typical indicator of firearms trafficking. Thus, the update illustrates that, even in the early stages of Fast and Furious, ATF was aware that the guns the straw buyers purchased from cooperating FFLs—transactions which ATF allowed to proceed—were ending up in Mexico and in the hands of violent criminals.

As indicated above, Case Agent Hope MacAllister somehow learned in early December that there would be a spike in purchasing activity. Accordingly, she told one FFL that "**you can expect to see an increase of purchases of AK-47 type rifles.**"⁹⁹ The upswing in firearms purchases occurred almost immediately, and the FFL was eager to cooperate with ATF and send them the 4473s to aid their investigation. He testified:

What occurred immediately, within five days, four to five days, of my conversation with Agent MacAllister in which she is giving me a heads-up to expect purchases to begin occurring, Caucasian males . . . came in and began to purchase in lots of 10, 15, sometimes 20 initially AK-47s

⁹⁸ E-mail from Kevin Simpson to David Voth (Dec. 18, 2009) [HOCR 001189] (Exhibit 47).

⁹⁹ Transcript, Interview of [FFL1] by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (May 18, 2011), at 18 [hereinafter FFL1 Transcript] (Exhibit 48).

without ammunition, strictly the guns. The denomination was done in cash, being it 20s, 50s, 100s. Generally it was in 20s.

Now, when somebody would enter my store in this manner I would telephonically contact Agent MacAllister right away. Her instructions were as follows:

Okay. Take your time boxing these weapons up. Try and stall them. We will get somebody out to the parking lot as fast as possible so we can surveil these people. We will text you or call you at the store when we are in position.¹⁰⁰

Yet as the number of firearms bought by these suspicious individuals continued to increase, this cooperating FFL expressed uneasiness about the large number of firearms being bought by the suspected straw purchasers ATF was watching. The FFL asked to speak with a superior who could verify that the operation in which he was being asked to participate was legitimate. The FFL stated:

Q. Had you balked with MacAllister and Voth that, hey, guys, I am going to have to ask –

A. I told them unless I had something definitive to go by, you know, I don't feel comfortable with this so I need to speak to the supervisor.¹⁰¹

On the morning of December 17, 2009, MacAllister brought both Voth and District of Arizona AUSA Emory Hurley to the FFL's store to assuage the FFL's concerns.¹⁰² The FFL testified:

And in my office, I voiced my concerns over several subjects, one of which primarily was the amount of weapons that were being purchased at my store.

* * *

I was instructed in that meeting in no uncertain terms by the agents and the Assistant United States Attorney himself to continue to stock these weapons, second, to keep working and inform the Phoenix field

¹⁰⁰ *Id.* at 18-19 (emphasis added).

¹⁰¹ *Id.*

¹⁰² Transcript, Interview of David Voth by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Jun. 30, 2011), at page 97-98 [hereinafter Voth Transcript] (Exhibit 49).

office and their agents and keep them apprised of all developments with regard to these types of purchases.¹⁰³

David Voth later testified that he couldn't remember whether the FFL had raised concerns about the number of guns. However, he testified, "I remember our meeting was whether or not he was doing anything illegal"¹⁰⁴ Similarly, AUSA Emory Hurley would later write: "[The FFL] had expressed concerns about the cooperation he was providing and whether he was endangering himself or implicating himself in a criminal investigation."¹⁰⁵

Individuals outside of Phoenix also expressed concern over the large number of firearms involved in Fast and Furious. Unaware of the short time-to-crime and lacking access to the DEA wire room, many people learning about the case found the sheer number of weapons alone to be staggering. For instance, Ray Rowley, Southwest Border Initiative Coordinator for ATF, voiced his anxiety over the number of weapons in Fast and Furious early in the investigation.¹⁰⁶ After a mid-December 2009 briefing on the case, an intelligence officer from ATF's Office of Strategic Information and Intelligence ("OSII") told Group VII Supervisor David Voth that at the briefing, Rowley "mentioned the possibility of needing to shut the investigation down due to the large number of guns that have already been trafficked."¹⁰⁷ Upon hearing this, ASAC Gillett spoke with Rowley on December 17, 2009, the same day as Voth and AUSA Hurley had their meeting with a cooperating FFL. In an e-mail to Newell about the conversation with Rowley, Gillett wrote:

I spoke with Ray Rowley today and explained that even though the identified straw purchasers bought approximately 175 guns last week alone, we have slowed down the FFL on future purchases and are obtaining intelligence directly related to this investigation from [redacted]. Ray did express some concern regarding the total number of guns that have been purchased by this straw-purchase scheme.¹⁰⁸

Whether in response to Rowley's concerns or the concerns expressed by the cooperating FFL in his meeting with Voth and AUSA Hurley in the morning, that afternoon Gillett wrote to Voth, forwarding a copy of the ATF order discussed in the first staff report.¹⁰⁹ ATF relied on this order to allow the guns to walk without interdicting them:¹¹⁰

¹⁰³ [FFL1] Transcript at 20-22 (emphasis added) (Exhibit 48).

¹⁰⁴ Voth Transcript at 100 (Exhibit 49).

¹⁰⁵ Memorandum to Dennis Burke from Emory Hurley, "Jaime Avila, Jr." (Jan. 28, 2011), at 1 [HOCR 002349] (Exhibit 26).

¹⁰⁶ E-mail from George Gillett to William Newell (Dec. 17, 2009) [HOCR 002491] (Exhibit 50).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ H. Comm. on Oversight & Gov't Reform and S. Comm. on the Judiciary Joint Staff Report, *The Department of Justice's Operation Fast and Furious: Accounts of ATF Agents*, 112th Congress (June 14, 2011), at 11.

¹¹⁰ E-mail from George Gillett to David Voth (Dec. 17, 2011) [HOCR 000903] (Exhibit 51).

From: Gillett, George T. Jr.
Sent: Thursday, December 17, 2009 1:39 PM
To: Voth, David J.
Subject: RE:

██████████

██████████

Anticipatory mi amigo. Let me know when "the eagle is in the nest."

Below is an excerpt from ATF Order 3310.4B

Please see 148 (a)(1) and (2).

"Anticipatory mi amigo. . . .
Below is an excerpt from
ATF Order 3310.4B."

148. **"WEAPONS TRANSFERS"**.

- a. **Considerations.** During the course of illegal firearms trafficking investigations, special agents may become aware of, observe, or encounter situations where an individual(s) will take delivery of firearms, or transfer firearm(s) to others. In these instances, the special agent may exercise the following options:
- (1) In cases where probable cause exists to believe a violation of law has occurred and the special agent determines there is a need to intervene in the weapons transfer (e.g., the recipient of the firearms is a known felon; it is known the firearms will be used in crime of violence), the special agent shall do so but should place concerns for public safety and the safety of the involved special agents as the primary determining factor in exercising this option.
 - (2) In other cases, immediate intervention may not be needed or desirable, and the special agent may choose to allow the transfer of firearms to take place in order to further an investigation and allow for the identification of additional coconspirators who would have continued to operate and illegally traffic firearms in the future, potentially producing more armed crime.

Agents testified that the intent of Order 3310.4B is to allow the transfer of firearms for a short period of time, under close surveillance, in order to arrest both the straw purchaser and the transferee.¹¹¹ The intent of the order was not to allow ATF to fail to interdict weapons for an unspecified amount of time. During Fast and Furious, however, ATF supervisors in Phoenix used this order as justification to allow the transfer of weapons while breaking off surveillance altogether. Then-ATF Acting Director Kenneth Melson would later testify:

So this case was done very—was investigated closely with the U.S. Attorney's office. Remember we have David Voth who became a supervisor and entered on duty in Phoenix on December 6, 2009. He is an inexperienced agent. MacAllister is a relatively new agent. I am sure that they were influenced by the direction they were given both by the ASAC George Gillett and by the U.S. Attorney's office. Nevertheless, they should

¹¹¹ See, e.g., Voth Transcript at 10-12 (Exhibit 49).

have had perhaps other views as to the propriety of what they were doing.¹¹²

The day after Gillett's conversation with Rowley and the ATF/U.S. Attorney's Office meeting with the cooperating FFL, Deputy Assistant Director Steve Martin e-mailed SAC Newell. Martin wrote:

Great stuff—aiming for those cartels! It is painful trying to get the powers to be to see that the target is the top in the cartel and not the straw purchase urchin (whose brain should be sucked dry for intel). Good luck and let us know how we can help.¹¹³

Newell responded:

George Gillett had to have a long talk with one Mr. Ray Rowley yesterday because we heard he was one of the “hand wringers” on this deal and asking why we weren't shutting this deal down now. I had Gillett call him and “counsel” him on why we weren't going to do that and if he had anymore concerns to contact us directly and not worry so much about those things he has absolutely no control over, or say in for that matter.¹¹⁴

Newell's response illustrates the extent to which the Phoenix Field Division successfully resisted supervision and support from ATF headquarters.

5. Formalization of Strategy and ICE Involvement

| | |
|-----------------|---|
| FINDING: | <u>Going for the “big fish”:</u> When faced with an opportunity to end Fast and Furious in its early stages, the U.S. Attorney's Office for the District of Arizona and ATF deliberately decided to hold out for a bigger case. At this point, U.S. Immigration and Customs Enforcement became heavily involved, assigning a dedicated co-case agent to the operation. |
|-----------------|---|

At the end of 2009 and the beginning of 2010, ATF and the Arizona U.S. Attorney's Office were debating whether to allow Fast and Furious to develop into a bigger case. ATF had already decided on its strategy. On January 4, 2010, ATF Group VII Supervisor Voth sent his supervisor a briefing paper on the case. The briefing paper detailed the investigative strategy

¹¹² Transcript, Interview of Kenneth Melson by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (July 4, 2011), at 55 [hereinafter Melson Transcript] (Exhibit 52).

¹¹³ E-mail from Steve Martin to William Newell (Dec. 18, 2009) [HOCR 002395] (Exhibit 53).

¹¹⁴ E-mail from William Newell to Steve Martin (Dec. 18, 2009) [HOCR 002395] (Exhibit 53).

employed in Fast and Furious, including the language of ATF Order 3310.4B that Gillett had sent Voth two weeks prior:

Currently our strategy is to **allow the transfer of firearms to continue** to take place in order to further the investigation and **allow for the identification** of additional co-conspirators who would continue to operate and illegally traffic firearms to Mexican DTOs [drug trafficking organizations] which are perpetrating armed violence along the Southwest Border.

The ultimate goal is to secure a Federal T-III audio intercept to identify and prosecute all co-conspirators of the DTO to include the 20 identified straw purchasers, the facilitators of the distribution cell centered here in Phoenix, the transportation cells taking firearms South, and ultimately to develop and provide prosecutable information to our Mexican law enforcement counterparts for actions.¹¹⁵

On January 5, 2010, MacAllister, Voth, and ASAC Gillett met with AUSA Emory Hurley from the U.S. Attorney's Office to discuss the case.¹¹⁶ After the meeting, Newell e-mailed McMahon seeking additional resources:¹¹⁷

[INTENTIONALLY BLANK]

¹¹⁵ Phoenix Group VII, Phoenix Field Division, ATF, *Briefing Paper on 785115-10-[redacted]* (Jan. 8, 2010) [HOCR 001144-001146] (emphasis added) (Exhibit 54); see also e-mail from George Gillett to William Newell (Jan. 8, 2010) [HOCR 001143] (Exhibit 55).

¹¹⁶ E-mail from William Newell to William McMahon (Jan. 5, 2010) [HOCR 002107] (Exhibit 56).

¹¹⁷ *Id.*

From: Newell, William D.
Sent: Tuesday, January 05, 2010 6:24 PM
To: McMahon, William G.
Subject: Mtng with USAO, re: Phoenix "Fast and Furious" case

Met with the USAO today on the status of this case. They want us to proceed with [REDACTED] before conducting any overt investigative activity. [REDACTED]
[REDACTED] They agree that right now we have very little to prosecute on especially considering the issues with prosecuting straw purchasers in this State and 9th Circuit. Even though I don't like it I have to agree and we are doing everything possible to slow these guys down. I need help though, in the form of detailees to conduct surveillance. I was hoping to wait until the GRIT but this case has progressed so fast, much quicker than any other case we've been involved with, that I need bodies asap. If it's OK with you I'll start reaching out to non-SWB SACs tomorrow to feel them out about letting us have some bodies to assist with surveillance. We are coordinating with ICE, they have a former ATF IOI now an ICE SA assigned to this case with us. It's a Strike Force case so we are also coordinating with ICE and DEA through the Strike Force coordination process.

Bill Newell
Special Agent in Charge
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
Phoenix Field Division (Arizona and New Mexico)
[REDACTED]

"I need help though . . . this case has progressed so fast, much quicker than any other case we've been involved with."

That day, AUSA Hurley sent a memorandum to National Security Section Chief Michael Morrissey, his first-line supervisor.¹¹⁸ The memorandum explicitly describes the tactical decision to forgo prosecuting or even contacting straw buyers:

Today I met with ATF regarding their investigation centered around Manuel Celis-Acosta, suspected of trafficking firearms to Mexico. He is the center of a hub-and-spokes conspiracy involving [redacted] or more straw purchasers. . . .

In the past, ATF agents have investigated cases similar to this by confronting the straw purchasers and hoping for an admission that might lead to charges. This carries a substantial **risk of letting the members of the conspiracy know that they are the subject of an investigation** Even when the straw buyers make admissions and can be prosecuted, they are easily replaced by new straw buyers and the flow of guns remains unabated.

In this case, ATF has discovered that the central target of their investigation is linked to a state wire case being run out of the DEA wire room. **They have reviewed a number of "dirty" calls from the Celis**

¹¹⁸ Memorandum from Emory Hurley to Mike Morrissey, "Manuel Celis Acosta Trafficking Investigation" (Jan. 5, 2010) [HOG 002960-002961] (Exhibit 57).

Acosta [sic] regarding gun trafficking and believe they could pursue a federal T-III. . . .

ATF believes that **there may be pressure from ATF headquarters to immediately contact identifiable straw purchasers** just to see if this develops any indictable cases and **to stem the flow of guns**. Local ATF favors pursuing a wire and surveillance to build a case against the leader of the organization.¹¹⁹

This memorandum identifies the dichotomy between the two possible strategies for ATF and the U.S. Attorney’s Office to pursue—either surveil straw purchasers and seek a federal wire intercept, or contact the straw purchasers and try to stem the flow of guns. Hurley concluded: “I concur with Local ATF’s decision to pursue a longer term investigation to target the leader of the conspiracy.”¹²⁰

Later that day, Morrissey forwarded the memo to U.S. Attorney Dennis Burke for a decision. Morrissey also worried about ATF headquarters wanting to do a smaller purchase case:¹²¹

From: Morrissey, Mike (USAAZ)
Sent: Tuesday, January 05, 2010 5:13 PM
To: Burke, Dennis (USAAZ)
Cc: Lodge, Joe (USAAZ); Hurley, Emory (USAAZ)
Subject: heads up on gun trafficking case

“ATF headquarters may want to do a smaller straw purchaser case. We should hold out for the bigger case, try to get a wire, and if it fails, we can always do the straw buyers.”

Dennis – Joe Lodge has been briefed on this but wanted to get you a memo for your review. Bottom line – we have a promising guns to Mexico case (some weapons already seized and accounted for), local ATF is on board with our strategy but ATF headquarters may want to do a smaller straw purchaser case. We should hold out for the bigger case, try to get a wire, and if it fails, we can always do the straw buyers. Emory’s memo references that this is the “Naco, Mexico seizure case” -- you may have seen photos of that a few months ago. << File: Emory trafficking case.wpd >>

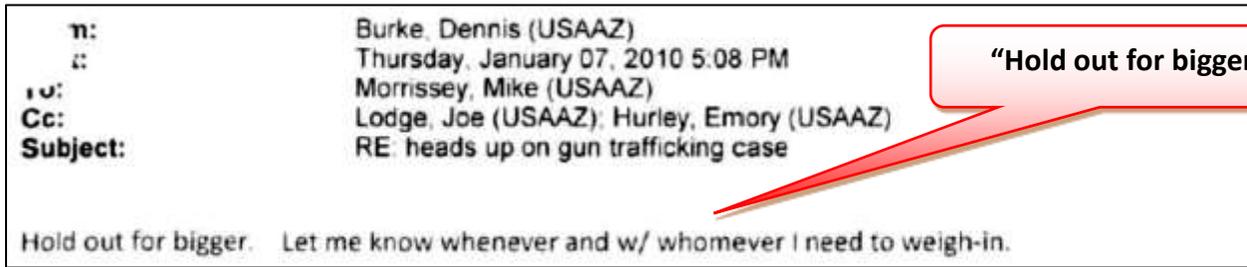
Since congressional investigators have not been allowed to interview Morrissey or Hurley to ask them about their statements, it’s difficult to know whether ATF or the U.S. Attorney’s Office proposed this approach first. It is clear, however, that both ATF leadership and the U.S. Attorney’s Office quickly agreed, and each seems to have had an independent desire to pursue the “big case” strategy.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ E-mail from Mike Morrissey to Dennis Burke (Jan. 5, 2010) [HOCR 002960] (Exhibit 57).

Burke's response to Morrissey simply said to hold out for the bigger case:¹²²



This decision to hold out for a bigger case was a critical juncture. It was a green light—by the U.S. Attorney himself—for ATF agents to continue surveiling straw purchasers instead of disrupting and deterring their activities.

On January 8, 2010, the briefing paper Voth had drafted a few days earlier was sent by ASAC Gillett to SAC Newell.¹²³ Before forwarding it to ATF headquarters two and a half hours later, Newell edited the briefing paper.¹²⁴ He revised the document to address the rapid pace at which firearms were purchased by the suspects in the case: “It should also be noted that the pace of firearms procurement by this straw purchasing group from late September to early December, 2009 defied the ‘normal’ pace of procurement by other firearms trafficking groups investigated by this and other field divisions.”¹²⁵ Newell also included the phrase “albeit at a much slower pace” after “allow the transfer of firearms to continue to take place.”¹²⁶

[INTENTIONALLY BLANK]

¹²² E-mail from Dennis Burke to Mike Morrissey (Jan. 7, 2010) [HOCR 002960] (Exhibit 57).

¹²³ E-mail from George Gillett to William Newell (Jan. 8, 2010) [HOCR 001143] (Exhibit 55).

¹²⁴ E-mail from William Newell to William McMahon (Jan. 8, 2010) [HOCR 001914] (Exhibit 58).

¹²⁵ Phoenix Group VII, Phoenix Field Division, ATF, *Briefing Paper on 785115-10-[redacted]* (Jan. 8, 2010) [HOCR 001915-001918] (Exhibit 59).

¹²⁶ *Id.*; see also e-mail from William Newell to William McMahon (Jan. 8, 2010) [HOCR 001914] (Exhibit 58).

“Currently our strategy is to allow the transfer of firearms to continue to take place . . .”

13. Currently our strategy is to allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow for the identification of additional co-conspirators who would continue to operate and illegally traffic firearms to Mexican DTOs which are perpetrating armed violence along the Southwest Border. This all in compliance with ATF 3310.4(b) 148(a)(2). It should be noted that since early December efforts to “slow down” the pace of these firearms purchases have succeeded and will continue but not to the detriment of the larger goal of the investigation. It should also be noted that the pace of firearms procurement by this straw purchasing group from late September to early December, 2009 defied the “normal” pace of procurement by other firearms trafficking groups investigated by this and other field divisions. This “blitz” was extremely out of the ordinary and created a situation where measures had to be enacted in order to slow this pace down in order to perfect a criminal case.

The briefing paper also stated:

This investigation was briefed to United States Attorney Dennis Burke, who concurs with the assessment of his line prosecutors and fully supports the continuation of the investigation. Furthermore, Phoenix Special Agent in Charge Newell has repeatedly met with USA Burke regarding the ongoing status of this investigation and **both are in full agreement with the current investigative strategy.**¹²⁷

ATF’s strategy to “allow the transfer of firearms to continue to take place” affected the agency’s interactions with ICE. In addition to the November 20, 2009, Naco recovery, when ATF asked ICE to stand down, ATF reiterated its request for ICE to stand down during a second recovery of weapons in December 2009.¹²⁸ ICE was interested in pursuing the Celis-Acosta case, however, so a joint ATF/ICE case was opened on January 12, 2010.¹²⁹

¹²⁷ Phoenix Group VII, Phoenix Field Division, ATF, *Briefing Paper on 785115-10-[redacted]* (Jan. 8, 2010) [HOCR 001916] (emphasis added) (Exhibit 59).

¹²⁸ See e-mail from [Office of Congressional Relations, Immigrations and Customs Enforcement] to [Senate Judiciary Committee staff] (Oct. 18, 2011) (Exhibit 60).

¹²⁹ E-mail from Alice Rojas to Alex Kruthaupt (Jan. 13, 2010) [HOCR 001962-001964] (Exhibit 61).

From: Rojas, Alice M
To: Leadmon, Lorren D.
Cc: O'Keefe, Kevin C.; Bass, William F.; Gil, Darren D.; Fasciani, Dennis C.; Kumor, Daniel J.; Voth, David J.; Gillett, George T. Jr.; MacAllister, Hope A.
Sent: Wed Jan 13 19:35:53 2010
Subject: RE: Naco, Sonora seizure
Hi Lorren,

I was operating on incomplete information before. It appears there is a joint ATF/ICE case being worked by BEST Phoenix (PX03BB10PX001) related to the ACOSTA Smuggling Organization. This case was just opened yesterday so when I ran queries yesterday I was not aware there was an open ICE case.

ATF apparently resented ICE's attempts to contact straw buyers and potentially deter or disrupt the illegal purchases. SAC Newell wrote on January 14, 2010: "[W]e have asked ICE several times to **stand down** on the Naco case because they were briefed here that this seizure ties into a much bigger ATF case which relates directly to a Phoenix DEA case with an active T-III."¹³⁰ Newell concluded: "They think this is an attempt to do an 'end around' on them—not true, they just don't understand our system or **how we conduct firearms trafficking investigations**. Last time I checked this was our expertise."¹³¹

ATF wanted to develop as big a case as possible without having other agencies intruding on its jurisdiction or contacting straw buyers. On January 15, 2010, ATF held another deconfliction meeting, this time with both ICE and DEA.¹³² AUSA Emory Hurley was also present.¹³³ As a result of that meeting, ICE detailed an agent, Layne France, to be a co-case agent on Operation Fast and Furious—a position he would hold for the next fourteen months.¹³⁴

Fast and Furious continued to intersect with other law enforcement agencies. On January 13, 2010, U.S. Customs and Border Protection ("CBP") stopped someone in El Paso, Texas trying to cross into Mexico with two firearms which traced back to Fast and Furious straw buyer Christopher Sean Steward.¹³⁵ The next day, on January 14, 2010, Newell e-mailed McMahon:

Yesterday El Paso PD hit a "stash house" on information that it had dope/money/guns, etc. They found 40 AK-47s from our "Fast and Furious" case that were in Suspect Guns and were purchased by our most prolific purchaser—Christopher Sean Steward. CBP also busted a guy trying to cross into Mexico with two of "our" AK-47s from the same case

¹³⁰ E-mail from William Newell to Darren Gil (Jan. 14, 2010) [*cf.* HOCR 001962-001963] (emphasis added) (Exhibit 62).

¹³¹ *Id.*

¹³² Phoenix Group VII, Phoenix Field Division, ATF, *Briefing Paper on 785115-10-[redacted]* (Jan. 8, 2010) [HOCR 001145] (Exhibit 54).

¹³³ See e-mail from [Office of Congressional Relations, Immigrations and Customs Enforcement] to [Senate Judiciary Committee staff] (Oct. 18, 2011) (Exhibit 60).

¹³⁴ Department of Homeland Security Responses of Apr. 25, 2012, Questions for the Record from S. Comm. on the Judiciary Hearing, *Oversight of the Department of Homeland Security*, 112th Congress (Oct. 19, 2011), at 19.

¹³⁵ U.S. Border Patrol Southwest Border Firearms Not Seized With Legible Serial Numbers (FY2009 – FY2011TD through June) (Exhibit 63).

and purchaser. As I said they were all purchased by our main straw purchaser, Chris Steward. . . . We are working this “fast and furious”, [sic] good news being **we got another 42 off the street** and can keep our case going. Hopefully the big bosses realize we are doing everything possible to prevent guns going into Mexico while at the same time trying to put together a phenomenal case. Good news too is we now have another Federal venue should the office here decide to punt.¹³⁶

Newell’s claim that “we got another 42 off the street” is misleading at best. Many of the recoveries Newell took credit for were made by other agencies, often with no tip or information provided by ATF in advance.

Also on January 14, 2010, U.S. Border Patrol agents stopped a vehicle in Columbus, New Mexico, near the U.S.-Mexico border, and found weapons inside.¹³⁷ Border Patrol ran database searches on the individuals in the vehicle and the weapons, including a National Crime Information Center (“NCIC”) search on the weapons’ serial numbers.¹³⁸ Border Patrol did not run a search on the weapons using eTrace since the agency only had limited access to the system and used it only to follow up in certain situations.¹³⁹ E-Trace is a “web-based, bi-lingual (“English and Spanish”) firearms tracing system,” “available to accredited domestic and international law enforcement agencies to assist in the tracing of U.S.-sourced firearms.”¹⁴⁰

The Suspect Gun Summary shows that two of the weapons in the vehicle had been purchased by Jaime Avila just five days earlier, on January 9, 2010.¹⁴¹ On January 16, 2010, two days after the Border Patrol vehicle stop, Avila purchased three more firearms at the same FFL, two of which would be recovered months later at the murder scene of Border Patrol Agent Brian Terry on December 15, 2010.¹⁴²

¹³⁶ E-mail from William Newell to William McMahon (Jan. 14, 2010) [HOCR 001436] (Exhibit 64).

¹³⁷ Indictment, *U.S. v. Villalobos et al.*, Case 2:11-cr-00487, Filed Mar. 8, 2011, U.S. District Court for the District of New Mexico, at 3.

¹³⁸ E-mail from [Office of Legislative Affairs, Department of Homeland Security] to [Senate Judiciary Committee staff] (Oct. 25, 2011) (Exhibit 65).

¹³⁹ *Id.*

¹⁴⁰ Bureau of Alcohol, Tobacco, Firearms and Explosives, Fact Sheet, ATF’s National Tracing Center (Mar. 2010), <http://www.atf.gov/publications/factsheets/factsheet-national-tracing-center.html>.

¹⁴¹ ATF Suspect Gun Summary, Jaime Avila Jr. (entered Jan. 14, 2010) (Exhibit 66).

¹⁴² ATF Suspect Gun Summary, Jaime Avila Jr. (entered Jan. 19, 2010) (Exhibit 67).

6. OCDETF Approval and ATF Wiretap

FINDING:

A costly mistake: Fast and Furious became an OCDETF multi-agency task force case, giving it additional clout and funding. Yet ATF was struggling to find out for whom the straw purchasing ring was acquiring weapons. The FBI began identifying two of these individuals as early as January 2010 in conjunction with DEA, but did not directly coordinate with ATF. ATF obtained at least seven wire intercepts while attempting to identify the same targets FBI and DEA had already identified. Wiretaps are incredibly expensive, resource-intensive, and rare for a firearms trafficking case. Senior Justice Department officials authorized submitting these applications to the court for wire intercepts.

On January 26, 2010, ATF's Fast and Furious OCDETF proposal was presented to the local Phoenix OCDETF Committee. The Committee passed the proposal unanimously.¹⁴³ On February 5, 2010, the Southwest Region OCDETF Coordinator for ATF contacted the case agents in the Phoenix Field Division to notify them that the proposal also had received the necessary regional approval and had become an official OCDETF case.¹⁴⁴

The narrative ATF provided in support of the case acknowledged that Fast and Furious overlapped with the DEA state wire case.¹⁴⁵ Indeed, one of the categories required for OCDETF approval was "Connections with Other Investigations." The ATF proposal stated:

ATF and ICE agents in this investigation are sharing information with investigators from Operation FLACO FEO, an active T-III investigation. Firearms purchased by Uriel PATINO were recovered in Nogales, Arizona. Firearms purchased by straw purchaser Sean STEWARD were recovered in El Paso, Texas and Douglas, Arizona. Two additional firearms were recovered in El Paso, Texas, by CBP. It is expected that this investigation will divulge both domestic and international firearms trafficking connections. As a result, it is foreseeable that other divisions will have opportunities to investigate facets of this organization and related illegal drug organizations and the ultimate dismantlement of [3 names of drug trafficking organizations redacted].¹⁴⁶

This information should also have alerted another agency involved in the OCDETF approval process that Fast and Furious overlapped with one of its investigations: specifically, the FBI. In

¹⁴³ E-mail from George Gillett to William Newell (Jan. 26, 2010) [HOCR 002217] (Exhibit 68).

¹⁴⁴ E-mail from Chong Gee to Tonya English and Hope MacAllister (Feb. 5, 2010) [HOCR 002962] (Exhibit 69).

¹⁴⁵ Operation Fast and Furious, OCDETF Proposal Narrative (Jan. 26, 2010), at 3 (Exhibit 16).

¹⁴⁶ Operation Fast and Furious, OCDETF Proposal Narrative (Jan. 26, 2010), at 7 (Exhibit 16).

early December 2009, the FBI had opened a case in Las Cruces, New Mexico involving the interstate transportation of stolen property.¹⁴⁷ The FBI knew the case also involved firearms. Since the potential subjects of the FBI case were already targets of a concurrent DEA case, in January 2010, FBI and DEA opened a joint case on the subjects entitled Operation Head Shot.¹⁴⁸

With the initiation of Operation Head Shot, the FBI obtained information from the DEA wire regarding the targets of the investigation and their contacts with Fast and Furious targets. The targets in Operation Head Shot were arranging for the purchase and delivery of weapons from the Fast and Furious straw buying ring with the intent to traffick the guns to Mexico. Although the FBI had participated in the OCDETF approval process, FBI officials apparently did not recognize that ATF's proposed OCDETF case had targets associated with targets in Operation Head Shot. Further, the FBI never pursued weapons trafficking charges or followed up with ATF on such charges against its drug trafficking targets in the months to come. The FBI therefore bears partial responsibility for some of the failures of Fast and Furious. ATF would spend the next seven months allowing guns to walk in order to identify the firearms traffickers ultimately receiving the weapons acquired by the straw purchasers—yet the FBI and DEA, through Operation Head Shot, already knew who these individuals were.

In Operation Fast and Furious, ATF had a more ambitious goal than just disrupting straw purchasing activity. ATF sought a federal wiretap. On January 27, 2010, Fast and Furious Co-Case Agent Tonya English e-mailed DEA about obtaining a copy of DEA's state wiretap affidavit that related to Celis-Acosta.¹⁴⁹ DEA was preparing to take down its own wire in February 2010.¹⁵⁰ DEA Special Agent in Charge of the Phoenix Field Division, Elizabeth Kempshall, told congressional investigators that after ATF made this decision, she encouraged ATF SAC Newell to consider pursuing a state wiretap because state wires were generally much quicker and easier to obtain than federal wires. According to Kempshall, however, Newell's response was that he wanted to pursue a federal wire because "it's never been done before" for a gun trafficking case.¹⁵¹

Throughout January 2010, ATF worked with AUSA Hurley and the U.S. Attorney's Office to prepare the wiretap application. Finally, on February 5, 2010, SAC Newell e-mailed Deputy Assistant Director McMahon a cover memorandum, written by David Voth, requesting authorization to seek a T-III intercept "on the main suspect in our on-going OCDETF Strike Force firearms trafficking case out of Phoenix entitled 'The Fast and Furious.'"¹⁵²

¹⁴⁷ October 5 Briefing (supra note 76).

¹⁴⁸ *Id.*

¹⁴⁹ E-mail from Tonya English to [DEA] (Jan. 27, 2010) (Exhibit 70).

¹⁵⁰ October 5 Briefing (supra note 76).

¹⁵¹ Telephone interview of Elizabeth Kempshall (Sep. 22, 2011) (emphasis added).

¹⁵² E-mail from William Newell to William McMahon (Feb. 5, 2010) (Exhibit 71).

-----Original Message-----
From: Newell, William D.
Sent: Friday, February 05, 2010 1:59 PM
To: McMahon, William G.
Cc: Vidoli, Marino F.
Subject: Phoenix "Fast and Furious" OCDETF Strike Force F/As Traff - TIII Affidavit Memo

Attached is the cover memo requesting authorization to conduct a T-III intercept on the main suspect in our on-going OCDETF Strike Force firearms trafficking case out of Phoenix entitled "The Fast and Furious", OCDETF SWB# [REDACTED]. I could not scan the actual affidavit due to its size so I am FedExing that to you along with the original memo.

Bill Newell
Special Agent in Charge
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Phoenix Field Division (Arizona and New Mexico) Office - [REDACTED]

The e-mail stated that Newell would send McMahon the actual wiretap affidavit along with the original memo via FedEx.¹⁵³ This e-mail and the FedEx package from Newell are the only link known between the wiretap affidavits and ATF headquarters.

The Justice Department approved the first wiretap application on March 10, 2010. ATF submitted at least six applications in support of seven wire intercepts during Fast and Furious. All of these wiretap applications were authorized by the Assistant Attorney General for the Criminal Division, Lanny Breuer, and signed by three of his deputies in March, April, May, June, and July 2010. The applications contained extensive and detailed information about the operational tactics used during Fast and Furious. The nature of the wiretap authorization process meant that senior officials in the Justice Department had information about the reckless tactics in Fast and Furious through the wiretap applications, while the applications were not provided to anyone higher than McMahon at ATF headquarters.

7. U.S. Attorney's Office Responsibility

FINDING: **A blank page: The full extent of the responsibility of the U.S. Attorney's Office for the District of Arizona in directing Operation Fast and Furious has yet to be discovered because the Department of Justice has stonewalled the congressional investigation.**

The Department of Justice has failed to turn over countless documents pursuant to the October 12, 2011, subpoena regarding the U.S. Attorney's Office, including all documents prepared after the Department's arbitrary February 4, 2011, cutoff date. These documents are necessary to investigate Fast and Furious because, once it became an OCDETF case, Fast and Furious was prosecutor-led.

¹⁵³ *Id.*

Many ATF agents testified that they often deferred to the U.S. Attorney's Office for guidance when determining whether to interdict firearms or take other investigative action. Several individuals within the U.S. Attorney's Office share the blame for their roles in Fast and Furious, from the U.S. Attorney himself down to the line prosecutor directing the day-to-day operations of the case.

The Justice Department, however, refused to produce the line attorney, Emory Hurley, for an interview in this investigation. Justice Department officials even told congressional investigators that if Hurley were to receive a subpoena, he would be directed by the Department not to appear. In lieu of Hurley, the Department offered Criminal Division Chief Patrick Cunningham, who the Department said was in the best position to explain the U.S. Attorney's Office's role in Fast and Furious. Cunningham, however, refused to appear after being subpoenaed, citing his Fifth Amendment privilege against self-incrimination. Immediately thereafter he promptly resigned from government service.

Congressional investigators were able to obtain some pertinent documents relating to the U.S. Attorney's Office from sources outside the Department. Investigators also spent two days interviewing former U.S. Attorney Dennis Burke. Some conclusions about the culpability of the U.S. Attorney's Office during Fast and Furious have been able to be drawn from that material. However, the Department of Justice's refusal to produce all of these documents ultimately resulted in Attorney General Eric Holder being held in contempt of Congress by the U.S. House of Representatives.

8. Headquarters Concerns and Exit Strategy Discussed

| | |
|-----------------|---|
| FINDING: | <u>Red flags ignored:</u> Senior ATF officials became concerned about the number of weapons purchased under Fast and Furious and requested an exit strategy for closing down the case. The drafting of the exit strategy was severely delayed, and the strategy itself was ultimately ignored. |
|-----------------|---|

Throughout February 2010, U.S. Attorney Dennis Burke continued to be interested in Fast and Furious and knew the main target of the case. On February 16, 2010, Burke e-mailed AUSA Hurley:¹⁵⁴

¹⁵⁴ E-mail from Dennis Burke to Emory Hurley (Feb. 16, 2010) [HOCR 002966-002970] (Exhibit 72).

From: Burke, Dennis (USAAZ)
Sent: Tuesday, February 16, 2010 4:03 PM
To: Hurley, Emory (USAAZ)
Cc: Morrissey, Mike (USAAZ)
Subject: Manuel Celis Acosta Trafficking Investigation

Any movement on this guy by ATF?

Hurley responded: “An AK variant with a GPS device [redacted] was sold to a conspirator and will be tracked until the battery goes dead.”¹⁵⁵ Two days later Hurley again updated Burke.¹⁵⁶

From: Hurley, Emory (USAAZ)
Sent: Thursday, February 18, 2010 1:40 PM
To: Burke, Dennis (USAAZ)
Subject: RE: Manuel Celis Acosta Trafficking Investigation

RC-3

The latest development in the case is that one player in this investigation was picked up last night in connection with another case (Parecki's), with \$100,000+ and two pounds of meth. Now we have to cross our fingers and hope that our main target [redacted] as a reaction to this arrest.

After each of these updates, Burke responded, “thanks” and “helpful.”¹⁵⁷

On February 22, 2010, Newell updated Burke, copying Emory Hurley:

42 AK-47 rifles we seized this past Saturday west of Tucson and a mile from the border. . . . The two cars carrying these firearms were about to cross into Mexico. This is from the ATF “Fast and Furious” OCDETF case. The suspects stopped at an address in Tucson before heading south and as it turns out this residence is a main target residence in our “Wide Receiver” OCDETF case out of Tucson.¹⁵⁸

¹⁵⁵ E-mail from Emory Hurley to Dennis Burke (Feb. 16, 2010) [HOCR 002966-002970] (Exhibit 72).

¹⁵⁶ E-mail from Emory Hurley to Dennis Burke (Feb. 18, 2010) [HOCR 002966] (Exhibit 72).

¹⁵⁷ E-mail from Dennis Burke to Emory Hurley (Feb. 17, 2010) [HOCR 002966] (Exhibit 72); e-mail from Dennis Burke to Emory Hurley (Feb. 18, 2010) [HOCR 002966] (Exhibit 72).

¹⁵⁸ E-mail from William Newell to Dennis Burke (Feb. 22, 2010) [HOCR 002968-002969] (Exhibit 72).

Burke responded to Hurley: “Talk to [Criminal Division Chief Patrick] Cunningham. I would like a briefing from you and him on Fast and Furious when I get back to Phoenix. Thanks. This is great stuff!”¹⁵⁹

Newell also responded separately to Burke that morning, specifically informing him that the suspects purchased over 800 weapons and that they were under surveillance.¹⁶⁰

From: Newell, William D. (ATF)
Sent: Monday, February 22, 2010 10:18 AM
To: Burke, Dennis (USAAZ)
Subject: RE: TNW 50 caliber rifle

10-4, it's part of the "Fast and Furious" OCADETF Strike Force case we are hoping to be up on a Federal T-III soon. This group is up to approx 800 "weapons of choice" mainly AK-47s, FN 5.7 pistols, etc. Emory is fully up to speed on it but if you want a more in-depth briefing we can do that over here at your earliest convenience. We have the charts showing the trafficking hierarchy, links due to purchases, phone tolls, intel from surveillance, etc.

Bill Newell
Special Agent in Charge
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Phoenix Field Division (Arizona and New Mexico) Office - [REDACTED]

Later that morning, Newell e-mailed Group Supervisor Voth and ASAC Gillett, stating that Burke had been surprised by some of the details:¹⁶¹

From: Newell, William D.
Sent: Monday, February 22, 2010 11:56 AM
To: Voth, David J.; Gillett, George T. Jr.
Subject: RE: FYI photo from this weekend...

Mr. Gillett sent it to me yesterday but thank you. Also, I talked to the USA this morning about this case and advised him of the seizure and link to the Tucson OCADETF case. He was taken aback by some of the facts I informed him about (including the fact that we are up to approx 800 guns) so I am setting up a briefing for him (alone no USAO "posse") about this case and several other cases I feel his is being misled about. Should be within the next couple of weeks so be prepared. Thanks.

Bill Newell
Special Agent in Charge
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
Phoenix Field Division (Arizona and New Mexico)
Office - [REDACTED]

“He was taken aback by some of the facts I informed him about (including the fact that we are up to approx. 800 guns) . . .”

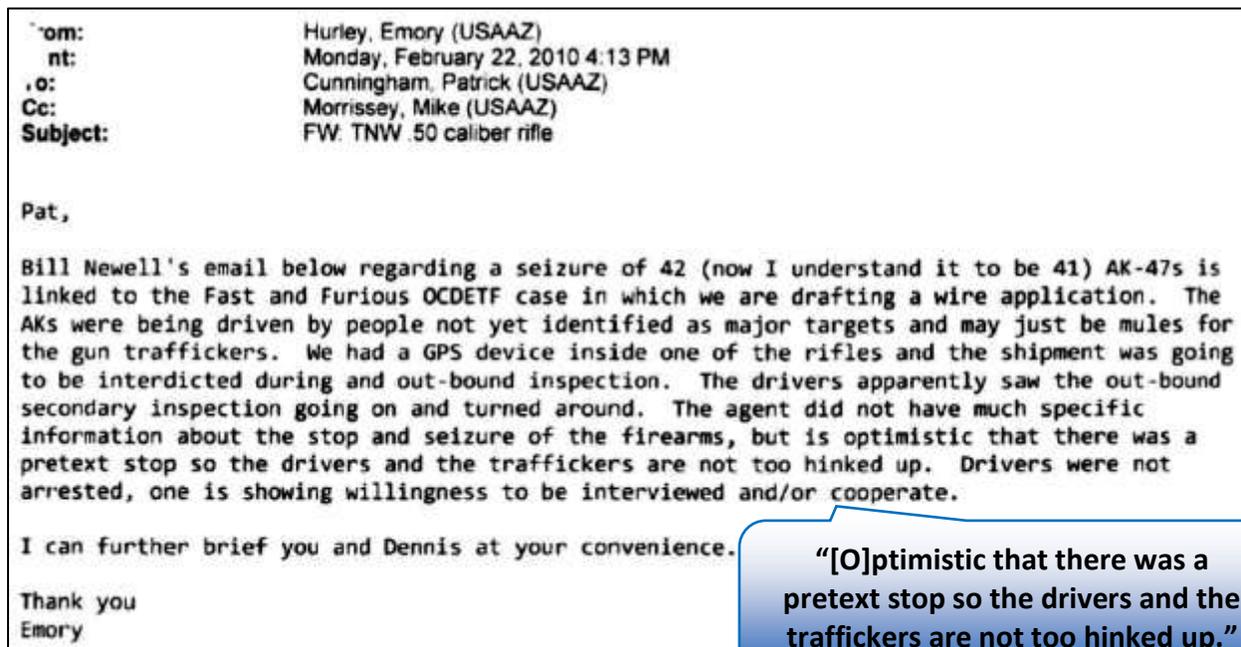
¹⁵⁹ E-mail from Dennis Burke to Emory Hurley (Feb. 22, 2010) [HOG R 002970] (Exhibit 72).

¹⁶⁰ E-mail from William Newell to Dennis Burke (Feb. 22, 2010) [HOG R 002968] (Exhibit 72).

¹⁶¹ E-mail from William Newell to David Voth, et al. (Feb. 22, 2010) [HOG R 001339] (Exhibit 73).

Burke, like Ray Rowley before him, appeared to express concerns about the number of weapons involved in the case.

That afternoon, Hurley gave Burke a further update, emphasizing the efforts to avoid alerting these traffickers that ATF was watching them :



This episode seems to corroborate what DEA agents had communicated to each other, namely that in their December 15, 2009, meeting, ATF agents “said the best way is to try to stop the load as it goes across into Mexico which adds in a whole bunch of charges.”¹⁶² In response to Hurley’s e-mail, U.S. Attorney Burke e-mailed his assistant: “Need a briefing on this from Emory, Mike Morrissey, and Pat Cunningham. Soon as we can.”¹⁶³

ATF SAC Newell continued to inform Burke and Hurley about weapons ending up in Mexico. On February 26, 2010, he wrote :¹⁶⁴

¹⁶² E-mail from [DEA] to [DEA] (Dec. 16, 2009) (Exhibit 42).

¹⁶³ E-mail from Dennis Burke to [U.S. Attorney’s Office Assistant] (Feb. 22, 2010) [HOCR 002972] (Exhibit 74).

¹⁶⁴ E-mail from William Newell to Dennis Burke and Emory Hurley (Feb. 26, 2010) [HOCR 002974] (Exhibit 75).

From: Newell, William D. (ATF)
To: Burke, Dennis (USAAZ); Hurley, Emory (USAAZ)
Sent: Fri Feb 26 11:30:18 2010
Subject: FW: 73 weapons of Navojoa Son.

Big firearms seizure in Sonora yesterday. Look at how many of the AR-15s (including several from [REDACTED]) have had their serial numbers obliterated. Word's gotten around about serial numbers, something we expect and why we have a very active serial number restoration training program. Also, we are going through these firearms right now but I can guarantee you a good number of these are from our "Fast and Furious" OCADETF Strike Force case.

Similarly, the next day he wrote:

From: Newell, William D. (ATF)
To: Burke, Dennis (USAAZ); Hurley, Emory (USAAZ); Kempshall, Elizabeth W (DEA-US)
Sent: Sat Feb 27 13:05:38 2010
Subject: Fw:

FYI - big Mexican Army seizure last night in Sinaloa from "Chapo" Guzman's guys. Seems something big is brewing down there which is why there's been such a flurry of gun purchasing activity of late in our area, as clearly seen in SA Hope MacAllister's "Fast and Furious" OCADETF Strike Force case. We've gotten the same info about this brewing issue from [REDACTED] interviews but DEA are the ones truly in the know so I'll defer to them. We don't have specifics on the firearms in [REDACTED] are yet, most likely get that w/n next 24 hours, but my paycheck is on a lot of these "pinging" off our case.

Newell
Special Agent in Charge
ATF Phoenix Field Division (AZ and NM)
Cell [REDACTED]

Not only was ATF receiving contemporaneous notice from cooperating FFLs of the purchases, by this time Group VII was also receiving contemporaneous e-mail notification from the FBI's National Instant Criminal Background Check System (NICS) for certain purchasers. As ASAC Jim Needles would later explain how ATF was able to start seizing weapons immediately after their purchase in the fall of 2010, "We have flagged these individuals in NICS and are notified if they make a purchase."¹⁶⁵ Yet, documents show Fast and Furious suspects had at least been flagged in NICS since February 2010.¹⁶⁶ A typical notification was this one, which indicated Uriel Patino had purchased a firearm the night before.¹⁶⁷

¹⁶⁵ E-mail from James Needles to William Newell (Oct. 29, 2010) [HOCR 001912] (Exhibit 76).

¹⁶⁶ See e-mail from David Voth to Group VII (Mar. 1, 2010) (Exhibit 77).

¹⁶⁷ E-mail from David Voth to Group VII (Mar. 11, 2010) (Exhibit 78).

From: Voth, David J.
Sent: Thursday, March 11, 2010 9:11 AM
To: Phoe-Group VII
Subject: FW: another hit
Attachments: AZ SWB Tracking.xlsx

Patino bought handgun at hand gun At [REDACTED] last night @ 6:30ish. You probably know this but if not FYI...

From: [REDACTED]
Sent: Thursday, March 11, 2010 5:36 AM
To: Voth, David J.
Subject: another hit

David,
Here is the updated list. Patino again.

Eric M. Moore
ATF NICS Liaison Specialist

ATF received these notifications for a list of individuals that at least included Jaime Avila and the five purchasers who would buy 90% of the guns in Fast and Furious: Patino, Sean Steward, Joshua Moore, Alfredo Celis, and Jacob Montelongo.¹⁶⁸

Around this time, ATF headquarters asked Voth to brief ATF leadership in Washington, D.C.¹⁶⁹ Voth provided a detailed PowerPoint presentation on March 5, 2010, to much of ATF's top brass, as well as a prosecutor from the Justice Department's Criminal Division.¹⁷⁰ The presentation detailed all the guns bought by known straw purchasers that appeared at crime scenes in Mexico and that the number of firearms purchased by Fast and Furious targets had risen to 1,026 as of February 27, 2010.¹⁷¹ One slide from the presentation detailed the firearms purchases:

[INTENTIONALLY BLANK]

¹⁶⁸ See e-mail from Marc Chamberlain to David Voth (Mar. 16, 2010) (Exhibit 79); e-mail from David Voth to Eric Moore (Mar. 25, 2010) (Exhibit 80); e-mail from Marc Chamberlain to David Voth (May 24, 2010) [HOCR 002691] (Exhibit 81).

¹⁶⁹ E-mail from David Voth to William Newell and George Gillett (Feb. 25, 2010) [HOCR 001420] (Exhibit 82).

¹⁷⁰ E-mail from Lorren Leadmon to Mark Chait, et al. (Mar. 5, 2010) [HOCR 002091] (Exhibit 83).

¹⁷¹ PowerPoint briefing, Mar. 12, 2010, "Operation the Fast and the Furious" [HOCR 002819-002823] (Exhibit 84).

**Total Firearms
Purchased as of
Feb 27, 2010
785115-10-0004**

| | | |
|--------------|---------|-------------|
| Patino | Uriel | 313 |
| Steward | Sean | 241 |
| Moore | Joshua | 116 |
| Chambers | Jacob | 68 |
| Celis | Alfredo | 55 |
| Hercegovac | Dejan | 30 |
| RC-4 | | |
| Montalongo | Jacob | 18 |
| Avila Jr | Jamie | 17 |
| RC-4 | | |
| Polanco | Jose | 3 |
| RC-4 | | |
| Celis-Acosta | Manuel | 1 |
| RC-4 | | |
| TOTAL | | 1026 |

On March 10, 2010, the Justice Department approved ATF's first wiretap. Acting ATF Director Kenneth Melson and Deputy Director Hoover did not attend the March 5, 2010 briefing, but in the wake of the wiretap application, they asked detailed questions about the case and techniques that were being utilized. On March 11, 2010—apparently in preparation for a briefing of Acting Deputy Attorney General Gary Grindler the next day—the Phoenix Field

Division worked to answer some of Acting Director Melson's questions about pole cameras, money transfers, and seizures in Fast and Furious:¹⁷²

From: Voth, David J.
Sent: Thursday, March 11, 2010 11:50 AM
To: Gillett, George T. Jr.
Subject: Director's questions

George,

Here are the answers to what I understand the Director's questions to be. More detail can be provided upon request, I thought it best to start brief.

1. IP Address for Pole Cameras; [REDACTED] User id: [REDACTED] password: [REDACTED] This must be monitored from a stand-alone computer as ATF Network bandwidth does not permit continuous monitoring.
2. Money Transfers: FINCEN, CTRs, SARs, Western Union, Arizona Department of Economic Security, ATF Special Investigator John Delfrari, IRS-CID Linda Wallace, [REDACTED] etc.
3. Mail covers – negative. In my experience this is a huge waste of time and resources for limited or no return.
[REDACTED]
4. How many seizure have been reviewed by our Mexico agents; to the best of my knowledge – three (3).
5. Nogales Seizure regarding [REDACTED]; there are a couple ROIs in N-Force, one from Tucson who initially responded to this incident, and one from us when it was determined to be part of our case. But in summary;
[REDACTED]

I hope this is what you are looking for, please advise if you need/want more.

In addition to pole cameras, ATF shortly installed two video cameras on either side of the counter in the main cooperating FFL that could be also accessed through an IP address on the Internet to watch purchases live.¹⁷³

On March 12, 2010, Melson and Hoover briefed Grindler on Fast and Furious.¹⁷⁴ Other members of the Deputy Attorney General's office were also present, including Associate Deputy Attorney General Ed Siskel and Special Assistant to the Deputy Attorney General Mark Michalic.¹⁷⁵

Over in the U.S. Attorney's Office, having obtained a federal wiretap in a firearms trafficking case was cause for celebration.¹⁷⁶

¹⁷² E-mail from David Voth to George Gillett (Mar. 11, 2010) [HOCR 001981] (Exhibit 85).

¹⁷³ Telephone interview of [ATF Technical Operations Agent] (Apr. 14, 2011).

¹⁷⁴ ATF Monthly Meeting with the Acting Deputy Attorney General (Mar. 12, 2010) [HOCR 002817-002823] (Exhibit 86).

¹⁷⁵ Transcript, Interview of Gary Grindler by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Dec. 14, 2011), at 43 (Exhibit 87).

¹⁷⁶ E-mail from Emory Hurley to Michael Morrissey (Mar. 10, 2010) [HOCR 002990] (Exhibit 88).

From: Morrissey, Mike (USAAZ)
Sent: Wednesday, March 10, 2010 8:42 PM
To: Hurley, Emory (USAAZ)
Subject: FW: Celis-Acosta, RC-3

You've made the US Attorney happy. Read the chain below.

From: Burke, Dennis (USAAZ)
Sent: Wednesday, March 10, 2010 6:35 PM
To: Morrissey, Mike (USAAZ)
Cc: Cunningham, Patrick (USAAZ)
Subject: Re: Celis-Acosta, RC-3

Frickin' love it!!

"Good job by Emory – a T-3 in a gun case is unusual, and aggressive. Hopefully we'll do it more in the future, but Emory is the trailblazer."

From: Morrissey, Mike (USAAZ)
To: Burke, Dennis (USAAZ)
Cc: Cunningham, Patrick (USAAZ)
Sent: Wed Mar 10 20:34:24 2010
Subject: FW: Celis-Acosta, RC-3

RC-3

RC-3 Good job by Emory – a T-3 in a gun case is unusual, and aggressive. Hopefully we'll do it more in the future, but Emory is the trailblazer.

From: Hurley, Emory (USAAZ)
Sent: Wednesday, March 10, 2010 5:58 PM
To: Morrissey, Mike (USAAZ)
Subject: FW: Celis-Acosta, RC-3

Now we are just waiting on ATF.

RC-3

At this same time, however, ATF Group VII Supervisor David Voth was attempting to quell dissension in the group over the fact that ATF was pursuing such an unusual technique while agents in Group VII were instructed to avoid conducting the most basic step of confronting the straw purchasers. ATF Special Agent John Dodson would later tell congressional

investigators, “You can’t go up on a wire and sit back and push the TiVo button and have your case solved for you. You need to be out there and do these bread and butter things that as cops, as case agents, as law enforcement, we have to do.”¹⁷⁷ Group VII was receiving NICS notifications of purchases and could remotely watch footage from video cameras at FFLs. Yet, with the posting of the wiretap, all of the Group VII agents were being pulled off of surveillance in order to work the wire room, leaving only out of town agents unfamiliar with the area to conduct critical surveillance work.¹⁷⁸

Nevertheless, in a March 12, 2010, Voth sent Group VII an e-mail defending the pursuit of the wire: “I am thrilled and proud that our Group is the first ATF Southwest Border Group in the country to be going up on a wire. . . . **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.**”¹⁷⁹

[INTENTIONALLY BLANK]

¹⁷⁷ Transcript, Interview of John Dodson by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Apr. 26, 2011), at 110 [hereinafter Dodson Transcript] (Exhibit 93).

¹⁷⁸ E-mail from David Voth to Brent Quinn (Mar. 11, 2011) (Exhibit 89).

¹⁷⁹ E-mail from David Voth to Phoenix Group VII (Mar. 12, 2010) [HOCR 001159] (emphasis added) (Exhibit 90).

From: Voth, David J.
Sent: Friday, March 12, 2010 7:34 PM
To: Phoe-Group VII
Subject: Monday Morning Meeting, Strike force 9:30am

To all;

It has been brought to my attention that there may be a schism developing amongst the group. This is the time we all need to pull together not drift apart. We are all entitled to our respective (albeit different) opinions however we all need to get along and realize that we have a mission to accomplish.

I am thrilled and proud that our Group is the first ATF Southwest Border Group in the country to be going up on wire. On that note I thank everyone for their efforts thus far and applaud the results we have achieved in a short amount of time.

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" when it comes to 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.

I don't know what all the issues are but we are all adults, we are all professionals, and we have a exciting opportunity to use the biggest tool in our law enforcement tool box. **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 tool box 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.

One last point is that we have many of our brother and sister ATF agents coming into town to assist us on this case. We have to put our best effort forward and lead by example. No one wants to leave their families behind, or leave their case work behind to come help someone who does even appreciate their sacrifice.

We need to get over this bump in the road once and for all and get on with the mission at hand. This can be the most fun you have with ATF, the only one limiting the amount of fun we have is you!

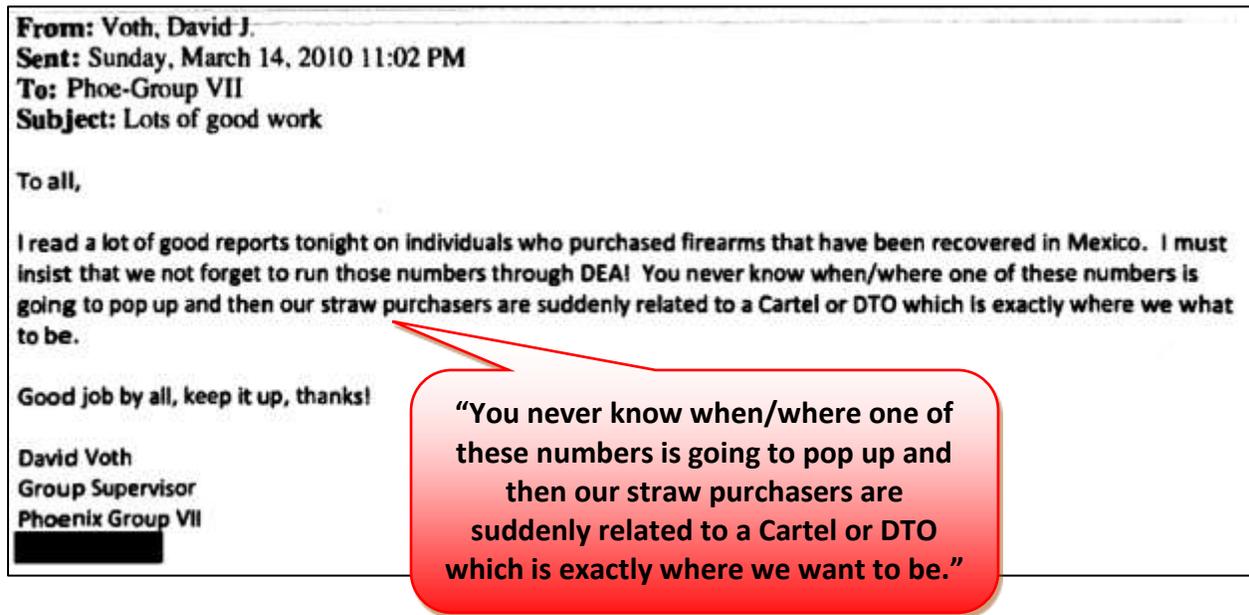
David Voth
Group Supervisor
Phoenix Group VII
[REDACTED]

In the e-mail, Voth denounced the differences of opinion occurring within the Group VII regarding Operation Fast and Furious. He further stated:

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 tool box 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.¹⁸⁰

¹⁸⁰ *Id.*

On Sunday, March 14, 2010—two days after the “schism” e-mail—Voth sent another e-mail to Group VII:¹⁸¹



Even though ATF had known since December 2009 that its targets were “related to a Cartel or DTO” from the DEA wire, Group VII was still trying to link the Fast and Furious straw purchases to recoveries in Mexico for intelligence purposes.

By this point, in March 2010, agents had complained within Group VII that only focusing on getting a wire and on subsequent recoveries in Mexico, while refusing to confront known straw purchasers buying from cooperating FFLs, amounted to walking guns. At the Monday morning staff meeting of Group VII on March 15, 2010, Voth asked ASAC Gillett, who didn’t normally attend the meeting, to come down and address the group.¹⁸² Special Agent Dodson testified about that encounter:

When ASAC George Gillett came down to our office, he really didn't -- and this happened a lot in Phoenix, is that most of our concerns or questions weren't addressed directly. The attitude and the mentality was that they didn't need to be addressed. We just needed to do what we were told.

And so when ASAC Gillett came down, we were told **you don't know what walking is, we are not walking guns**. And that's pretty much the

¹⁸¹ E-mail from David Voth to Phoenix Group VII (Mar. 14, 2010) [HOCR 001681] (Exhibit 91).

¹⁸² Voth Transcript at 205 (Exhibit 49); *see also* Transcript, Interview of Larry Alt by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Apr. 27, 2011), at 23 [hereinafter Alt Transcript] (Exhibit 92).

extent of the debate, because in Phoenix there is very little debating one of the ASACs or the SAC. So it was, you know, a declaration, you don't know what walking guns is, we are not walking guns, this is all okay.¹⁸³

Voth's second attorney has stated that this e-mail and the subsequent meeting of Group VII addressed only personnel conflicts in Group VII over scheduling shifts to work in the wire room, rather than differences of opinion over the tactics of the case.¹⁸⁴ The testimony of several other agents in Group VII, including Special Agents Larry Alt, Lee Casa, John Dodson, and Mark Sonnendecker, however, contradicts the version advanced by Voth's attorney.¹⁸⁵ Though Voth's attorney stated that "the rest of the group [other than Dodson and Casa] did not complain"¹⁸⁶ about the reckless tactics used in the case, Agent Sonnendecker told congressional investigators that he had concerns as well at the time of the meeting but thought that Dodson and Casa had made the point.¹⁸⁷

Voth's attorney also maintained that "the plain language of the e-mail establishes that the 'schism' refers to a misperception of inequitable working conditions by certain agents and not a fight about investigative strategy or methods."¹⁸⁸ The e-mail, shown in its entirety above, clearly attempts to justify the use of a wiretap, calling it "the pinnacle of domestic U.S. law enforcement techniques" and "the biggest tool in our law enforcement tool box."¹⁸⁹

An additional memo prepared by another ATF agent further demonstrated the type of divisions that existed within ATF regarding Fast and Furious. Special Agent Gary Styers, who was detailed to the Phoenix Field Division during Fast and Furious, wrote about the effect of Fast and Furious on agents within ATF. According to the document:

Special Agent Styers stated that **the case had systematically divided and isolated agents from the group**. The case agent had solicited the advice of numerous experienced agents, including Special Agent Styers, regarding how to conduct and end the wiretap operations and case overall. . . . Special Agent Styers felt that his advice and opinions, as well as other agents' advice and opinions were widely disregarded.¹⁹⁰

¹⁸³ Dodson Transcript at 92 (Apr. 26, 2011) (Exhibit 93).

¹⁸⁴ Voth Transcript at 201-202 (Exhibit 49); *see also* letter from Joshua Levy to Chairman Darrell Issa and Ranking Member Charles Grassley (Mar. 14, 2012), at 4-5 (attachments omitted) (Exhibit 43).

¹⁸⁵ Alt Transcript at 29 (Exhibit 92); Transcript, Interview of Lee Casa by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Apr. 28, 2011), at 39-41 (Exhibit 94); Dodson Transcript at 44-45 (Exhibit 93); telephone interview of Mark Sonnendecker (Mar. 1, 2012).

¹⁸⁶ Letter from Joshua Levy to Chairman Darrell Issa and Ranking Member Charles Grassley (Mar. 14, 2012), at 4 (attachments omitted) (Exhibit 43).

¹⁸⁷ Telephone interview of Mark Sonnendecker (Mar. 1, 2012).

¹⁸⁸ Letter from Joshua Levy to Chairman Darrell Issa and Ranking Member Charles Grassley (Mar. 14, 2012), at 5 (attachments omitted) (Exhibit 43).

¹⁸⁹ E-mail from David Voth to Phoenix Group VII (Mar. 12, 2010) [HOCR 001159] (emphasis added) (Exhibit 90).

¹⁹⁰ Memorandum from Gary Styers to Robert Champion, "Contact with Congressional Investigators" (Feb. 3, 2011), at 2 (emphasis added) (Exhibit 95).

When asked what in particular he felt was incorrect about the way Fast and Furious was conducted, Styers elaborated: “[I]t is unheard of to have an active wiretap investigation without full time dedicated surveillance units on the ground. . . . [N]o agents in the group were assigned to surveillance on the Fast and Furious case.”¹⁹¹ Styers also gave a specific example of the type of scenario which caused the dissent within the group:

Special Agent Styers was asked to describe the operations and relayed that one of the operations was a suspected transaction that was to occur at a gas station and detailed agents were asked to cover the transaction. While positioning to observe the suspects, Special Agent Styers and other detailed agents were told by Special Agent McAllister that agents were too close and would burn the operation. **Special Agent McAllister told all the agents to leave the immediate area.** While the agents were repositioning, the transaction between the suspects took place and **the vehicle that took possession of the firearms eventually left the area without agents following it.**¹⁹²

Group Supervisor Voth’s March 12, 2010, e-mail, however, signaled disregard for the concerns of agents like Styers, and instead attempted to intimidate ATF agents into acquiescing to the strategy approved by “people of rank and authority at HQ.”¹⁹³

On March 19, 2010, Group Supervisor Voth wrote to ASAC Gillett that in just the previous four days, “[O]ur targets have purchased 105 firearms from local FFLs. This includes 3 Barrett .50 caliber rifles. On one occasion surveillance followed Patino and Moore from [FFL] to [FFL] to Acosta’s location At Acosta’s location firearms were transferred into 3 separate waiting vehicles.”¹⁹⁴ By that date, approximately 150 weapons had been recovered in Mexico or near the Mexican border.¹⁹⁵

On March 28, 2010, Voth e-mailed the FBI to add some additional purchasers to the list ATF had already asked to be flagged in NICS:¹⁹⁶

¹⁹¹ *Id.* at 3.

¹⁹² *Id.* (emphasis added).

¹⁹³ E-mail from David Voth to Phoenix Group VII (Mar. 12, 2010) [HOCR 001159] (Exhibit 90).

¹⁹⁴ E-mail from David Voth to George Gillett (Mar. 19, 2010) [HOCR 001480] (Exhibit 96).

¹⁹⁵ Phoenix Group VII Bi-Weekly Update, 785115-10-[redacted], *Jacob Chambers et al* (Mar. 19, 2010) [HOCR 002795] (Exhibit 97).

¹⁹⁶ E-mail from David Voth to Eric Moore (Mar. 25, 2010) (Exhibit 80).

From: Voth, David J. [REDACTED]
Sent: Thursday, March 25, 2010 13:55
To: eric [REDACTED]@leo.gov
Subject: Updating the NICS watch list for our case

Eric,

We appreciate all the work you have done on this case and it has proven very helpful. After receiving your NICS watch list the other day we queried our end and found few minor discrepancies. The ones highlighted below in yellow are on your list but with slightly different DOB or SSN. This is the correct information here.

Celis, Alfredo; [REDACTED] (Correct SS# [REDACTED])
Chambers, Jacob; [REDACTED] (Correct SS# [REDACTED])
Collins, Gerald; [REDACTED] (Correct DOB [REDACTED])
Moore, Joshua; [REDACTED] (Correct SS# [REDACTED])

Can we add the individuals listed below to the NICS watch list for our investigation? They are continually recruiting new Straw Purchasers and other are obviously falling off. These individuals have purchased firearms recently with our crew (Patino, Moore, etc) and have been connected through surveillance and Pen Register data.

[REDACTED]

Voth's March 25, 2010, e-mail raised concerns for FBI legal counsel, who questioned the inclusion in NICS of individuals who had ended their association with the straw purchasing ring:¹⁹⁷

[INTENTIONALLY BLANK]

¹⁹⁷ E-mails between David Voth and William Finch (Mar. 25, 2010) (Exhibit 80).

From: Voth, David J.
Sent: Thursday, March 25, 2010 1:01 PM
To: Finch, William L. (FBI)
Cc: Gillett, George T. Jr.
Subject: RE: Updating the NICS watch list for our case

Mr. Finch,

Sorry to confuse you with "pronouns" I know how hard they can be to grasp.

Our case is being run out of the USAO for the District of Arizona and we have Grand Jury (i.e. "6e") material, we have a Court Authorized T-III Audio Intercept which was vetted through the local USAO, DOJ Office of Enforcement Operation (OEO), signed off by the Deputy Attorney General (DAG), and then lastly the Chief Federal Judge for the District of Arizona, not to mention the oversight of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). If our word as Federal Agents is not good enough or too confusing for you then we will forgo any further inquiries into this matter.

Respectfully,

David Voth
Group Supervisor
Phoenix Group VII
602 [REDACTED]

From: Finch, William L. [REDACTED]@ic.fbi.gov]
Sent: Thursday, March 25, 2010 12:36 PM
To: Voth, David J.
Subject: RE: Updating the NICS watch list for our case

Eric - the information that links the three newly identified ATF targets must be in writing from the ATF (email is fine). The use of [REDACTED]. "They" refers to which group? The original conspirators?

Also, if there are "others" (targets?) who are "falling off," then what are they falling off of? If they are no longer actively purchasing for this conspiracy, then any records NICS generates regarding them would not indicate ... a violation or potential violation of law or regulation. Correct? If that is correct, then can we stop monitoring for those individuals who have fallen off? Whatever they fell off of?

William L. Finch
Assistant General Counsel
Office of the General Counsel
Federal Bureau of Investigation

Notwithstanding Voth's threat to "forgo any further inquiries into this matter," he and Group VII continued to receive NICS notifications.¹⁹⁸

On March 28, 2010, Voth sent senior ATF attorney Brian Kenrick and Phoenix Field Division counsel Thomas Karmgard an affidavit in support of a second wiretap in Fast and

¹⁹⁸ See, i.e., e-mail from Marc Chamberlain to David Voth (May 24, 2010) [HOCR 002691] (Exhibit 81).

Furious.¹⁹⁹ Voth stated that the affidavit had been provided to AUSA Emory Hurley and that the Phoenix Field Division was hopeful Hurley would “submit it up the chain to OEO this upcoming week.”²⁰⁰ Kenrick sent a response on March 31, 2010, suggesting he shorten the affidavit in order to expedite the process for senior Department officials to review. He wrote: “[E]very time I read this case I am amazed at the amount of firearms we are talking about OEO is currently swamped with T3 applications and **as you know they need to read each affidavit a couple times (and so does the DAG) before approval.**”²⁰¹

Although Kenrick’s e-mail identified the same factors that caused DEA SAC Kempshall to warn ATF SAC Newell about the time required to obtain and renew federal wiretaps, Voth was impatient about the pace of the wiretap approval process. On April 2, 2010, two days after Kenrick’s e-mail, Voth sent an e-mail to AUSA Hurley and ASAC Gillett to report that the statistics of murders in Mexico in March 2010 made it the “[m]ost violent month since 2005”—and the perhaps related fact that subjects of Fast and Furious had “purchased 359 firearms during the month of March alone, to include numerous Barrett .50 caliber rifles.”²⁰² Voth still agreed that ATF should refrain from arresting any of the straw purchasers:²⁰³

[INTENTIONALLY BLANK]

¹⁹⁹ E-mail from David Voth to Brian Kenrick and Thomas Karmgard (Mar. 28, 2010) (Exhibit 98).

²⁰⁰ *Id.*

²⁰¹ E-mail from Brian Kenrick to David Voth (Mar. 31, 2010) (emphasis added) (Exhibit 99).

²⁰² E-mail from David Voth to Emory Hurley and George Gillett (Apr. 2, 2010) [HOG 001423] (Exhibit 100).

²⁰³ *Id.*

From: Voth, David J.
Sent: Friday, April 02, 2010 1:31 PM
To: Hurley, Emory (USAAZ); Gillett, George T. Jr.
Cc: Phoe-Group VII
Subject: No pressure but perhaps an increased sense of urgency...

MEXICO STATS

958 killed in March 2010 (Most violent month since 2005)

937 killed in January 2010

842 killed in December 2009

SINALOA - MARCH STATISTICS

187 murders in March, including 11 policemen

“[W]ithout being dramatic, we have a sense of urgency with regards to this investigation. . . . I believe we are righteous in our plan to dismantle this entire organization and to rush in to arrest any one person . . . would be ill advised to the overall good of the mission.”

I hope this e-mail is well received in that it is not intended to imply anything other than that the violence in Mexico is severe and without 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. I 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.

Thanks for everyone’s continued support in this endeavor,

David Voth
Group Supervisor
Phoenix Group VII

Voth and others at ATF fully understood the extent of the violence in Mexico. The agency’s strategy to allow the transfer of guns to continue to take place undoubtedly made it worse. Yet, rather than “rush in to arrest any one person,” and in spite of the “urgency” Voth stressed, the Phoenix Field Division still wanted to wait and “tak[e] into account the entire scope of the conspiracy.”²⁰⁴

That very night, on April 2, 2010, Phoenix police officers noticed a vehicle traveling the wrong direction with its headlights off.²⁰⁵ After they turned around and began following the vehicle, the officers observed a silver handgun being thrown out the passenger-side window of

²⁰⁴ *Id.*

²⁰⁵ Phoenix Police Department Report 2010-00481598 (Apr. 2, 2010) (Exhibit 101).

the moving vehicle. A subsequent traffic stop revealed that the vehicle had three occupants, one of whom was Manuel Celis-Acosta.²⁰⁶

Upon searching the vehicle, officers found casings from the discarded handgun all over the back seat of the vehicle, an additional two firearms—including a semiautomatic Glock handgun—and a small bag of cocaine. The silver handgun that had been thrown out the window had been purchased one week earlier—by Uriel Patino, a prolific purchaser in *Fast and Furious*.²⁰⁷ Celis-Acosta was arrested that night for possession of narcotics, but inexplicably, he was never charged.²⁰⁸ The incident was one of several which contradicted ATF's claim that it could not have arrested the straw buyers sooner than it did because it lacked evidence to do so. As Voth's e-mail above suggests, ATF was interested in pursuing larger charges, not pulling individuals off the street—even though stopping the straw buying ring in April 2010 by indicting Celis-Acosta would have prevented hundreds of guns from going to Mexico.

One week later, on April 9, 2010, AUSA Emory Hurley wrote as part of an update on *Fast and Furious* sent around his office: “This case sucks up a tremendous amount of AUSA time consulting with agents.”²⁰⁹ Just a week after Hurley's e-mail, Voth's supervisor ASAC George Gillett, who had been closely involved with the case from the beginning, began a leave of absence that would last until the beginning of June.²¹⁰ Gillett later testified that he transitioned oversight of the case to ASAC Jim Needles at the time the leave of absence began.²¹¹ However, Needles testified that he didn't take over responsibility for the case until the first week of June, when Gillett returned.²¹² Although SAC Newell had already been heavily involved in *Fast and Furious*, it appears that he did not ensure ASAC Needles was managing the case during that six-week period, allowing direct oversight to be severed at a critical time.

On March 26, 2010, ATF sent a memorandum on long gun demand letters to Justice Department headquarters. The purpose of the memorandum was to “[o]btain concurrence for ATF to issue demand letters to FFLs requiring multiple sales information for certain rifles as a pilot project.”²¹³ ATF cited *Fast and Furious* as an example of the potential benefit of the demand letter program. The volume of guns in the case was used to bolster the argument for the letter:²¹⁴

²⁰⁶ *Id.*

²⁰⁷ ATF Suspect Gun Summary, Uriel Patino (entered Mar. 30, 2010) (Exhibit 102).

²⁰⁸ *Id.*

²⁰⁹ E-mail from Emory Hurley to Joe Koehler (April 9, 2010) [HOCR 003003] (Exhibit 103).

²¹⁰ Gillett Transcript at 41 (Exhibit 4).

²¹¹ Gillett Transcript at 35 (Exhibit 4).

²¹² Transcript, Interview of James Needles by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Nov. 4, 2011), at 7 (Exhibit 104).

²¹³ Memorandum for the Attorney General from Kenneth Melson, “Issuing demand letters to Federal firearms licensees (FFLs) in selected states requiring them to submit multiple sales information concerning certain types of rifles” (Mar. 26, 2010), at 3 [HOCR 004972-004976] (Exhibit 105).

²¹⁴ *Id.*

The following cases involving the multiple sale of rifles illustrate the potential benefit of ATF collecting information regarding firearms trafficking using the demand letter program. ATF believes these cases represent a very small portion of the overall trafficking activity of these firearms that is occurring, and that multiple sales reports of the specified rifles will enable ATF to uncover more illegal activity and develop better intelligence about trafficking patterns:

- **Phoenix Field Division:** On or about November 1, 2009, individuals in the Phoenix, Arizona area began to illegally purchase firearms, firearm magazines and/or ammunition to be transported to Mexico. Case agents identified 25 individuals that purchased in excess of 1130 firearms in the Phoenix area with over-the-counter cash transactions. Twenty-two of these individuals purchased firearms that were recovered in Mexico in the possession of drug traffickers affiliated with the Sinaloa Cartel. Over 50 firearms purchased by two of these individuals were recovered in stash locations or during a crossing along the border in Arizona and Texas and were destined for delivery to DTO's in Mexico. There was an extremely short time span, ranging from one (1) day to less than a month, between all the purchases of all these firearms and the recoveries. The majority of the firearms were purchased at a FFL involving transactions of five to ten rifles at a time.
- **McAllen Field Office:** The target of this investigation purchased several hundred pistols, rifles and lower receivers. Scores of these firearms were recovered in Mexico. The majority of the target's purchases were rifles and lower receivers acquired through multiple sale transactions. Of these, the target purchased mostly lower receivers (which are designated firearms by law) and upper receivers. He combined the receivers and parts kits to make complete rifles. The target was in turn selling the firearms at gun shows and other secondary market venues.
- **Las Cruces Field Office:** The target of this investigation purchased 19 AK47 rifles through multiple sale transactions. The investigation shows that the firearms are being transported to El Paso Texas for entry into Mexico.
- **Phoenix Field Division:** In this case, three rifles were recovered in Mexico and traced to the target of this investigation. At this point, it has been determined that the target has purchased five rifles. There were two multiple sale transactions of two rifles from two FFLs.
- **McAllen Field Office:** In this case, the target purchased 69 firearms. He acquired 50 rifles through multiple sale purchases. Sixteen of these rifles were recovered and traced.

“Case agents identified 25 individuals that purchased in excess of 1130 firearms in the Phoenix area with over-the counter cash

The memo also illustrated just how unusual a volume 1,130 firearms was, since the next-highest cases cited involved “several hundred,” “19,” “five,” and “69,” respectively.²¹⁵ The memo failed to acknowledge that the demand letter would not have aided ATF in *Fast and Furious*, as ATF knew contemporaneously of long gun sales and yet encouraged FFLs to continue those sales.

²¹⁵ *Id.*

9. Additional FBI Connection to Fast and Furious

FINDING: Mistakes compounded: In the spring of 2010, FBI and DEA positively identified the two individuals for whom the straw purchasing ring had acquired weapons. However, FBI and ATF missed another opportunity to share information and coordinate their cases. Later, the FBI targets—drug kingpins with a long history of violence—became FBI informants. Questions about inadequate coordination remain unanswered, and the Committees will need to further pursue the role of classified matters related to Fast and Furious.

On March 29, 2010, ATF identified an additional phone number for deconfliction. The deconfliction revealed that the phone number was connected with the DEA/FBI Operation Head Shot.²¹⁶ Hope MacAllister contacted DEA in a March 30, 2010, e-mail to inquire about the connection. DEA responded the next day:²¹⁷

[INTENTIONALLY BLANK]

²¹⁶ October 5 Briefing (supra note 76).

²¹⁷ E-mail from [DEA] to Hope MacAllister (Mar. 31, 2010) (Exhibit 106).

From: [REDACTED]
Sent: Wednesday, March 31, 2010 7:37 AM
To: [REDACTED]
Subject: RE: [REDACTED] De-confliction Notice 1113035 03/30/2010 [REDACTED]

[REDACTED]
I am working a joint investigation with FBI here in Las Cruces. We are looking at two brother, [REDACTED] [REDACTED]. We have attempted to go up on their phones since we started this investigation in December but they keep getting new phones frequently. Both [REDACTED] were in contact with [REDACTED] out in Phoenix and we think they may have received weapons from Acosta as well. We are currently up on a pen on [REDACTED] and [REDACTED] and we are in the final stages on a roving T-III on [REDACTED]

My case number is [REDACTED] and the case is in OCDETF under [REDACTED]

Let me know if you need anything else on our end.
[REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, March 30, 2010 10:22 AM
To: [REDACTED]
Cc: Sonnendecker, Mark; Zicha, Marjorie L
Subject: RE: [REDACTED] De-confliction Notice 1113035 03/30/2010 [REDACTED]

I am working a joint Strike Force case with ATF on a weapons trafficking crew operating out of Phoenix and El Paso. We are currently up on a T-III on [REDACTED] Manuel CELIS-Acosta's cell phone. We are about to spin up on [REDACTED] utilized by [REDACTED] and [REDACTED] is a straw purchaser who has bought over 300 weapons for CELIS-Acosta. Any info you have on the [REDACTED] crossovers would be helpful.
[REDACTED]

“[W]e think they may have received weapons from Acosta as well.”

On April, 9, 2010, ATF submitted more phone numbers for deconfliction, and, on April 19, 2010, an intelligence analyst from ATF's OSII contacted the FBI's New Mexico office to inquire about the targets of Operation Head Shot.²¹⁸ When the ATF analyst asked the FBI agent if he knew about Fast and Furious, the analyst got the impression that the FBI case agent was aware of it. When the ATF analyst asked further about the overlap between Fast and Furious and Operation Head Shot, the FBI agent simply told the ATF analyst that the FBI “has a gun case and a DTO case.”²¹⁹

²¹⁸ October 5 Briefing (supra note 76).

²¹⁹ Telephone interview of [ATF intelligence analyst] (Oct. 25, 2011).

Documents show that by March 2010, the FBI knew about a stash house run by one of Operation Head Shot's targets, and that the target was purchasing weapons from Celis-Acosta.²²⁰

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 03/26/2010

SA [REDACTED] and Agent [REDACTED] drove CS #3 to the area of [REDACTED], New Mexico. From there, CS #3 directed SA [REDACTED] and Agent [REDACTED] to a [REDACTED] residence located at [REDACTED], New Mexico. CS #3 pointed to the residence and identified it as the stash house CS #3 had previously described to SA [REDACTED] and Agent [REDACTED]. CS #3 had visited the stash house in mid-January 2010 with [REDACTED] and [REDACTED]. CS #3 provided SA [REDACTED] with a sketch of the interior of the residence, to include the closet area where CS #3 observed 20-30 military style assault rifles behind a false wall.

The ATF analyst did not ask further questions. The ATF analyst, like most of ATF, was completely unaware that the FBI's case was focused on the very traffickers buying weapons from Celis-Acosta and his straw purchasing ring—the same cartel associates ATF sought to identify through Fast and Furious.²²¹ This lack of effective information-sharing contributed to the failure to shut down Fast and Furious. However, ATF's failure to act on the information it was given contributed to the failure to shut down Fast and Furious.

After the investigative phase of Fast and Furious had largely wrapped up, Operation Head Shot concluded when the FBI signed up the above weapons trafficker, "Target A," as a paid confidential informant. Target A pled guilty to a one-count violation of 18 U.S.C. §§ 922(g)(5) and 924(a)(2), being an Alien in Possession of a Firearm. Target A was not prosecuted for his role in trafficking weapons from the Fast and Furious straw purchasing ring to Mexico.²²²

²²⁰ FBI Form FD-302, at 1 (Mar. 26, 2010) (Exhibit 107).

²²¹ *Id.*

²²² Organized Crime Drug Enforcement Task Forces Final Report, Operation Head Shot (Feb. 3, 2011) (Exhibit 108).

The Committees have received further information on Operation Head Shot that cannot be made public due to its sensitive nature. Many questions still remain. Of the over \$1,000,000 straw purchasers spent on weapons in Fast and Furious, it is unclear how much Target A provided. The transactions detailed above may have been one-time events or may be examples of extensive gun trafficking activities throughout Fast and Furious. The FBI refused to provide enough information to know one way or the other.²²³ If Target A was the source of a significant amount of the straw purchasing funds used in Fast and Furious, the FBI's decision to sign him up as an informant and failing to prosecute him raises many questions. It is unclear what exactly the FBI knew about Target A's involvement in gun trafficking with the Fast and Furious suspects at the time it decided to forgo prosecution in favor of cooperation. It is also unclear what valuable information, if anything, the FBI obtained as a result of the cooperation agreement. Accordingly, further examination of agencies' procedures for signing up confidential informants is necessary.

Additionally, Operation Fast and Furious may have involved classified information. On January 11, 2010, Kevin O'Keefe, the Chief of ATF's Criminal Intel Division, wrote to a prosecutor at the Justice Department:

The Arizona case continued to progress—info coming in from the investigation, a DEA wire that intersects a common player, and **from the intel community (at the classified level).**²²⁴

[INTENTIONALLY BLANK]

²²³ October 5 Briefing (supra note 76).

²²⁴ E-mail from Kevin O'Keefe to Joseph Cooley (Jan. 11, 2010) [HOCR 003408-003409] (emphasis added) (Exhibit 109).

Similarly, on December 7, 2009, Group VII Supervisor David Voth's very first day in Phoenix, he e-mailed his supervisor, ASAC George Gillett:²²⁵

```
----- Original Message -----  
From: Voth, David J.  
To: Gillett, George T. Jr.  
Sent: Mon Dec 07 12:33:57 2009  
Subject: RE: How's your first day?
```

Should be clear for football. I think Hope said [REDACTED] FFL #1 was getting a shipment of 7.62s on Wednesday so they anticipate surveillance... On that note Hope mentioned some info from SOD regarding a December 17th exportation of the stash of guns from here (Glendale) across the border. Is there a point of contact @ SOD or someone I can talk to regarding this information?

Thanks

SOD stands for Special Operations Division, but it is unclear which agency's SOD was being referenced. Gillett responded:²²⁶

```
-----Original Message-----  
From: Gillett, George T. Jr.  
Sent: Monday, December 07, 2009 11:37 AM  
To: Voth, David J.  
Subject: Re: How's your first day?
```

Ummmm. I'll fill you in tonight. It's high side info.

George T. Gillett
Assistant Special Agent in Charge
ATF - Phoenix Field Division
[REDACTED]

“High side info” is a term usually used to refer to classified information from the FBI. Because questions still remain, the Committees will need to pursue the role of classified information in Fast and Furious.

²²⁵ E-mail from David Voth to George Gillett (Dec. 7, 2009) [HOCR 002273] (Exhibit 110).

²²⁶ E-mail from George Gillett to David Voth (Dec. 7, 2009) [HOCR 002273] (Exhibit 110).

10. *Operation Wide Receiver*

FINDING: **An outrage concealed: In April 2010, senior Justice Department officials told ATF about gunwalking in Operation Wide Receiver, a case that ended in 2007. However, the Justice Department’s focus was on press implications instead of accountability. As a result, ATF’s response was that it was “nothing terrible.” The Justice Department prosecuted the case and ATF continued to use similar reckless tactics in Fast and Furious.**

In April 2010, the Department of Justice informed ATF of a prior case in which ATF’s Phoenix Field Division had walked guns: Operation Wide Receiver. In an April 19, 2010, meeting, James Trusty, Acting Chief of the Gang Unit at the Department of Justice, brought the issue of gunwalking to the attention of Assistant Attorney General Lanny Breuer, the head of the Department’s Criminal Division.²²⁷ Trusty subsequently noted Breuer’s instruction from the meeting to a colleague: “Wants us to meet with Ken [Melson] and Billy [Hoover] at some point so they know the bad stuff that could come out.”²²⁸

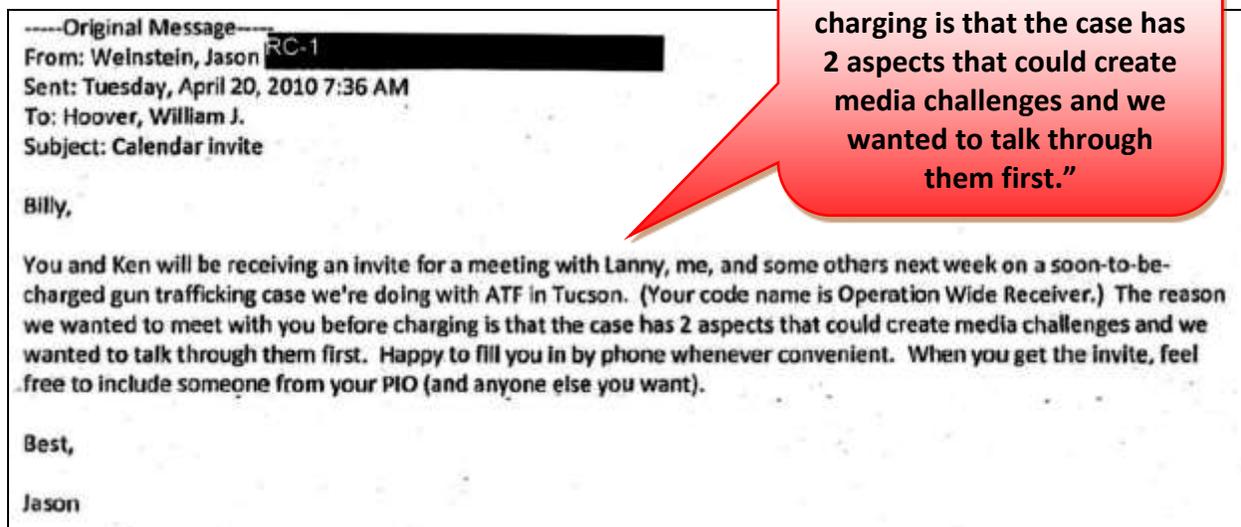
Jason Weinstein, Deputy Assistant Attorney General (“DAAG”) in the Criminal Division, contacted Deputy Director Hoover to set up the meeting. Weinstein wrote to Hoover about the “media challenges” posed by gunwalking.²²⁹

[INTENTIONALLY BLANK]

²²⁷ Meeting between Assistant Attorney General Lanny Breuer, Principal Deputy Assistant Attorney General and Chief of Staff Mythili Raman, Steve Fagell, Deputy Assistant Attorney General Jason Weinstein, Deputy Chief of Staff and Counselor to the Assistant Attorney General Amy Pope, Acting Gang Unit Chief Jim Trusty, Capitol Case Unit Chief and former Gang Unit Chief Kevin Carwile (Apr. 19, 2010) [HOCR 003450] (Exhibit 111).

²²⁸ E-mail from James Trusty to Kevin Carwile (Apr. 19, 2010) [HOCR 003451] (Exhibit 111).

²²⁹ E-mail from Jason Weinstein to William Hoover (Apr. 20, 2010) [HOCR 003452] (Exhibit 111).



Later that day, ATF representatives on the Justice Department’s Southwest Border Working Group e-mailed an analyst within ATF’s Office of Field Operations: “Per discussion this date, requesting supplemental documentation, if any, issued by HQ and/or Field Divisions reflecting the requirement of supervisory/SAC approval for ‘Weapons Transfers,’ which is not addressed in ATF O[rder] 3310.48.”²³⁰ Stuart Lowrey, Chief of ATF’s Firearms Operations Division, was copied on the e-mail.²³¹ ATF headquarters seemed to be doing its homework to find out the regulations applicable to instances in which guns might be walked, and, in particular, whether SAC approval was required for weapons transfers as outlined by ATF Order 3310.4B, Section 148.

On April 26, 2010, DAAG Weinstein e-mailed Hoover, “[D]o you have time this week to talk about that tricky gun traff. case in AZ?”²³² Hoover, along with McMahon, scheduled a meeting with Weinstein for later that week.²³³ The day before the meeting, ATF’s Office of Field Operations responded to the Southwest Border Working Group’s request. The e-mail from Field Operations staff stated:

I’ve checked several resources . . . and not been able to find any supplemental policy regarding weapons transfer. It seems the information in ATF O 3310.4B is the only policy that exist[s].²³⁴

In other words, Order 3310.4B apparently did *not* require supervisory approval in order to allow firearms to be transferred to further an investigation. The Southwest Border Working Group

²³⁰ E-mail from [ATF Southwest Border Working Group staff] to [Program Analyst, Office of Field Operations, ATF] (Apr. 20, 2010) [HOCR 002077-002079] (Exhibit 112).

²³¹ *Id.*

²³² E-mail from Jason Weinstein to William Hoover (Apr. 26, 2010) [HOCR 003460] (Exhibit 113).

²³³ E-mail from William Hoover to Anjanette Walker (Apr. 27, 2010) [HOCR 003469] (Exhibit 114).

²³⁴ E-mail from [Program Analyst, Office of Field Operations, ATF] to [ATF Southwest Border Working Group staff] (Apr. 27, 2010) [HOCR 002077-002079] (Exhibit 112).

staff forwarded the response from ATF Field Operations to ATF Southwest Border Initiative Coordinator Ray Rowley.²³⁵

In preparation for the April 28, 2010, meeting with ATF, Weinstein e-mailed Trusty: “If ok with you, I figured you could do for Billy what you did for Lanny in terms of describing the case and the issues, and then we can spend the rest of the time **talking messaging**.”²³⁶ Weinstein appeared interested in minimizing the embarrassment to ATF over the gunwalking in Wide Receiver instead of holding anyone accountable for gunwalking, or ensuring it did not happen again. Weinstein also invited a press aide from the Office of Public Affairs in the Deputy Attorney General’s office to attend the meeting. Her notes indicate Operation Wide Receiver was not the only case discussed at the meeting—Operation Fast and Furious was as well.²³⁷

[INTENTIONALLY BLANK]

²³⁵ E-mail from [ATF Southwest Border Working Group staff] to Raymond Rowley (Apr. 27, 2010) [HOCR 002077] (Exhibit 112).

²³⁶ E-mail from Jason Weinstein to James Trusty (Apr. 28, 2010) [HOCR 003477] (emphasis added) (Exhibit 115).

²³⁷ Notes of Alisa Finelli, Office of Public Affairs, Justice Department (Apr. 28, 2010) [HOCR 006989] (Exhibit 116). The Justice Department produced these notes on June 19, 2012 – just as Attorney General Eric Holder was negotiating a settlement proposal with Congress. The Committee voted to recommend the House hold him in contempt 2 days later. The e-mail was the only document that the Justice Department had produced in a month and one of only thirty pages produced in two months.

* May 12 - 2 or 3 defendants
indictment 2006-01; 183 guns sold in
first conspiracy, 9R15's in bulk
vast majority of guns not recovered
2nd conspiracy - same people but
bigger mix of weapons 200 some
purchased - 50 recovered - 5 in Mexico -
Feb 07, 10 defendants
* gun trafficking, illegal aliens, straw purchase,
some overlap w/ investigation
* Fast and Furious, 

After the meeting, Weinstein e-mailed Lanny Breuer, again focusing on the press strategy for announcing the case rather than correcting the problem with gunwalking.²³⁸

[INTENTIONALLY BLANK]

²³⁸ E-mail from Jason Weinstein to Lanny Breuer (Apr. 30, 2010) [HOCR 003485] (Exhibit 117).

From: Weinstein, Jason
Sent: Friday, April 30, 2010 7:03 PM
To: Breuer, Lanny A.
Subject: Re: Operation Wide Receiver

“ATF let a bunch of guns walk”

As you'll recall from Jim's briefing, ATF let a bunch of guns walk in effort to get upstream conspirators but only got straws, and didn't recover many guns. Some were recovered in MX after being used in crimes. Billy, Jim, Laura, Alisa and I all think the best way to announce the case without highlighting the negative part of the story and risking embarrassing ATF is as part of Deliverance.

“[T]he best way to announce the case without highlighting the negative part of the story and risking embarrassing ATF is as part of Deliverance.”

Jason M. Weinstein
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Office: RC-1
Cell: RC-1

----- Original Message -----

From: Breuer, Lanny A.
To: Weinstein, Jason
Sent: Fri Apr 30 18:39:45 2010
Subject: Re: Operation Wide Receiver

Anything I should know about thos?

----- Original Message -----

From: Weinstein, Jason
To: Breuer, Lanny A.; Raman, Mythili; Fagell, Steven
Sent: Wed Apr 28 18:59:27 2010
Subject: Operation Wide Receiver

Jim T and I met with Billy Hoover and with Laura and Alisa to talk about this gun trafficking case with the issues about the guns being allowed to walk for investigative purposes. Can fill you in tomorrow in more detail but we all think the best move is to indict both Wide Receiver I and Wide Receiver II under seal and then unseal as part of Project Deliverance, where focus will be on aggregate seizures and not on particulars of any one indictment.

Project Deliverance was the name given to an umbrella project to announce various cases from around the country to the public all at once. By proposing to include Wide Receiver as part of Project Deliverance, the Justice Department apparently hoped to bury the case among others to minimize the media attention and fallout.

Given the focus of Breuer and Weinstein on damage control rather than accountability, it is not surprising that ATF left the April 28, 2010, meeting with the Criminal Division with the

impression that the tactics used in Wide Receiver were no big deal. McMahon characterized the meeting for Chait as “[s]ome surprises but nothing terrible.”²³⁹

These contemporaneous e-mails stand in stark contrast to the outrage Weinstein professed to congressional investigators that he felt over Wide Receiver. Weinstein testified:

I was stunned by those tactics which were unlike anything I had encountered in my career as a prosecutor; and, although the tactics had been used years earlier, I was sufficiently troubled by them that I raised them with Mr. Breuer and at his direction with top officials at ATF. I made clear to ATF my concerns about the tactics, and I was satisfied that ATF leadership shared those concerns and viewed those tactics as unacceptable.²⁴⁰

Breuer took a similar stance when documents subpoenaed from the Justice Department revealed his awareness of gunwalking in a case prior to Fast and Furious. Breuer issued a public statement claiming he had taken strong action:

When I learned of the unacceptable tactics used in Operation Wide Receiver, I instructed one of my Deputy Assistant Attorneys General to schedule a meeting with ATF’s Acting Director and Deputy Director to bring these issues to their attention. The next day, my Deputy contacted ATF leadership to arrange a meeting, and approximately one week later, my Deputy met with the ATF Deputy Director and others to discuss this matter.²⁴¹

The claims of Breuer and Weinstein that these tactics were “unacceptable” are inconsistent with McMahon’s contemporaneous report of the meeting as “nothing terrible.” McMahon’s attitude about the Wide Receiver meeting spread throughout ATF. ATF did not get the supposedly clear message that guns were not to be walked again. If it had, Fast and Furious might have been shut down sooner.

²³⁹ E-mail from William McMahon to Mark Chait (Apr. 28, 2010) [HOCR 005455] (Exhibit 118).

²⁴⁰ Transcript, Interview of Jason Weinstein by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Jan. 10, 2012), at 10 [hereinafter Weinstein Transcript] (Exhibit 119).

²⁴¹ Public Statement, Assistant Attorney General Lanny Breuer (Oct. 31, 2011).

11. Fast and Furious Exit Strategy and Impact

FINDING: **Arrests delayed: The Fast and Furious exit strategy acknowledged that enough evidence existed to arrest the key straw buyers, but argued that doing so would not cripple the organization. The straw purchasers continued to buy hundreds of additional firearms.**

After receiving a detailed briefing about Fast and Furious in mid-March 2010, ATF Deputy Director Hoover tasked Deputy Assistant Director McMahon with crafting an exit strategy for Fast and Furious.²⁴² This request for an exit strategy was unique for Hoover, something he had never asked for before,²⁴³ and represented an effort to obtain a roadmap for Fast and Furious to be shut down.²⁴⁴ On April 13, 2010, McMahon visited the Phoenix Field Division and met with David Voth a mere 45 minutes after his plane landed.²⁴⁵ Yet by the end of April, McMahon had still not communicated the request for an exit strategy to the Phoenix Field Division.

On April 27, 2010, the day before McMahon and Hoover met with the Department regarding Wide Receiver, McMahon finally e-mailed Bill Newell to request the exit strategy in Fast and Furious:²⁴⁶

From: McMahon, William G.
To: Newell, William D.
Sent: Tue Apr 27 07:59:35 2010
Subject: RE: SAC write up 04 26 2010

Bill,

We need to begin working on an "exit strategy" for this case. Let me know what your plans are for taking this case down to include the timing.

Also, can I get a write up on Wide Receiver? Billy is meeting with Kevin Carwile tomorrow and this case is on the agenda.

Newell wrote back to McMahon and complained once again to headquarters about being accountable for the conduct of his cases:²⁴⁷

²⁴² Transcribed Interview of William McMahon, at 85 (June 28, 2011) [hereinafter McMahon Transcript] (Exhibit 120).

²⁴³ Transcribed Interview of William Hoover, at 72 (July 21, 2011) [hereinafter Hoover Transcript] (Exhibit 121).

²⁴⁴ *Id.* at 60-61; Transcript, Interview of Mark Chait by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (July 20, 2011), at 33-35 [hereinafter Chait Transcript] (Exhibit 122).

²⁴⁵ *Id.*

²⁴⁶ E-mail from William McMahon to William Newell (Apr. 27, 2010) [HOCR 002416] (Exhibit 123).

²⁴⁷ E-mail from William Newell to William McMahon (Apr. 27, 2010) [HOCR 002416] (Exhibit 123).

“As for Fast and Furious I have already discussed an exit strategy and will have that today I don’t like HQ driving our cases but understand the ‘sensitivities’ of this case better than anyone.”

From: Newell, William D.
Sent: Tuesday, April 27, 2010 8:19 AM
To: McMahon, William G.
Subject: Re: SAC write up 04 26 2010

The indictments for Wide Receiver will come in two phases in mid-May but I'll have more detailed info early today. As for Fast and Furious I have already discussed an exit strategy and will have that today as well. The issue has been getting a

RC-3

RC-3

I don't like HQ driving our cases but understand the "sensitivities" of this case better than anyone. We don't yet have the direct link to a DTO that we want/need for our prosecution, RC-3 Once we establish that link we can hold this case up as an example of the link between narcotics and firearms trafficking which would be great on a national media scale but if the Director wants this case shut down then so be it.

Bill Newell

Special Agent in Charge

ATF Phoenix Field Division (AZ and NM)

RC-1

Newell sent this message just one day before the Criminal Division met with ATF about gunwalking in Operation Wide Receiver, a case he had also supervised. Given the context and timing of the e-mail, Newell’s reference to “sensitivities” may suggest that he was aware that Fast and Furious raised the same concerns about gunwalking that occurred in Wide Receiver.

Later that day, Acting ASAC David Palmer asked David Voth to draft an exit strategy within 24 hours.²⁴⁸ Voth sent a draft of the exit strategy to Palmer later that evening,²⁴⁹ and Palmer forwarded it to Newell two hours later.²⁵⁰ Within ten minutes, Newell sent the exit strategy to both McMahon²⁵¹ and Dennis Burke.²⁵² Despite the Phoenix Field Division’s quick turnaround, however, McMahon did not send the exit strategy to his boss Mark Chait until May 3, 2010.²⁵³

The exit strategy acknowledged that the Phoenix Field Division was seeking to do more than just get enough evidence to take Patino and others off the street: “[A] straw purchase prosecution requires different evidence and burden of proof than an international firearms trafficking conspiracy.”²⁵⁴ The document again argued against arresting straw purchasers:²⁵⁵

²⁴⁸ Letter from Joshua Levy to Elijah Cummings (Mar. 14, 2012), at 16 (Exhibit 124).

²⁴⁹ E-mail from David Voth to Douglas Palmer (Apr. 27, 2010) (Exhibit 125).

²⁵⁰ E-mail from Douglas Palmer to William Newell (Apr. 27, 2010) [HOCR 1178] (Exhibit 126).

²⁵¹ E-mail from William Newell to William McMahon (Apr. 27, 2010) [HOCR 001178] (Exhibit 126).

²⁵² E-mail from William Newell to Dennis Burke (Apr. 27, 2010) [HOCR 002588] (Exhibit 127).

²⁵³ E-mail from William McMahon to Mark Chait (May 3, 2010) [HOCR 001178] (Exhibit 126).

²⁵⁴ “Operation Fast and Furious Exit Strategy” (Apr. 27, 2010), at 1 [HOCR 001179-001181] (Exhibit 126).

²⁵⁵ *Id.*

- International considerations – The Republic of Mexico has a right to be concerned with the number of firearms illegally entering their country from the United States. It is hard to express that arresting any one straw purchaser in and of itself will not solve the full spectrum of the problem. Meanwhile the straw purchasers in this case continue to purchase firearms almost daily.

While the exit strategy attempts to offer a justification for refusing to arrest Uriel Patino, the document also acknowledges that there was, in fact, sufficient evidence to arrest Patino at that time:²⁵⁶

trafficking organizational ladder. If we arrest Uriel Patino for the firearms he has straw purchased thus far we will only minimally impact the organization before Patino is replaced by another member of the organization. Thus without actual oral communication between Manuel

Voth later testified that arresting Patino in April 2010 “was a discussion we had with the U.S. Attorney **and amongst ourselves, and that was the general consensus**, that taking him down wouldn’t have brought the organization to an end or to a close.”²⁵⁷ By the date of the strategy, Patino had purchased over 475 firearms—at least 440 of them after he had been entered as a target in Fast and Furious—and would go on to purchase at least another 169 more.²⁵⁸ In fact, 70% of the 1,880 Fast and Furious guns that would eventually be added to ATF’s Suspect Gun Database were bought by just five straw purchasers.²⁵⁹ Had ATF simply arrested *those five individuals*, it could have significantly reduced the overall number of guns illegally purchased in the case.

Instead, ATF wanted to tie Patino in with Celis-Acosta and a drug trafficking organization (DTO) in Mexico. The exit strategy concluded with its goals:²⁶⁰

[INTENTIONALLY BLANK]

²⁵⁶ *Id.*

²⁵⁷ Voth Transcript at 233 (Exhibit 49).

²⁵⁸ ATF Suspect Gun Database, Uriel Patino.

²⁵⁹ Those five purchasers were Uriel Patino, Sean Steward, Josh Moore, Alfredo Celis, and Jacob Montelongo. ATF Suspect Gun Database.

²⁶⁰ “Operation Fast and Furious Exit Strategy” (Apr. 27, 2010), at 3 [HOCR 001179-001181] (Exhibit 126).

- 30 – day target goal: Obtain approval and begin interception of Uriel Patino’s Sprint Nextel telephone that he utilizes to communicate with Manuel Celis-Acosta and other individuals at a higher level within the organization.
- 60 – day target goal: Obtain approval and begin interception of Manuel Celis-Acosta’s Sprint Nextel telephone that he utilizes to communicate with other individuals at a higher level within the organization ideally members of a DTO within the Republic of Mexico.
- 90 – day target goal: If applicable obtain approval and begin interception of a DTO member within the Republic of Mexico as it relates to this firearms trafficking organization. Secure Grand Jury Indictments against targets of this investigation and “take-down” the organization with multiple arrests and search warrants.

According to the document, as of April 2010, ATF planned to have Fast and Furious finished with arrests and search warrants, by the beginning of August 2010. Instead, while waiting on the U.S. Attorney’s Office to return indictments, ATF failed to arrest anyone until almost five months later—after the death of U.S. Border Patrol Agent Brian Terry. They would not get anyone higher than the ringleader initially targeted over a year earlier, Manuel Celis-Acosta.

12. Continuation of Fast and Furious

FINDING: Gun dealers misled and the ring-leader released: The Fast and Furious exit strategy was ignored as the case dragged on into the summer of 2010. ATF continued to mislead FFLs about the interdiction of weapons, and ATF investigative agents acted recklessly by crossing the line into ATF’s regulatory function. Manuel Celis-Acosta was stopped and interviewed at the border, but was still allowed to cross into Mexico.

Although ATF management became aware of the use of gunwalking in Operation Wide Receiver, that same investigative technique continued unabated for months on end in Fast and Furious. The Department of Justice’s Criminal Division kept approving wiretap applications for Fast and Furious, and ATF continued using the same gunwalking tactics, watching straw purchasers illegally purchase firearms from FFLs cooperating with ATF which were then trafficked into Mexico. The lessons supposedly learned from Wide Receiver deterred neither the Justice Department nor ATF from continuing down the same path with the same investigative techniques in Fast and Furious.

A. Federal Firearms Licensees

Federal Firearms Licensees in Arizona became unwillingly embroiled in ATF’s recklessness. A general update on ATF investigations at the end of April 2010 added a new development: “Additionally, agents [redacted] consensually record calls to/from a friendly FFL

[Federal Firearms Licensee] and one of the suspects for the purpose of ordering and discussing large-scale firearms purchases.”²⁶¹

Earlier that month, another FFL had expressed concerns to Group Supervisor Voth, writing: “[W]e 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 viewed as not selling to bad guys.”²⁶² Voth reassured the FFL, claiming that ATF was “continually monitoring” the suspects using methods he supposedly could not disclose.²⁶³

[INTENTIONALLY BLANK]

²⁶¹ ATF Investigations, Operation: Fast and Furious (CHAMBERS, et al) [HOG 002407-002408] (Exhibit 128).

²⁶² E-mail from [FFL2] to David Voth (Apr. 13, 2010) (Exhibit 129).

²⁶³ E-mail from David Voth to [FFL2] (Apr. 13, 2010) (emphasis added) (Exhibit 129).

From: Voth, David J. [mailto:██████████@usdoj.gov]
Sent: Tuesday, April 13, 2010 9:25 AM
To: ██████████
Cc: MacAllister, Hope A.; English, Tonya A.; ██████████
Subject: Ongoing ATF Investigation

██████████

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. I totally understand and am not in a position to tell you how to run your business. 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 detail. We are working in conjunction with the United States Attorney's Office (Federal Prosecutors) to secure the most comprehensive case involving the different facets of this organization. If it puts you at ease I can schedule a meeting with the Attorney handling the case and myself to further discuss this issue. Just know that we cannot instruct you on how to run your business but your continued cooperation with our office has greatly aided the investigation thus far.

Thanks again and please let me know how I can be of service to you.

Respectfully,

David Voth

Group Supervisor

Phoenix Group VII

"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."

"[I]f it helps put you at ease we (ATF) are continually monitoring these suspects using a variety of investigative techniques which I cannot go into detail."

Voth's reassurances were hollow, since ATF was not "continually monitoring these suspects" and agents were only interdicting a fraction of the guns. In a subsequent meeting on May 13, 2010, between Voth, AUSA Hurley, and the FFL, Hurley told the FFL that it was very important for the FFL to participate and that the participation was leading to arrests.²⁶⁴ ATF did "not go into detail" on just how much it knew about these straw purchasers, namely, the conversations from the DEA or federal wires, the recovery of the guns in Mexico, and the short times-to-crime. Instead, ATF officials encouraged cooperating FFLs to sell guns to suspected straw purchasers, sometimes even giving the FFLs a list of individuals to whom they wanted them to sell guns.²⁶⁵ And so the FFLs did. As a result, the same straw purchasers kept on acquiring more and more guns. One buyer alone, Uriel Patino, bought the vast majority of his

²⁶⁴ Telephone interview of [FFL2] (Apr. 5, 2011).

²⁶⁵ Telephone interview of [FFL3] (May 17, 2011).

guns—661 in all—*after* ATF identified him as a target in the investigation. In total, Patino purchased 720 weapons.

In testimony to the Committees, one FFL described the representations that ATF made in encouraging the FFL to go through with extremely suspicious transactions:

Q. Was it your understanding they (ATF) were watching the camera so they could surveil some of these straw purchase suspects?

A. That is the purpose they told me, yes.

Q. Was it your understanding they were going to interdict these weapons shortly after?

A. Absolutely. I was assured all the way through this program that they would be stopped before they would ever harm anyone or get below the border.

Q. So ATF made affirmative representations to you that these weapons would be interdicted?

A. The entire time.

Q. Did they make any representations to you that other FFLs were participating in a similar type of arrangement?

A. They did.²⁶⁶

These FFLs continued to voice their concerns to ATF. Yet not only were the FFLs assured that the weapons were being interdicted, but, as discussed earlier, they were also pressured to *provide* weapons to the straw purchasers. Since ATF also oversees the licensing and regulation of FFLs, FFLs were in a difficult position to turn down requests from the ATF. Group Supervisor Voth promised one cooperating FFL that the renewal of their federal license—which the ATF’s federal firearms licensing center oversees—would not be a problem. One exchange between Voth and one cooperating FFL follows:²⁶⁷

²⁶⁶ [FFL1] Transcript at 63-64 (emphasis added) (Exhibit 48).

²⁶⁷ E-mail from [FFL2] to David Voth (Exhibit 130).

David,

Greetings, I hope all is well with you.

I wanted to let you know that we have some ATF investigators performing an annual check [REDACTED]. This is a routine investigation covering all the standard avenues. They told us that one of the things they are interested in is any "suspicious transactions".

As you know we have extensive documentation that we've supplied you and your team with concerning transactions that may be suspect. Shall we supply this documentation to these investigators as well?

Voth responded a few minutes later, promising to accomplish "compliance through previous disclosure."²⁶⁸

[REDACTED]

Thanks for reaching out to me. Yes I absolutely confirm the extensive documentation that you have supplied us. I don't want your routine compliance to cause extra work. If you have all of the documentation set aside and it is easy enough to provide the compliance investigators a copy, by all means I have no secrets. If this process creates extra time and work for you and your team perhaps I can attempt to justify the process involved in providing the same information to ATF twice, thereby creating compliance through previous disclosure.

Please advise if you can comply or would like me to reach out to the compliance investigators?

Thanks,

David Voth
Group Supervisor
Phoenix Group VII
[REDACTED]

The FFL provided the information of the identity of the compliance investigator:²⁶⁹

²⁶⁸ E-mail from David Voth to [FFL2] (Exhibit 130).

²⁶⁹ E-mail from [FFL2] to David Voth (Exhibit 130).

David,

Thank you first of all for your prompt response! I know you are a busy man and I very much appreciate you giving this priority.

I also would like to thank you for your offer. It would be a great time saver for us if you would be so kind as to provide that information to the investigators working with us right now.

Ben Richardson, Industry Operations Investigator, is the gentleman to be in contact with.

Cell: [REDACTED]

Tel: [REDACTED]

[REDACTED]@atf.gov

Again, thank you. Please don't hesitate to let me know if [REDACTED] can be of help to you with anything.

Shortly thereafter, Voth took care of the matter, writing: "I spoke with Ben Richardson and I think we have come to an agreement. I will however speak with his supervisor but I don't anticipate any problems."²⁷⁰

ATF headquarters frowned upon Voth's conduct in this matter, namely blurring the line between ATF's regulatory and investigative functions. As Bill McMahon testified:

Q. This is an email from [FFL] notifying Voth that their annual check is occurring, and they were requesting extensive documentation. And so [FFL] tells Voth about this. And over the course of the next couple pages, Voth confirms that . . . he essentially can help [FFL] out with this . . . with their regulatory -- on the regulatory side of things.

So the concern here is, if [FFL] doesn't go through with the transaction it discussed with Voth, they might be worried about getting jammed up on the regulatory side of things. You can see here with these emails that there was a discussion about the regulatory side of things, and it looks like Voth hooked him up.

Is that concerning to you?

A. **Very much. Very much.**

* * *

Q. Okay. **So this is a problem.**

²⁷⁰ E-mail from David Voth to [FFL2] (Exhibit 130).

A. **Absolutely.**

Q. Okay.

A. We have to keep that balance. We license the industry. That is our job. And then we also conduct criminal investigations. **They can't bleed into one another.**²⁷¹

Even into the summer of 2010, six months after FFLs began cooperating with ATF on Fast and Furious and ATF told them they were providing an invaluable service, David Voth and other Group VII agents still failed to give the FFLs any indication that the guns they were being encouraged to sell under ATF's watchful eye were ending up on the other side of the border.

B. The Operation Continues

On May 5, 2010, the Criminal Division in Justice Department headquarters asked ATF to provide case summaries for a briefing with Assistant Attorney General Lanny Breuer in anticipation of an upcoming trip to Mexico to meet with the U.S. Ambassador and the Mexican Attorney General.²⁷² ATF did not want to send a summary of Fast and Furious to Breuer. David Booth in ATF's International Affairs Office wrote to Stuart Lowrey, Chief of ATF's Firearms Operation Division discouraging a discussion of the case with Mexican officials.²⁷³

[INTENTIONALLY BLANK]

²⁷¹ McMahon Transcript at 190-191 (Exhibit 120).

²⁷² E-mail from [DOJ Criminal Division] to [Executive Office of U.S. Attorneys] (May 5, 2010) [HOCR 002568] (Exhibit 131).

²⁷³ E-mail from David Booth to Stuart Lowrey (May 5, 2010) [HOCR 002565] (Exhibit 132).

From: Booth, David S. (IAO)
Sent: Wednesday, May 05, 2010 5:49 PM
To: Lowrey, Stuart L.
Subject: RE: Prep for Lanny
Attachments: DirectorDAD CEIT and Case brief.docx

McMahon and chait know about these cases, at least Bill has seen them. We don't want to use fast and furious (chambers, et. al), as that case, for a few reasons, is not the best one to trumpet in front of the Mexicans right now.

ATF SA David S. Booth
International Affairs Office
Program Manager-Mexico
99 NY Ave. NE, 6S-144
Washington, DC 20226



“We don't want to use fast and furious (chambers, et. al) [sic], as that case, for a few reasons, is not the best one to trumpet in front of the Mexicans right now.”

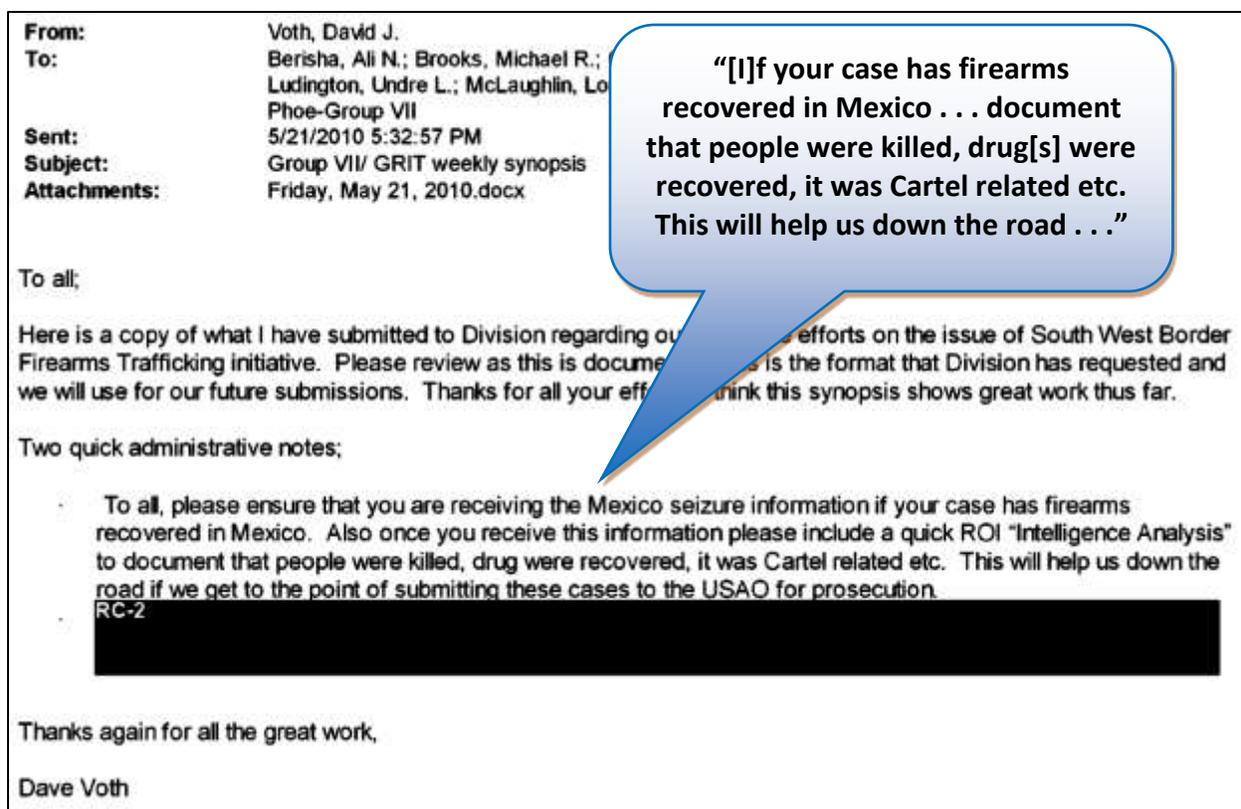
Lowrey responded: “Yeah – anything sensitive should be held back.”²⁷⁴

ATF continued to try to trace the guns straw purchasers were buying to recoveries in Mexico. On May 21, 2010, Voth e-mailed Group VII agents reminding them to document such recoveries.²⁷⁵

[INTENTIONALLY BLANK]

²⁷⁴ E-mail from Stuart Lowrey to David Booth (May 5, 2010) [HOCR 002575-002579] (Exhibit 133).

²⁷⁵ E-mail from David Voth to Ali Berisha, et al. (May 21, 2010) [HOCR 005007] (Exhibit 134).



Special Agent John Dodson testified that around this time, he continued warning about the possible consequences of this strategy:

[I]n May as the GRIT team or gunrunner initiative team was coming out . . . I was having a conversation with Special Agent McAllister about the case in which the conversation ended with me asking her are you prepared to go to a border agent's funeral over this or a Cochise County deputy's over this, because that's going to happen. And the sentiment that was given back to me by both her, the group supervisor, was that, or along the lines of, if you are going to make an omelette, you need to scramble some eggs.²⁷⁶

Although Group Supervisor Voth's second attorney claims that there is no evidence that agents complained to Voth about the tactics of Fast and Furious, the Committees are aware of no one who has denied that Agent Dodson made this comment to Case Agent MacAllister.²⁷⁷

ATF leadership was also soon explicitly discussing the issue of gunwalking. On June 1, 2010, Southwest Border Initiative Coordinator Rowley forwarded the April 27, 2010, e-mail he

²⁷⁶ Dodson Transcript at 136 (Exhibit 93).

²⁷⁷ Letter from Joshua Levy to Chairman Issa and Ranking Member Grassley (Mar. 14, 2012), at 3-4 (attachments omitted) (Exhibit 43).

had received regarding ATF Order 3310.4B to Assistant Director Chait and Deputy Assistant Director McMahon. Implying that one of them had made a request on the issue, Rowley wrote:

This is what we've come up with regarding the transfer of firearms during the course of an investigation. This issue came up during the recent firearms trafficking seminar I attended in El Paso. Specifically, it appears that **agents in the field are of the opinion that they can transfer or permit the transfer of firearms to further an investigation without HQ knowledge or approval.** The language below would seem to support that position. Given that our Firearms Enforcement Order has not been updated for 21 years and much has changed during the intervening period I recommend that we develop policy to address this issue immediately, followed by an effort to update the Order.²⁷⁸

Firearms Operations Division Chief Lowrey responded:²⁷⁹

From: Lowrey, Stuart L.
Sent: Tuesday, June 01, 2010 1:01:30 PM
To: Rowley, Raymond G.
CC: Chait, Mark R.; McMahon, William G.
Subject: RE: Response -- Negative / Request for Supplemental Documentation / ATF O 3310."Firearm Transfer" / ? - Supervisory Approval Requirement

Ray -

I think we should address this item with the immediate work ahead that we've discussed (and are meeting on today). I wasn't in the El Paso conversations, but I assume the student SAs were referring to allowing firearm transfers, between individuals or between FFLs and individuals, to occur without LE interference in furtherance of a trafficking type investigation. The question you raised before was what volume of firearms is acceptable to allow to "walk" before we intervene, 5, 10, 50? Also, my read of your comments does not imply that we are, with only field level approval, authorizing "prop" firearms to walk ... Good idea - let's discuss later today.
Thanks

Stuart L. Lowrey
Chief, Firearms Operations Division
ATF HQ - Room 6.S.129
[REDACTED]

"The question you raised before was what volume of firearms is acceptable to allow to 'walk' before we intervene, 5, 10, 50?"

²⁷⁸ E-mail from Raymond Rowley to Mark Chait and William McMahon (Jun. 1, 2010) [HOCR 002077] (emphasis added) (Exhibit 112).

²⁷⁹ E-mail from Stuart Lowrey to Raymond Rowley (Jun. 1, 2010) [HOCR 002077] (Exhibit 112).

The “immediate work ahead,” the subject of the meeting that day that ATF leadership had previously discussed, is unclear. It does not appear that ATF headquarters took any steps to address the issue or clarify its understanding of ATF Order 3310.4B as Rowley had suggested until much later, after the Fast and Furious scandal erupted.

Just two days before this discussion took place, the Phoenix Field Division had its most significant development to date in the Fast and Furious investigation.

C. Manuel Celis Acosta Detained

On May 29, 2010, CBP stopped a vehicle at an Arizona point of entry for an outbound inspection. According to an ATF Report of Investigation (“ROI”) of the incident, an inspection of the vehicle revealed “an AK type high capacity drum magazine loaded with 74 rounds of 7.62 ammunition underneath the spare tire in the trunk.”²⁸⁰ The driver of the vehicle was Manuel Celis-Acosta, the main target in Fast and Furious. CBP learned that Acosta was the principal target of a firearms investigation through a database search.²⁸¹ CBP notified ICE, which in turn notified ATF.²⁸² ATF Case Agent MacAllister and ICE Special Agent Layne France drove four hours from Phoenix to the Lukeville, Arizona point of entry where Celis-Acosta had been temporarily detained.²⁸³

In his interview with MacAllister, Celis-Acosta first denied that he knew anything about the magazines and ammunition found in the car.²⁸⁴ He subsequently admitted that it was possible his fingerprints were on the magazines and ammunition and that he knew which FFL they had been purchased from.²⁸⁵ MacAllister had asked Celis-Acosta to prepare a written statement regarding the events that led to his detention, but after Celis-Acosta’s companions in the vehicle produced a contradictory statement, he began to divulge more information.²⁸⁶ Celis-Acosta went into great detail about his relationship with a cartel figure, supposedly cartel leader Chapo Guzman’s right hand man.²⁸⁷ By the end of the interview, Celis-Acosta admitted that his venture to Mexico was for the purpose of starting up a drug trafficking business.²⁸⁸

One section of the ROI states:

CELIS-ACOSTA stated that the cartels like the AKs more than the ARs because the AKs never jam. CELIS-ACOSTA stated that the AR jam frequently and the AK’s are more reliable explaining a person can dip a

²⁸⁰ Report of Investigation, CHAMBERS, Jacob, et al., Report #292, at 2 (Exhibit 135).

²⁸¹ *Id.* at 1-2.

²⁸² *Id.* at 2.

²⁸³ *Id.*

²⁸⁴ *Id.* at 3.

²⁸⁵ *Id.* at 5.

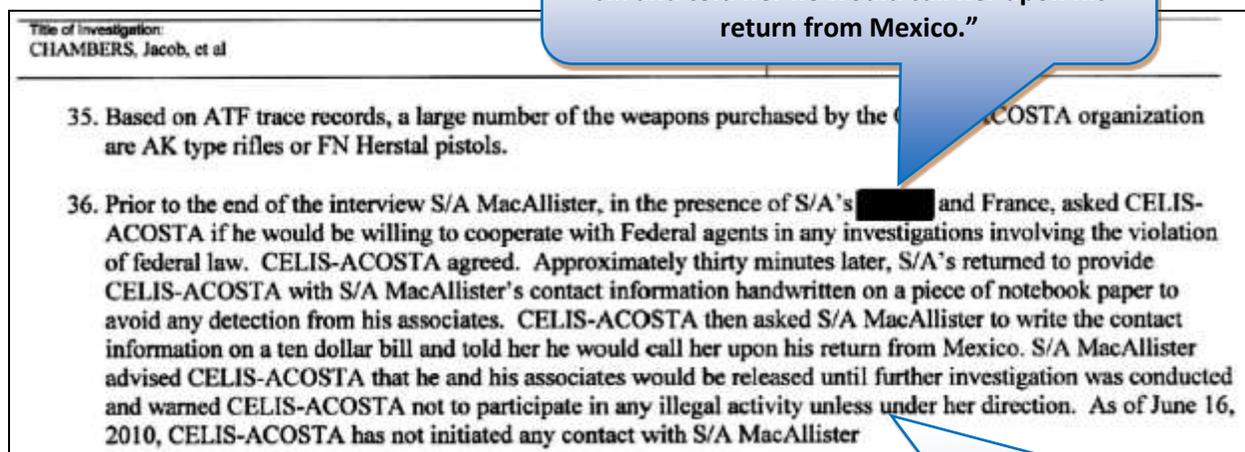
²⁸⁶ *Id.* at 3.

²⁸⁷ *Id.* at 4.

²⁸⁸ *Id.*

shoe lace in oil and run it through the barrel and the AK would never jam. He stated they also like the FiveSeven and Colt 38 Super “El Jefe”. CELIS-ACOSTA stated the FivenSevens [sic] (FN Herstal model FiveSeven, 5.7 caliber pistols) are referred to as “cop killers”. He also said the “El Jefe” is famous in Mexico and that they are seen as a status symbol. He said he did not like the “El Jefe”, but they were desired in Mexico.²⁸⁹

MacAllister asked Celis-Acosta to prepare a new written statement based on everything he had said in the interview.²⁹⁰ The ROI then describes Celis-Acosta being let go after asking MacAllister to write her contact information on a ten dollar bill and promising to call her when he returned to Mexico.²⁹¹



On June 3, 2010, a few days after MacAllister’s interview with Acosta, ATF Phoenix SAC Newell wrote to McMahan at ATF Headquarters:

Acosta never called SA McAllister back on Tuesday, **not a big surprise**, but we are aware of his whereabouts. He met with one of the main straw purchasers (Stewart) yesterday regarding a purchase of 9mm handguns.

²⁸⁹ *Id.* at 5.

²⁹⁰ *Id.*

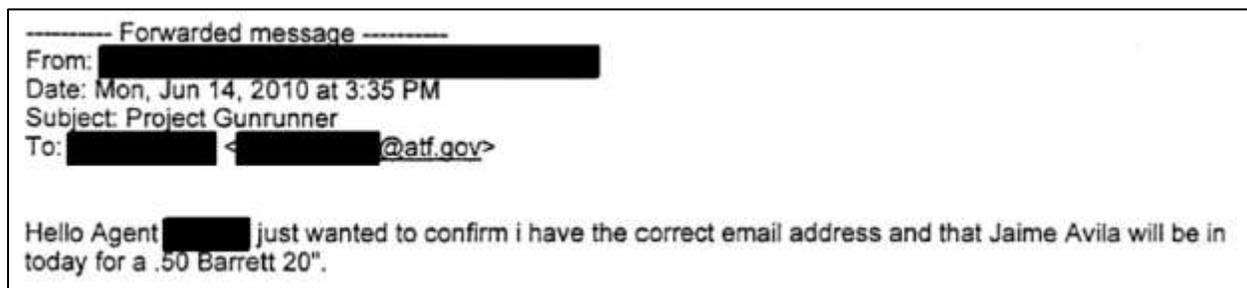
²⁹¹ *Id.* at 6 (emphasis added).

GRIT personnel are being used to maintain surveillance of Acosta and Stewart.²⁹²

Two weeks later the ROI noted, “As of June 16, 2010, CELIS-ACOSTA has not initiated any contact with S/A MacAllister.”²⁹³ The fact that the main target in ATF’s most important investigation never contacted the case agent after this encounter with law enforcement should not have come as a surprise to ATF and the Department. Without charging him with anything, Celis-Acosta had no incentive whatsoever to cooperate. Celis-Acosta was not arrested for seven more months.

By June 15, 2010, 179 guns had been recovered at crime scenes in Mexico and another 130 in the U.S.—all tied to Fast and Furious.²⁹⁴ The gun trafficking ring Fast and Furious targeted had already spent more than \$1 million and was still buying weapons from FFLs cooperating with ATF.²⁹⁵ And when the case agent had an opportunity to arrest the main target, she simply let him cross the border into Mexico.

ATF continued to receive contemporaneous and even advance notice of purchases from cooperating FFLs. For example, the same FFL who expressed concerns in April and met with Group Supervisor Voth and AUSA Hurley in May continued to cooperate with ATF. On June 14, 2010, an FFL employee e-mailed ATF advanced notice of another purchase by Jaime Avila—the same straw buyer who purchased the guns later found at the Brian Terry murder scene:²⁹⁶



Avila ended up not coming in to the FFL for the .50 caliber rifle until the next day, June 15, 2010.²⁹⁷ It was his second in two weeks.²⁹⁸ Just two days later, the same FFL e-mailed Voth again about his concern in continuing to sell to the straw buyers:²⁹⁹

²⁹² E-mail from William Newell to William McMahon (Jun. 3, 2010) [HOCR 001417] (emphasis added) (Exhibit 136).

²⁹³ Report of Investigation, CHAMBERS, Jacob, et al., Report #292 (Exhibit 135).

²⁹⁴ E-mail from Lorren Leadmon to Louis Quinonez (Jun. 15, 2010) [HOCR 002162-002163] (Exhibit 137).

²⁹⁵ *Id.*

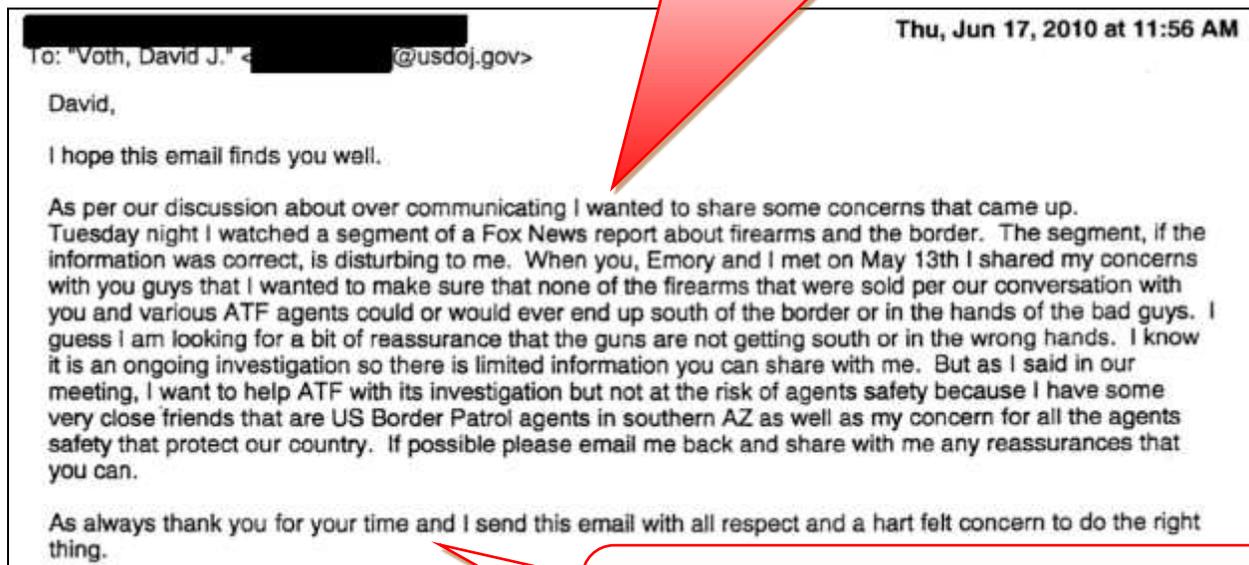
²⁹⁶ E-mail from [FFL2] to [ATF Group VII Agent] (Jun. 15, 2010) (Exhibit 19).

²⁹⁷ Suspect Gun Summary, Jaime Avila Jr. (entered Jun. 16, 2010) (Exhibit 138).

²⁹⁸ Suspect Gun Database, Jaime Avila Jr.

²⁹⁹ E-mail from [FFL2] to David Voth (Jun. 17, 2010) (Exhibit 139).

“I wanted to make sure that none of the firearms that were sold per our conversation . . . 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 [sic] safety because I have some very close friends that are US Border Patrol agents in southern AZ . . .”

Again, the FFL received assurances that cooperating was the right thing to do.³⁰⁰ According to the FFL, Hurley re-emphasized that it was extremely important for the FFL to participate and falsely claimed that this participation was leading to arrests.³⁰¹

As discussed previously, Avila could have been arrested that day, since that he no longer lived at the address he was swearing to on the 4473s. From June 10-15, 2010, Avila swore to the same false address in five 4473s, three at the cooperating FFL where ATF had video cameras above the counter.³⁰² ATF had been aware of Avila since November 2009 and was clearly still monitoring him, as evidenced by the fact that the FFL knew to e-mail ATF about him. However, like Patino and others, ATF’s Group VII chose to allow these straw purchasers to continue to operate. Six months later, when guns purchased by Avila were found at the scene of Border

³⁰⁰ Telephone interview of [FFL2] (Apr. 5, 2011).

³⁰¹ Telephone interview of [FFL2] (Apr. 5, 2011).

³⁰² Suspect Gun Database, Jaime Avila Jr.

Patrol Agent Brian Terry's death, Avila was finally arrested—for swearing to a false address on the June 15, 2010, purchase.³⁰³ ATF SAC William Newell was later questioned about whether or not ATF learned of the false address before the night of Agent Terry's death. He stated:

A. [T]here was evidence that was gathered later in the case to be able to arrest [Avila] on a complaint.

Q. Surely you're not suggesting that you learned of the address change and the falsehood about the address on the form, you happened to learn about that on December 14th, the same night that Agent Terry was killed? That's not what you are suggesting, is it?

A. No. I'm not suggesting it at all.

Q. So you had the information that allowed you to make the complaint on him long before you actually did it, right?

A. I don't think it was long -- as I recall, the complaint lists purchases that were made in -- it was June or July.³⁰⁴

David Voth's testimony contradicted Newell's. Voth testified that ATF only bothered to check Avila's address the night of Agent Terry's death, when there was a much greater incentive to find a charge to hold Avila on.³⁰⁵ It's unclear which of them is telling the truth.

ATF supervisors claim that sometime in June 2010, the U.S. Attorney's Office finally gave authorization to begin seizing firearms in *Fast and Furious*.³⁰⁶ Because the Justice Department withheld documents subpoenaed from the Arizona U.S. Attorney's Office and did not permit an interview of AUSA Emory Hurley or others at the office, it is difficult to assess this claim. It is clear that throughout the case, the U.S. Attorney's Office for the District of Arizona held ATF to meeting a higher threshold than necessary to begin seizing weapons.

Arizona U.S. Attorney's Office Criminal Chief, Patrick Cunningham, would later state in a memorandum specifically referring to whether guns should have been seized sooner in *Fast and Furious*:

³⁰³ See Memorandum from Emory Hurley to Dennis K. Burke, "Jaime Avila, Jr." (Jan. 28, 2011), at 2-3 [HOCR 002348-002351] (Exhibit 26).

³⁰⁴ Transcript, Interview of William Newell by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Jun. 8, 2011), at 111 [hereinafter Newell Transcript] (Exhibit 140).

³⁰⁵ Voth transcript at 183-184 (Exhibit 49).

³⁰⁶ Letter from Joshua Levy to Chairman Darrell Issa and Ranking Member Grassley (Mar. 14, 2012), Attachment 3, Declaration of David Voth at 4-5 (other attachments omitted) (Exhibit 43); see also Letter from Paul Pelletier to Chairman Darrell Issa and Ranking Member Charles Grassley (Mar. 14, 2012), at 4 (Exhibit 141).

[U]ntil agents observe illegal conduct they cannot treat [straw purchasers] as anything other than ordinary buyers. At the time of transfer of the firearms from the FFL to the straw purchaser based upon the facts available to the FFL at the time of the sale, the sales to the “straw purchasers” are lawful
.....³⁰⁷

In fact, sales to straw purchasers are *not* lawful at the time of the sale if a purchaser is violating 18 U.S.C. § 922(a)(6)—making any false or fictitious oral or written statement to deceive an FFL—or 18 U.S.C. § 924(a)(1)(A)—knowingly making any false statement or representation with respect to the question on the 4473 of whether guns are for an individual’s own use. Second, “the facts available to the FFL at the time of the sale” are not the same as the facts that were available to ATF at the time of these sales. ATF had significantly more evidence indicating criminality than the FFLs did.

Cunningham continued:

In these investigations, there may come a point over the course of an investigation where ATF believes, though it is well short of proof beyond a reasonable doubt required in criminal cases, that they can prove that a particular person only buys guns for the purposes of illegal trafficking. However, seizure of the guns at that point may not be legal because purchasing multiple long guns in Arizona is lawful, transferring them to another is lawful and even sale or barter of the guns to another is lawful unless the United States can prove by clear and convincing evidence that the firearm is intended to be used to commit a crime.³⁰⁸

Cunningham cites for authority of the above statement to 18 U.S.C. § 924(d). However, that statute does not say the government has to prove “that the firearm is intended to be used to commit a crime.” Rather, it states: “Any firearm or ammunition involved in or used in any knowing violation of [§ 922(a)(6)] . . . where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture”² In other words, ATF agents didn’t need evidence of a future crime, but merely evidence that the purchaser had *already intended to commit a crime* by “making any false or fictitious oral or written statement to deceive an FFL”—lying on the 4473. Many purchasers met that standard well before June 2010. ATF and the U.S. Attorney’s Office *agreed* they could have arrested Uriel Patino and others as early as April 2010 for straw purchasing, yet chose not to in order to make a bigger case.

Regardless of what legal restrictions ATF may have labored under, it is clear that ATF *should not* have been encouraging FFLs to continue selling firearms prior to this period if ATF’s hands were tied when it came to interdicting the weapons. Newell would later point to the fact

³⁰⁷ E-mail from Patrick Cunningham to William Newell and James Needles (Mar. 6, 2011) (Exhibit 142).

³⁰⁸ *Id.*

that in June 2010, ATF would seize 40 guns, along with 100 or so in July.³⁰⁹ Yet these seizures were too little, too late. Even after June 2010, straw-purchased guns of which ATF had contemporaneous notice were flowing to Mexico.³¹⁰ Further, ATF could have confronted straw purchasers at any earlier point and attempted to disrupt or deter straw purchasing activity. Instead, guns were still only interdicted when it could be done in such a way as to not “compromise the bigger case.”³¹¹

D. Additional Concerns

In the summer of 2010, ATF’s National Tracing Center, the country’s only crime gun tracing facility, stopped providing information to ATF personnel in Mexico requesting traces. When the trace request submitted links to an ongoing case, ATF’s eTrace system automatically sends an e-mail to the case agent asking whether releasing information about the firearm will jeopardize the case in question.³¹²

From: [REDACTED]
Sent: Thursday, May 06, 2010 10:32 AM
To: MacAllister, Hope A.
CC: Medina, Jose L.; English, Tonya A.; Medina, Jose L.; Sonnendecker, Mark; [REDACTED]
Subject: Suspect Gun firearm recovered, [REDACTED]

Subject: Suspect Gun firearm recovered

The National Tracing Center (NTC) has received a Trace request for the above listed firearm. To prevent the NTC from releasing information that may jeopardize your investigation, please choose one of the following. It is extremely important that if your case is still active that you state whether or not we may conduct a Trace on this firearm.

A written response (email communication is sufficient) is required within 7 days of initial notification regarding this email. If a response is not received within this time frame the NTC may be compelled to release trace summary information to the requestor.

All information regarding this and any other trace requests can be obtained by using eTrace. In the event that you do not have access, access can be requested by contacting the Law Enforcement Support Branch at 800-260-1500 or 800-788-7132.

Please advise as to whether your case is:

- a) Active - NTC may release Trace disposition history to other Requestors for only this firearm.
- b) Active - NTC may release Trace disposition history to other Requestors. **(This is to be applied to all remaining firearms in this Suspect Gun file)**
- c) Active - NTC may not release Trace disposition history to other Requestors.
- d) Inactive - NTC will release Trace disposition to other Requestors.

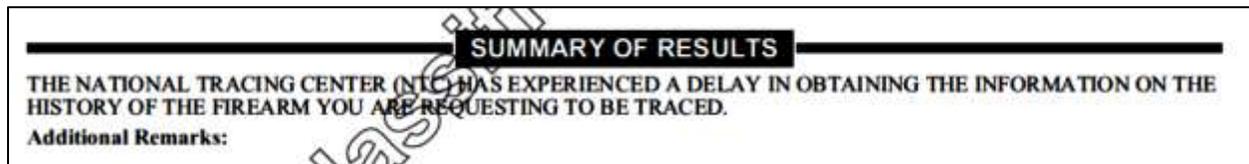
³⁰⁹ Letter from Paul Pelletier to Chairman Darrell Issa and Ranking Member Charles Grassley (Mar. 14, 2012), at 4 (Exhibit 141).

³¹⁰ For instance, guns seized by ICE on August 5, 2010, which had been purchased by two main Fast and Furious straw purchasers in late June 2010.

³¹¹ E-mail from William Newell to Kevin O’Reilly (Jul. 28, 2010) [NSS F&F 000020-000026] (Exhibit 143); e-mail from William Newell to William McMahon (Dec. 21, 2010) [HOCR 001935] (Exhibit 144).

³¹² See, e.g., e-mail from [National Tracing Center] to Hope MacAllister (May 6, 2010) [HOCR 002608] (Exhibit 145).

In mid-2010, Case Agent Hope MacAllister began instructing the National Tracing Center not to release trace data to requestors. Instead, trace requestors would receive the following notice.³¹³



Once this happened, other agencies—and even ATF’s Attaché Office in Mexico City—were no longer able to receive information about where or when recovered firearms had been purchased, making time-to-crime calculations for those outside of Group VII impossible.

A June 28, 2010, weekly report from the National Drug Intelligence Center reminded Attorney General Holder and his Deputy Attorney General that *Fast and Furious*, which had been active since the fall of 2009, involved over 1,500 firearms:³¹⁴

[INTENTIONALLY BLANK]

³¹³ See, e.g., ATF Firearms Trace Summary (Aug. 16, 2010) (Exhibit 146).

³¹⁴ Memorandum to the Attorney General from Michael F. Walther (Jun. 28, 2010) (Exhibit 147).

LIMITED OFFICIAL USE - LAW ENFORCEMENT SENSITIVE



U.S. Department of Justice

National Drug Intelligence Center

Office of the Director

DATE: June 28, 2010

MEMORANDUM TO THE ATTORNEY GENERAL
THROUGH THE ACTING DEPUTY ATTORNEY GENERAL

FROM: Michael F. Walther
Director
National Drug Intelligence Center

SUBJECT: WEEKLY REPORT FOR JUNE 28 THROUGH JULY 2, 2010

• ***(LOU-LES) Document and Media Exploitation Support to the Organized Crime Drug Enforcement Task Force:***

From July 6 through July 9, the National Drug Intelligence Center Document and Media Exploitation Team at the Phoenix Organized Crime Drug Enforcement Task Force (OCDETF) Strike Force will support the Bureau of Alcohol, Tobacco, Firearms, and Explosives' Phoenix Field Division with its investigation of Manuel Celis-Acosta as part of OCDETF Operation Fast and the Furious. This investigation, initiated in September 2009 in conjunction with the Drug Enforcement Administration, Immigration and Customs Enforcement, and the Phoenix Police Department, involves a Phoenix-based firearms trafficking ring headed by Manuel

Celis-Acosta. Celis-Acosta and [redacted] straw purchasers are responsible for the purchase of 1,500 firearms that were then supplied to Mexican drug trafficking cartels. They also have direct ties to the Sinaloa Cartel which is suspected of providing \$1 million for the purchase of firearms in the greater Phoenix area.

The mention of the large number of weapons that had been “supplied to Mexican drug trafficking cartels” raised serious concerns. In Mexico, guns from a drug cartel shootout in early July 2010 traced back to Fast and Furious. On July 14, 2010, ATF Attaché to Mexico Carlos Canino e-mailed Newell: “[A]t least one gun recovered in this shootout comes back to Hope’s case. What’s the status. I anticipate questions from [Government of Mexico] . . .”³¹⁵ Newell forwarded Canino’s e-mail to Group Supervisor Voth, writing: “This related to the big shootout two weeks ago in Sonora. Two rival DTOs went at it, Sinaloa and Juarez I believe. . . . I told Carlos we were within 45-50 days of taking this down IF the USAO goes with our 846/924(c) conspiracy plan.”³¹⁶ But Canino received no answers.

³¹⁵ E-mail from Carlos Canino to William Newell (Jul. 14, 2010) [HOCR 002454] (Exhibit 148).

³¹⁶ E-mail from William Newell to David Voth (Jul. 14, 2010) [HOCR 002454] (Exhibit 148).

Acting Director Melson also had concerns over the volume of weapons ending up in Mexico. In response to an e-mail from Chait about a seizure, Melson asked Chait and Hoover on July 14, 2010: “**When will be taking Fast and Furious down? An awful lot of guns seem to be flowing south.**”³¹⁷ People at Justice Department headquarters were concerned, too, but for other reasons. Upon receiving information about the recovery of weapons from the shootout in Sonora, Associate Deputy Attorney General Ed Siskel inquired about the media implications: “How much longer is the GRIT going to be operating in AZ? At what point will we know the total results of the operation and be in a position to do **some public roll out** [sic] along the lines of what we did in Texas?”³¹⁸

On July 28, 2010, Kevin O’Reilly, the Director of North American Affairs on the White House’s National Security Staff, e-mailed his colleagues asking, “Have we gotten any readout on ATF’s GRIT surge in Phoenix & in Arizona?”³¹⁹ O’Reilly forwarded the correspondence to Newell, asking: “Just an informal ‘how’s it going?’”³²⁰ Newell promptly responded:

[W]e are on target to . . . eliminate our backlog of “leads.” A ‘lead’ [sic] is where we have solid information regarding firearms trafficking activity but not enough manpower to work it. The best part about the GRIT for me has been the influx, albeit temporary (100 days), of Special Agents, Inspectors, Support Staff, etc. They have allowed us to catch up on the backlog of leads as well as follow up on newer information. They have been instrumental in supplying much needed ground-level support to several large-scale firearms trafficking investigations with direct links to Mexican DTOs. As an example I have had 10 Special Agents working exclusively in support of a very large OCDETF case involving firearms trafficking by the Sinaloa DTO. These agents have been so busy that they have expressed a desire to extend past the GRIT deadline due to the amount of work still needed on this case, a very good thing. One agent on detail from Miami . . . told me recently . . . [h]e’s **never seen this level of illegal firearms trafficking activity before and wants to stay another 30 days just to help out with this case.**³²¹

When O’Reilly asked for permission to share the documents with other White House staff, Newell responded: “Sure, just *don’t want ATF HQ to find out*, especially since this is what **they** should be doing (briefing you)!”³²² Newell continued to update O’Reilly, stating:³²³

³¹⁷ E-mail from Kenneth Melson to Mark Chait and William Hoover (Jul. 14, 2010) [HOCR 002084] (Exhibit 149).

³¹⁸ E-mail from Edward Siskel to Mark Chait (Jul. 14, 2010) [HOCR 002847] (emphasis added) (Exhibit 150).

³¹⁹ E-mail from Kevin O’Reilly to Gregory Gatjanis and Sarah Kendall (Jul. 28, 2010) [HOCR 002667] (Exhibit 151).

³²⁰ E-mail from Kevin O’Reilly to William Newell (Jul. 28, 2010) [NSF F&F 000001/HOCR 002666] (Exhibit 151).

³²¹ E-mail from William Newell to Kevin O’Reilly (Jul. 28, 2010) [NSF F&F 000006/HOCR 002665] (Exhibit 151).

³²² E-mail from William Newell to Kevin O’Reilly (Jul. 28, 2010) [NSF F&F 000013/HOCR 002664] (italics added) (Exhibit 151).

³²³ E-mail from William Newell to Kevin O’Reilly (Jul. 28, 2010) [NSF F&F 000020/HOCR 002664] (Exhibit 151).

From: Newell, William D. [REDACTED]
Sent: Wednesday, July 28, 2010 7:50 PM
To: O'Reilly, Kevin M.
Subject: RE: Wicked One
Attachments: One week in Phoenix - One ATF case.pdf

“These pics are just an example of some of the guns, ammo and magazines seized within the past week in Phoenix related to the ‘large OCDETF case’ I mentioned.”

These pics are just an example of some of the guns, ammo and magazines seized within the past week in Phoenix related to the “large OCDETF case” I mentioned. When a 22 year old kid on State financial assistance walks into a gun store and plops down \$12,000 in cash to buy a tripod mounted .50 caliber rifle that’s a clue (even for us) that he’s involved in trafficking firearms for a Mexican DTO. Another picture shows the 225 drum magazines we seized from the same group. These are in BIG demand by the Mexican DTOs because each drum hold 75 rounds of 7.62x39mm (AK47) ammo. Each one costs about \$200, depending on where you go, so we they aren’t happy we seized approx \$45,000 in merchandise from them but of course money is not a problem for them. If you have any questions, like “how in the hell....?” then feel free to call.

Bill Newell
Special Agent in Charge
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
Phoenix Field Division (Arizona and New Mexico)
[REDACTED]

Such seizures, however, were too little, too late. Hundreds of firearms had been sold to the straw purchasers under ATF’s watchful eye and distributed into communities in an uncontrolled manner. On July 28, 2010, Canino told Fast and Furious Co-Case Agent Tonya English that Fast and Furious guns were being used in murders in Mexico.³²⁴ Rather than express alarm at Canino’s statement, English requested reports of the homicides to which Canino had referred. English stated, “We were not aware of any firearms related to our case being used in any homicides. If this has occurred, would you please forward or send the reports because this is information we do not have.”³²⁵

Despite the optimism expressed in the April 2010 exit strategy, no significant efforts to disrupt straw purchasing in Fast and Furious took place by mid-summer 2010. In fact, ATF still made no move to “step to”—or confront and question—individuals or make arrests. Group VII Special Agent Olindo Casa, one of the agents upset about the tactics used in Fast and Furious, made his frustration about this inaction known. In a July 27, 2010, e-mail exchange between Casa and another ATF Special Agent, the other agent revealed the flaw in the strategy of Operation Fast and Furious. He stated, “I am [on] duty and having to deal with all this gun crime because there are **groups that don’t arrest anybody**.”³²⁶ Casa replied that Group VII had not made a single arrest since December:³²⁷

³²⁴ E-mail from Carlos Canino to Tonya English (Jul. 28, 2010) [HOCR 002448] (Exhibit 152).

³²⁵ E-mail from Tonya English to Carlos Canino (Jul. 28, 2010) [HOCR 002448] (Exhibit 152).

³²⁶ E-mail from Terry Besta to Olindo Casa (Jul. 27, 2010) [HOCR 001706] (emphasis added) (Exhibit 153).

³²⁷ E-mail from Olindo Casa to Terry Besta (Jul. 27, 2010) [HOCR 001706] (Exhibit 153).

From: Casa, Olindo J.
Sent: Tuesday, July 27, 2010 6:01 PM
To: Besta, Terry P.
Subject: RE: Duty call

Yeah, like group VII -- been here since December and we have not arrested a soul.

OLindo J. Casa

Olindo J. Casa
Special Agent - Bureau of ATF
Phoenix Group VII

Such e-mails corroborate the testimony of the ATF whistleblowers that they had concerns about Fast and Furious long before Agent Terry was killed, and contradict those, including Voth, who have recently attacked the whistleblowers and labeled them liars.

As weapons recoveries continued into the month of August, other people began to take notice that ATF was not arresting the individuals involved or making any effort to stop the actual purchases. On August 3, 2010, an ICE investigation called Operation Too Hot to Handle revealed that an illegal alien in Phoenix named Jose Beltran-Bermudez was in the possession of 80 firearms, which he was seeking to move to Texas for eventual transportation to Mexico.³²⁸ ICE was working with no prior tip-off from ATF in Phoenix. On August 5, 2010, ICE seized the firearms in San Antonio, Texas and submitted them to ATF for tracing.³²⁹ The trace results showed that 57 of the guns tied back to Fast and Furious.³³⁰ The guns had been purchased in late June, just five weeks before they were seized³³¹—and *after* the period when ATF Phoenix supervisors say they were authorized by the U.S. Attorney's Office to start seizing guns.³³² Alfredo Celis had purchased 30 of the firearms at an FFL cooperating with ATF. Celis had been a Fast and Furious target since December 2009.³³³ Sean Steward, who had also been a target since December 2009, had purchased another ten firearms at the same time.³³⁴

³²⁸ Indictment, U.S. v. Beltran-Bermudez, Case No. 2:11-cr-00245-ROS, District of Arizona, United States District Court (filed Feb. 9, 2011), at 2.

³²⁹ Briefing by ICE to Senate Judiciary Committee Staff (Apr. 27, 2012) [hereinafter ICE Briefing].

³³⁰ U.S. Immigration and Customs Enforcement Briefing of the Minority Staff of the Senate Judiciary Committee (Apr. 27, 2012).

³³¹ *Id.*

³³² Letter from Joshua Levy to Chairman Darrell Issa and Ranking Member Grassley (Mar. 14, 2012), Attachment 3, Declaration of David Voth at 4-5 (other attachments omitted) (Exhibit 43).

³³³ ATF Suspect Gun Summary, Alfredo Celis (Jun. 24, 2010); ATF Suspect Gun Summary, Alfredo Celis (Jun. 28, 2010); ATF Suspect Gun Summary, Alfredo Celis (Jun. 29, 2010); Operation Fast and Furious Recoveries, 08/05/2010, ICE Case File (Dec. 7, 2010) [DHS OGR FF 000220-000224] (Exhibit 154); Operation Fast and Furious Recoveries, 08/05/2010, ICE Case File (Dec. 7, 2010) [DHS OGR FF 000220-000224] (Exhibit 155).

³³⁴ ATF Suspect Gun Summary, Sean Christopher Steward (Jun. 23, 2010) (Exhibit 156); Operation Fast and Furious Recoveries, 08/05/2010, ICE Case File (Dec. 7, 2010) [DHS OGR FF 000220-000224] (Exhibit 155).

On August 9, 2010, Group Supervisor Voth asked if the Texas ATF had gotten more information from ICE on Beltran-Bermudez, writing: “Just checking in to see if there are any updates or reports that can be forwarded to us here in Phoenix.”³³⁵ Voth inquired again a week later: “Any luck we have not heard anything here locally? Obviously we are interested as 63 of the 80 firearms were part of open/active ATF Phoenix cases, especially the 57 as part of Operation Fast and Furious.”³³⁶ The ICE agent asked what ATF’s plan was:³³⁷

| | |
|---|---|
| <p>From: Arredondo, Francisco J. Sent: Sunday, August 15, 2010 1:52 PM To: Voth, David J.; Herrera, Juan H. Subject: Re: 80 gun seizure</p> | <p>“Are you just letting these guns walk?”</p> |
| <p>Are you all planning to stop some of these guys any time soon? That’s a lot of guns that have been seized. Are you just letting these guns walk?</p> | |

Voth responded, claiming that ATF had “stopped ‘some’ of these guys and seized hundreds (plural) of firearms in this case to date.”³³⁸ Yet ‘hundreds’ was but a fraction of the guns that had been purchased, and ATF had never taken any steps to stop the biggest purchasers, such as Patino. No arrests would be made for four to five more months. Although Beltran-Bermudez was an illegal alien, making his possession of firearms a felony, the U.S. Attorney’s Office requested that ICE delay arresting him, purportedly to avoid tipping off the Fast and Furious straw purchasers from whom he was receiving firearms.³³⁹ Beltran-Bermudez was not indicted until February 9, 2011, shortly after the Fast and Furious indictments in January 2011.³⁴⁰

Voth’s statement—that ATF had only “seized hundreds of firearms” in Fast and Furious—is also puzzling. Even as late as August 2010, it appears that ATF was not seizing all of the weapons bought by some of the earliest Fast and Furious targets, such as Uriel Patino. Instead, ATF agents were only seizing a fraction of the weapons that had been purchased. Without revealing this fact, ATF continued encouraging FFLs to make the sales. On August 25, 2010, one FFL e-mailed Voth advance notice of another purchase by Patino:³⁴¹

³³⁵ E-mail from David Voth to Juan Herrera and Francisco Arredondo (Aug. 9, 2010) [HOGR 002012] (Exhibit 157).

³³⁶ E-mail from David Voth to Juan Herrera and Francisco Arredondo (Aug. 15, 2010) [HOGR 002011] (Exhibit 157).

³³⁷ E-mail from Francisco Arredondo to David Voth (Aug. 15, 2010) [HOGR 002011] (Exhibit 157).

³³⁸ E-mail from David Voth to Francisco Arredondo (Aug. 15, 2010) [HOGR 002011] (Exhibit 157).

³³⁹ ICE Briefing.

³⁴⁰ “17 indicted for weapons trafficking following ICE investigation,” ICE News Release (Feb. 17, 2011), *available at* <http://www.ice.gov/news/releases/1102/110217phoenix.htm>.

³⁴¹ E-mail from [FFL2] to David Voth (Aug. 25, 2010) (Exhibit 158).

Wed, Aug 25, 2010 at 5:13 PM

To: "Voth, David J."

Cc: [REDACTED]

Good Afternoon David,

One of our associates received a telephone inquiry from Uriel Patino today. Uriel is one of the individuals your office has interest in, and he looking to purchase 20 FN-FNX 9mm firearms. We currently have 4 of these firearms in stock. If we are to fulfill this order we would need to obtain the additional 16 specifically for this purpose.

I am requesting your guidance as to weather or not we should perform the transaction, as it is outside of the standard way we have been dealing with him.

I look forward to your advisment.

"I am requesting your guidance as to weather [sic] or not we should perform the transaction, as it is outside of the standard way we have been dealing with him."

Voth replied:

Thank you very much for contacting us regarding Mr. Patino and this order/inquiry. We (ATF) are very much interested in this transaction **In summary our guidance is that we would like you to go through with Mr. Patino's request and order the additional firearms he is requesting, and if possible obtain a partial down payment.** This will require further coordination of exact details but again we (ATF) are very much interested in this transaction and appreciate your willingness to cooperate and assist us.³⁴²

This transaction apparently never went through, but these e-mails corroborate the accounts of FFLs who say this was exactly the type of interactions they were having with ATF throughout the case.

³⁴² E-mail from David Voth to [FFL2] (Aug. 25, 2010) (emphasis added) (Exhibit 158).

13. Delay of Indictment

FINDING: **Risk without reward: ATF’s wire intercepts failed to reveal anyone “up the chain” for whom the Fast and Furious straw buying ring was acquiring weapons. Thus, ATF only obtained charges against the straw purchasers, most of whom were known to ATF from the beginning of the case. The U.S. Attorney’s Office for the District of Arizona was irresponsible and negligent in delaying the indictment of the straw purchasers for so long. In December 2010 the lead federal prosecutor was still contemplating novel ways of charging the suspects even though enough evidence had been gathered for an indictment at least six months earlier.**

The Fast and Furious exit strategy that had been distributed among ATF leadership called for the case to be taken down at the end of July 2010, with multiple arrests and search warrants.³⁴³ The strategy was based on Deputy Director Hoover’s request (not conveyed to the Phoenix Field Division until the end of April 2010) that the case come down within 90 days. As Hoover would later testify: “It was contingent upon that time limit and that time limit only. We had what we had at the end of that 30, 60, 90 day plan, and that was when I wanted this investigation to be taken down.”³⁴⁴

Instead, as the end of July 2010 approached, ATF’s Phoenix Field Division was only barely beginning to reach out to the U.S. Attorney’s Office about indictments. It was clear that the case would not be coming down in the time frame Hoover had called for. On July 14, 2010, SAC Bill Newell e-mailed Group Supervisor David Voth that he was telling others “we were within 45-50 days of taking this down IF the USAO goes with our 846/924(c) conspiracy plan.”³⁴⁵ Five days later, on July 19, 2010, Group VII Supervisor David Voth e-mailed AUSA Emory Hurley:³⁴⁶

³⁴³ “Operation Fast and Furious Exit Strategy” (Apr. 27, 2010), at 3 [HOCR 001179-001182] (Exhibit 126).

³⁴⁴ Hoover Transcript at 81 (Exhibit 121).

³⁴⁵ E-mail from William Newell to David Voth (Jul. 14, 2010) [HOCR 002454] (Exhibit 148).

³⁴⁶ E-mail from David Voth to Hope MacAllister, et al. (Jul. 19, 2010) (Exhibit 159).

From: Voth, David J. <[REDACTED]>
Sent: Monday, July 19, 2010 7:00 PM
To: MacAllister, Hope A. <[REDACTED]>; Hurley, Emory (USAAZ) <[REDACTED]>; Needles, James R. <[REDACTED]>
Subject: Meeting

Hope/Emory,

The case is progressing nicely and I am very pleased with how things are turning out; thanks to you both. ASAC Jim Needles has requested that we all sit down together to discuss how we envision the indictment phase taking shape. If schedules permit are you available Monday, August 2nd, 2010 @ 3:00pm?

It is clear from Voth's later testimony that the exit strategy was not foremost on the Phoenix Field Division's mind. Voth testified:

Q. Now, I believe you mentioned that the case began to wind down in July and August of 2010?

A. Well, I don't know if the case began to wind down. We made the decision to not go after another wire, to take the evidence we had amassed thus far and charge the people that we could charge thus far with the crimes and the charges we thought we had at that time.

We still had the loftier goal of going after . . . the cartels or the DTO in Mexico. We hadn't got there at that time, but we made the decision not to go further. And that was essentially the, kind of, end date or end time of the investigation.

Q. Why did you make that decision at that point in time?

A. Because we were having so much trouble with the phones and the flipping of phones and maybe the inability to get a roving wire or something. We felt the only way to get the evidence needed to charge somebody in Mexico or in a DTO with them being in Mexico and not hands-on buying guns and transporting guns by having straws buy the guns and having, I guess just for easy safety, mules transport the guns, that to get evidence on the person actually doing it we would have to have their word, their intercepted communication directing these activities. We hadn't gotten there.

* * *

But it seemed we had given it a good try and gotten where we had gotten. And, certainly, we were going to charge people. Maybe not the ultimate goal that we had started with.³⁴⁷

These problems with straw buyers flipping phones were the very same obstacles DEA SAC Elizabeth Kempshall had warned ATF SAC Bill Newell about. Kempshall stated that DEA preferred seeking state wires because it was much quicker to reauthorize them when phones were flipped.³⁴⁸

The Department of Justice was also preparing for the indictments in Operation Fast and Furious. On July 29, 2010, Laura Gwinn, an attorney assigned to the case from the Criminal Division in Washington, D.C., reported:

I am still trying to “learn” the case through review of wire-tap applications, a running log of overt acts and discussions with the lead attorney. A strategy session was held to determine the cause of action over the next couple of months. . . . It is hoped that we would be in a position to consider indictment approximately early to mid-fall.³⁴⁹

On July 30, 2010, Newell described to McMahon his understanding of the upcoming timeframe:³⁵⁰

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-----Original Message-----
From: Newell, William D.
Sent: Friday, July 30, 2010 7:45 AM
To: McMahon, William G.
Subject: Fast and Furious meeting at USAO

The meeting btwn the Case Agent, Jim and AUSA is the 5th. My meeting
with USA Dennis Burke is the 17th. That will give the AUSA plenty of
time to prepare a pros memo so Dennis and I can discuss charges in our
meeting. I'll provide a case update later today, they were all out on
another case yesterday afternoon and are assisting in the [REDACTED]
[REDACTED] here this morning.
Bill Newell
Special Agent in Charge
ATF Phoenix Field Division (AZ and NM)
Cell: [REDACTED]
```

The day after the August 5th meeting with Case Agent MacAllister, ASAC Jim Needles, and AUSA Emory Hurley, Newell wrote to McMahon, “as per the USAO, Fast/Furious will be ready for indictment in early October.”³⁵¹

³⁴⁷ Voth Transcript at 235-236 (Exhibit 49).

³⁴⁸ Telephone interview of Elizabeth Kempshall (Sep. 22, 2011).

³⁴⁹ E-mail from James Trusty to Kevin Carwile (Jul. 29, 2010) [HOCR 003503] (Exhibit 160).

³⁵⁰ E-mail from William Newell to William McMahon (Jul. 30, 2010) [HOCR 002028] (Exhibit 161).

Newell was also updating the White House on the timeline. On August 9, 2010, he wrote to Director O'Reilly: "Got another one last week, a .50 caliber semi-auto. Headed for Sinaloa DTO. Part of the same 'large OCDETF case' I mentioned previously. We should be indicting in early October."³⁵² A few days later, in response to O'Reilly's offer to involve Newell in an arms trafficking conference in Mexico City in late September or early October, Newell responded: "Timing would be good because we should indict our Phoenix case in late Sept/early Oct."³⁵³

On August 16, 2010, the day before the meeting between the U.S. Attorney's Office and ATF, Hurley e-mailed his prosecution memorandum on Fast and Furious to his supervisor, National Security Section Chief Michael Morrissey. Upon receiving the memo, Morrissey replied, copying Cunningham and Burke:³⁵⁴

| | |
|-----------------|--|
| From: | Morrissey, Mike (USAAZ) |
| Sent: | Monday, August 16, 2010 8:41 PM |
| To: | Cunningham, Patrick (USAAZ) |
| Cc: | Burke, Dennis (USAAZ); Hurley, Emory (USAAZ) |
| Subject: | FW: memo on Fast and Furious |

Emory – good job on this. Do you anticipate drug charges in the indictment? Drug charges are not listed in paragraph two of the memo but the memo also says the investigation has seized 50 pounds of marijuana. Dennis and Pat – this is quick and dirty but we thought it would help ground tomorrow's discussion. Mike

The August 16, 2010, memo stated that the U.S. Attorney's Office anticipated taking Fast and Furious down in October 2010.³⁵⁵ In the memo Hurley explicitly anticipated the gunwalking controversy months before the first news stories or Internet postings about the issue: "Investigating agents have pursued interdiction of the firearms transferred to conspirators where possible. **Agents have not purposely let guns 'walk.'** Interdiction in some cases has been hampered by counter-surveillance used by the targets."³⁵⁶ It is unclear whether this statement reflected an attempt by Hurley to mask the fact that, as ATF argues, he had not permitted them to make seizures. Either way, it is clear from the overwhelming body of evidence and testimony that counter-surveillance used by the targets was *not* the main reason ATF did not interdict the vast number of guns in Fast and Furious. Hurley's statement also masks the fact that ATF was receiving contemporaneous notice of the sales from cooperating FFLs. Either way, it is remarkable that Hurley, the lead federal prosecutor on the case, discussed gunwalking as early as August 2010.

³⁵¹ E-mail from William Newell to William McMahon (Aug. 6, 2010) [HOCR 002527] (Exhibit 162).

³⁵² E-mail from William Newell to Kevin O'Reilly (Aug. 9, 2010) [NSS F&F 000027] (Exhibit 163).

³⁵³ E-mail from William Newell to Kevin O'Reilly (Aug. 9, 2010) [NSS F&F 000049-000050] (Exhibit 164).

³⁵⁴ E-mail from Mike Morrissey to Patrick Cunningham (Aug. 16, 2010) [HOCR 003026] (Exhibit 165).

³⁵⁵ Memorandum from Emory Hurley to Dennis K. Burke, "Fast and Furious Overview" (Aug. 16, 2010) [HOCR 003027] (Exhibit 166).

³⁵⁶ *Id.* (emphasis added).

On August 17, 2010, Group Supervisor Voth briefed Burke, Cunningham, Morrissey, and Hurley for two hours at ATF's Phoenix offices.³⁵⁷ Apparently frustrated as a result of that meeting, the next day Newell e-mailed Director O'Reilly at the White House:

We have some "straw" purchasers who had purchased several hundred "weapons of choice" and made good money doing it but in reality may never get prosecuted. In trying to satisfy the Arizona USAO's request to have the firearms inspected in Mexico in order to be able to introduce that in US Federal court we need Mexico's help but as you can guess it's a major pain to get access to these guns. . . . As an example and regarding the August 4th seizure in Nogales, Sonora [sic]. **Several of the firearms in that seizure are directly linked to a case we are ready to indict here in the Federal system.** We had these guns entered into our "Suspect Guns" system so when they were traced in eTrace they "pinged" off this "Suspect Guns" list and our case agent was immediately notified.³⁵⁸

When these e-mails became public, the White House claimed the communications were "not in relation to Fast and Furious."³⁵⁹ Yet this e-mail illustrates the methods ATF used to benefit from recoveries in Mexico. Because ATF entered the serial numbers of firearms into the Suspect Gun Database as soon as they received the 4473s from FFLs, frequently at the same time the firearms were being purchased, recoveries in Mexico provided ATF with instant intelligence about where the guns were going.

On September 3, 2010, Newell e-mailed Kevin O'Reilly at the White House again:³⁶⁰

[INTENTIONALLY BLANK]

³⁵⁷ See e-mail from William Newell to William McMahon (Aug. 6, 2010) [HOCR 002527] (Exhibit 162); see also e-mail from Dennis Burke to [Executive Assistant, U.S. Attorney's Office for the District of Arizona] (Jul. 14, 2010) [HOCR 005964] (Exhibit 167).

³⁵⁸ E-mail from William Newell to Kevin O'Reilly (Aug. 18, 2010) [NSS F&F 000055-000056] (Exhibit 168).

³⁵⁹ Richard Serrano, *Emails to White House didn't mention gun sting*, LOS ANGELES TIMES (Jul. 28, 2011), available at <http://articles.latimes.com/2011/jul/28/nation/la-na-fast-furious-emails-20110729>.

³⁶⁰ E-mail from William Newell to Kevin O'Reilly (Sep. 3, 2010) [NSS F&F 000073/HOCR 002559] (Exhibit 169).

From: Newell, William D. <William [REDACTED] Newell [REDACTED]>
Sent: Friday, September 03, 2010 11:28 AM
To: O'Reilly, Kevin M.
Subject: RE: GRIT
Attachments: PHX GRIT Briefing - FINAL.PDF; GRIT Press conference stats.docx

**“You didn’t
get these
from me . . .”**

1 of 2 e-mails.

You didn’t get these from me...

The first attachment is what we were going to hand out to the media prior to our planned August 26th press conference. We will still use this IF we ever do a press conf. It had been vetted through ATF HQ. The second Word doc is what we were going to give to ATF DD Melson as notes in case he got asked specific questions about our Industry Operations efforts during GRIT.

Also, not mentioned in these docs but VERY relevant to Mr. Brennan’s meeting next week is the fact that we and the USA were going to announce the indictment of a dozen “straw purchase” case addressing firearms trafficking by 30 individuals. We finally have the USAO here on board with going after “straw” purchasers and making a statement, publically especially, that we will take action against those folks. In reality we look at “straw” purchases as the lowest ring on the firearms trafficking ladder but in many investigations we need their cooperation in order to identify the real traffickers and middlemen. Having the USAO backing our “play” when we first interact with “straw” purchases adds tremendous leverage to our efforts to get the truth from them so we can work our way up the ladder.

Bill Newell
Special Agent in Charge
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
Phoenix Field Division (Arizona and New Mexico)
[REDACTED]

What Newell describes is what many of the ATF whistleblowers believed ATF should have been doing all along in Fast and Furious. As some ATF agents have stated, the U.S. Attorney’s Office may have hampered ATF’s efforts, even though there were clearly other steps ATF could have taken. However, despite what Newell told O’Reilly, ATF waited until January 2011, after the death of Border Patrol Agent Brian Terry, to confront straw purchasers or attempt to “work . . . up the ladder.”

ATF claims that it was waiting to take further action until the U.S. Attorney’s Office returned indictments. Group VII Supervisor Voth would later say that he called AUSA Hurley on a monthly basis after July to ask whether the indictments had been drafted and approved, and that Hurley never mentioned that he needed anything additional.³⁶¹ U.S. Attorney Dennis Burke testified that ATF did not formally hand the case over to the U.S. Attorney’s Office, complete

³⁶¹ Letter from Joshua Levy to Chairman Darrell Issa and Ranking Member Grassley (Mar. 14, 2012), Attachment 3, Declaration of David Voth at 4 (other attachments omitted) (Exhibit 43).

with the formal cover and the full case file, until September or October.³⁶² Contemporaneous evidence seems to support this conclusion. In a September 16, 2010, e-mail, AUSA Hurley stated that he was still waiting for materials from ATF:³⁶³

From: Hurley, Emory (USAAZ) [mailto: [REDACTED]]
Sent: Thursday, September 16, 2010 12:06 PM
To: Gwinn, Laura
Subject: RE: next week

I am out of the office this coming week. ATF is working on putting together binders for each defendant which will include call translations, but we don't have any of these yet. I was shooting for a late October indictment of the ten [REDACTED] RC 6. This may add a little to the time it takes them to prepare the necessary translations and for me to review everything, but I would still like to try for a late October/early November GJ date.

“ATF is working on putting together binders for each defendant . . . , but we don't have any of these yet.”

By this point, Dennis Burke was ready wrap up Fast and Furious, though he and Criminal Division Chief Patrick Cunningham's focus appears to have been on the opportunity for press coverage from the case:³⁶⁴

From: Cunningham, Patrick (USAAZ)
Sent: Monday, September 20, 2010 3:44 PM
To: Burke, Dennis (USAAZ)
Subject: RE: [REDACTED]

Yes, excellent coverage in the Republic on Saturday and KTAR ran your sound bites today on Cartel Gun Locker and Deadly, Deadly business. I will check with Emory and Mike. PJC

From: Burke, Dennis (USAAZ)
Sent: Monday, September 20, 2010 12:35 PM
To: Cunningham, Patrick (USAAZ)
Subject: Re: SWB Wire Link

Emory ready to take down the Fast and Furious wire? Seems we should strike while the iron is hot.

At the end of September and beginning of October, ATF's Phoenix Field Division clearly believed Fast and Furious had the attention of senior Justice Department Officials. Following up on an October 5, 2010, briefing paper that he requested, Newell wrote to ASAC Gillett: "Have [Voth] put into a [briefing paper] format, **will most likely go to DAG [Deputy Attorney General]**."³⁶⁵

³⁶² Transcript, Interview of Dennis Burke by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Aug. 18, 2011), at 91-92 (Exhibit 170); Transcript, Interview of Dennis Burke by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Dec. 13, 2011), at 75 [hereinafter Burke December Transcript] (Exhibit 171).

³⁶³ E-mail from Emory Hurley to Laura Gwinn (Sep. 16, 2010) [HOCR 005979] (Exhibit 172).

³⁶⁴ E-mails between Dennis Burke and Patrick Cunningham (Sep. 20, 2010) [HOCR 003031] (Exhibit 173).

³⁶⁵ E-mail from William Newell to George Gillett (Oct. 5, 2010) [HOCR 001349] (emphasis added) (Exhibit 174).

This is apparently also the period when the U.S. Attorney's Office finally received all of the wire intercepts from ATF. On September 30, 2010, Morrissey reported to Burke: "F and F . . . is also wrapping up (down on all wires) but tons of reports to read as Emory plans the indictments."³⁶⁶ Burke responded:³⁶⁷

From: Burke, Dennis (USAAZ)
Sent: Thursday, September 30, 2010 12:28 AM
To: Morrissey, Mike (USAAZ); Hurley, Emory (USAAZ)
Cc: Cunningham, Patrick (USAAZ)
Subject: Re: Wide Receiver II indictment review

The "War and Peace" equivalent of a T--III !

From: Morrissey, Mike (USAAZ)
Sent: Thursday, September 30, 2010 12:08 AM
To: Hurley, Emory (USAAZ); Burke, Dennis (USAAZ)
Cc: Cunningham, Patrick (USAAZ)
Subject: Re: Wide Receiver II indictment review

Thanks, Emory. Dennis _ Emory briefed me earlier this week on F and F _ it is also wrapping up (down on all wires) but tons of reports to read as Emory plans the indictments.

"The 'War and Peace' equivalent of a T--III!"

Burke later testified:

Q. [S]o are you saying that there are things that you didn't know, that your office didn't know until October of 2010 because it hadn't been formally -- you hadn't formally been provided all of the case documents?

A. Of the ones I'm aware of, yes. I don't know that for an actual fact. I do know that in October 2010 our office was provided over 3,000 documents, and a lot of those documents were ROIs that our office had not seen before. . . . [T]here was a huge data dump, file dump on our office in October of this case.

* * *

Q. So there was no other maybe more informal handing over of information or no other milestone that might have been in August?

A. I'm not aware -- well, I do recall we had a meeting in August, but it wasn't with regards to now you have everything you need, you know, start drafting the indictment.

³⁶⁶ E-mail from Mike Morrissey to Emory Hurley and Dennis Burke (Sep. 30, 2010) [HOCR 003038] (Exhibit 175).

³⁶⁷ E-mail from Dennis Burke to Emory Hurley and Mike Morrissey (Sep. 30, 2010) [HOCR 003038] (Exhibit 175).

Because these documents have not been produced by the Justice Department and the Committees have not been able to interview AUSA Hurley, the conflicting accounts of ATF and the U.S. Attorney's Office as to when the case was turned over are difficult to assess.

Nevertheless, since Justice Department headquarters had authorized seven federal wire intercepts in the case, it appears that the U.S. Attorney's Office had underestimated the amount of work required to review the evidence gathered from the wiretaps. By mid-October, they were still months away from the indictment. On October 19, 2010, Newell requested an early November meeting with Burke, again to discuss plans for the Fast and Furious indictment.³⁶⁸ Newell specifically requested that the meeting take place at ATF's Phoenix offices so that he could "show [Burke] the evidence."³⁶⁹ In response to Newell's meeting request, National Security Section Chief Michael Morrissey e-mailed others in the U.S. Attorney's Office on October 22, 2010.³⁷⁰

From: Morrissey, Mike (USAAZ)
Sent: Friday, October 22, 2010 1:32 PM
To: Hernandez, Norma (USAAZ)
Cc: Cunningham, Patrick (USAAZ); Hurley, Emory (USAAZ)
Subject: Fast and Furious meeting

Pat and Norma – I'm hoping we can defer Mr. Newell's request for a meeting on Nov 1,2, or 3. It is simply too early – Emory is reviewing a huge mass of information, and while we could discuss broad ideas on the indictment, I would much rather delay this a bit and have an "informed" discussion, at a later date.

Morrissey's supervisor, Criminal Division Chief Patrick Cunningham, responded.³⁷¹

om: Cunningham, Patrick (USAAZ)
nt: Friday, October 22, 2010 5:31 PM
io: Hernandez, Norma (USAAZ)
Cc: Hurley, Emory (USAAZ); Burke, Dennis (USAAZ); Morrissey, Mike (USAAZ); Scheel, Ann (USAAZ)
Subject: Fast and Furious meeting

Norma: please advise Mr. Newell's scheduler that we will be ready to meet on Fast and Furious the Week of November 30. Emory will have a good idea by then who we believe we can charge.
Emory: let us know if you can meet any sooner. Thanks! PJC

³⁶⁸ See e-mail from [ATF Phoenix Field Division] to [U.S. Attorney's Office] (Oct. 22, 2010) [HOCR 005986] (Exhibit 176).

³⁶⁹ *Id.*

³⁷⁰ E-mail from Michael Morrissey to [U.S. Attorney's Office] (Oct. 22, 2010) [HOCR 003049] (Exhibit 177).

³⁷¹ E-mail from Patrick Cunningham to [U.S. Attorney's Office] (Oct. 22, 2010) [HOCR 003049] (Exhibit 177).

The resulting meeting would be 11 ½ months after ATF received detailed wire information from DEA on Celis-Acosta and his activities trafficking the guns from his straw purchasing ring.

One week after Newell made the initial meeting request, ATF Assistant Director Chait e-mailed Newell on October 29, 2010, to inquire about the indictment. Newell responded that the U.S. Attorney's Office had pushed the indictment to December 7 and that Burke had cancelled their meeting to discuss it.³⁷² Chait responded that the straw buying activity needed to be shut down.³⁷³

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----- Original Message -----  
From: Chait, Mark R.  
To: Newell, William D.  
Cc: McMahon, William G.  
Sent: Fri Oct 29 07:39:08 2010  
Subject: Re: Fast and Furi.
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I'm concerned that we are not shutting down the activity waiting on an  
indictment. Thanks  
Mark R. Chait  
Assistant Director  
Field Operations
```

Later that day, Newell sent his supervisor McMahon (also cc'd on Chait's e-mail) an e-mail that was a reminder of the same contemporaneous notice ATF's Phoenix Field Division had almost throughout the case:³⁷⁴

[INTENTIONALLY BLANK]

³⁷² E-mail from William Newell to Mark Chait (Oct. 29, 2010) [HOCR 001912] (Exhibit 76).

³⁷³ E-mail from Mark Chait to William Newell (Oct. 29, 2010) [HOCR 001912] (Exhibit 76).

³⁷⁴ E-mail from William Newell to William McMahon (Oct. 29, 2010) [HOCR 001912] (Exhibit 76).

From: Newell, William D.
Sent: Friday, October 29, 2010 1:22:00 PM
To: McMahon, William G.
Subject: Fw: Fast and Furi.

FYI - before I left Orlando I asked Jim to verify what I told you and Mark earlier was correct, that being the purchases have slowed significantly. Several reasons for this main one being [redacted] (Acosta) is in some trouble with the Glendale PD [redacted]

[redacted] Also, we have been very successful over the past several months in seizing guns before they head south by quickly responding to calls from cooperating FFLs as well as "flagging" our known straw purchasers via NICS.

"We have been very successful over the past several months in seizing guns before they head south by quickly responding to calls from cooperating FFLs . . ."

"We have flagged these individuals in NICS and are notified if they make a purchase."

----- Original Message -----

From: Needles, James R.
To: Newell, William D.
Sent: Fri Oct 29 12:46:19 2010
Subject: RE: Fast and Furi.

Of the [redacted] individuals we know of who are supplying firearms to the organization, in the last 30 days one individual (Patino) purchased 5 firearms which we immediately seized, that was on Oct. 8. We have flagged these individuals in NICS and are notified if they make a purchase.

In early October 2010, the activity from the straw purchasing ring appears to have slowed. Several months later, ATF would try to take credit for this development, writing: "[F]irearms purchasing and trafficking activity by this organization has subsided significantly since early October of this year. This is due to several factors not the least of which are proactive measures taken by the agents assigned to Phoenix Group VII."³⁷⁵ Given that ATF did little, if anything, to thwart these traffickers, it is more likely that firearms purchasing and trafficking activity subsided for two very different reasons. First, unbeknownst to Newell or the ATF, the individual Celis-Acosta was working with to traffic the guns to Mexico had become an FBI informant.³⁷⁶ Second, as Newell acknowledged at the end of October: "[T]he purchases have slowed significantly. Several reasons for this main one being [redacted] (Acosta) is in some trouble with the Glendale PD . . ."³⁷⁷

³⁷⁵ Phoenix Group VII, Phoenix Field Division, ATF, *Briefing Paper, Operation: Fast & Furious*, at 1 (Dec. 3, 2010) [HOCR 001408-001411] (Exhibit 178).

³⁷⁶ Organized Crime Drug Enforcement Task Forces Final Report, Operation Head Shot (Feb. 3, 2011) (Exhibit 108).

³⁷⁷ E-mail from William Newell to William McMahon (Oct. 29, 2010) [HOCR 001912] (Exhibit 76).

On October 9, 2010, Phoenix police officers responded to a call about a burglary at what turned out to be the home of Celis-Acosta's father. The police officers observed and temporarily seized Celis-Acosta's Taurus .45 handgun, which he had fired through the door in an attempt to scare off the burglars.³⁷⁸ Just five days later, on October 14, 2010, Phoenix police again arrived at the Celis-Acosta home, this time in response to an emergency radio call that shots had been fired there. Celis-Acosta's mother had seen two vehicles outside and screamed. Celis-Acosta's brother and father both ran outside and began firing at the vehicles. Celis-Acosta grabbed his Taurus .45 handgun and ran outside to join his brother and father. According to a police report:

[O]nce outside, he closed his eyes and began firing his handgun one-handed in the same direction that [his brother and father] were firing. When I asked . . . what he was aiming at, he stated, "Nothing," and that he just closed his eyes and began shooting. . . . When he opened his eyes, he observed that what they were all firing at was a dark-colored vehicle. . . .³⁷⁹

As it turned out, Celis-Acosta's handgun had been purchased by Fast and Furious straw buyer Sean Steward on June 2, 2010.³⁸⁰

Just as he had been in April 2010, Celis-Acosta was arrested after the October 9, 2010, event, this time for discharging a firearm within the limits of a municipality.³⁸¹ As part of the case, the Phoenix Police Department learned that ATF had "surveillance video footage involved in an unrelated investigation of the front of [Celis-Acosta's] residence."³⁸² Fast and Furious Co-Case Agent Tonya English provided Phoenix police with a compact disc of the footage, which was forwarded to the Maricopa County Attorney's office.³⁸³ This October 9, 2010, arrest marked the third time in 2010 that Celis-Acosta had been in law enforcement custody, including his arrest on April 2, 2010, and his detainment with ammunition and an illegal alien on May 29, 2010, in Lukeville, Arizona. Nevertheless, it appears that Celis-Acosta was inexplicably once again not charged.

In the fall of 2010, AUSA Emory Hurley prepared a briefing paper that continued to attempt to re-write what actually took place in Fast and Furious. The October 21, 2010, briefing paper Hurley forwarded to his superiors again included the language about ATF agents "not purposely let[ting] guns walk" and "interdiction . . . be[ing] hampered."³⁸⁴ Notwithstanding his review of the ROIs in the case, it is possible Hurley was ignorant or had been misinformed on this front by ATF. Hurley, however, added a line that he would have known was misleading:

³⁷⁸ Phoenix Police Department Report 2010 1435239 (Oct. 9, 2010) (Exhibit 179); see also Phoenix Police Department Report 2010 1466578 (Oct. 14, 2010), at 16 (Exhibit 179).

³⁷⁹ Phoenix Police Department Report 2010 1466578 (Oct. 14, 2010), at 16 (Exhibit 179).

³⁸⁰ ATF Suspect Gun Summary, Sean Christopher Steward (entered Jun. 3, 2010) (Exhibit 180).

³⁸¹ *Id.* at 8.

³⁸² Phoenix Police Department Report 2010 1466578 (Oct. 14, 2010), at 30 (Exhibit 179).

³⁸³ *Id.* at 31.

³⁸⁴ Memorandum from Emory Hurley to Carol Stachan-Noonan, "Fast and Furious" (Oct. 21, 2010) [HOCR 003047] (Exhibit 181).

“By looking at firearms transaction records **historically**, it is believed that the organization has acquired more than 1800 firearms.”³⁸⁵ This observation implied that ATF had only learned of *all* the purchases historically, rather than only a small fraction, as Hurley knew full well. He had first-hand knowledge because he had visited two of the cooperating FFLs himself to encourage them to keep cooperating with the investigation by sending ATF contemporaneous notice of illegal purchases by known straw buyers.

In light of the delays at the U.S. Attorney’s Office, ATF Deputy Director Hoover contacted Ed Siskel in the Deputy Attorney General’s office sometime in the fall of 2010 in an attempt to accelerate the indictments.³⁸⁶ Similarly, on November 8, 2010, Deputy Assistant Attorney General Jason Weinstein in the Criminal Division at the Justice Department conveyed ATF’s frustrations about the delay to his colleagues:

Ken [Melson] is also frustrated by the pace of the USAO in AZ bringing charges in the “Fast and Furious” gun-trafficking case (multiple wires, huge # of guns)—the AUSA has apparently told the agents that it will take a couple of months to draft the indictment; **it appears that the AUSA on the case is not the fastest worker**, and Laura Gwinn, our prosecutor on the case, is going to try to push things along, including by offering to draft the indictment.³⁸⁷

A month later, in early December 2010, AUSA Emory Hurley was still contemplating novel charging theories including using a money laundering statute which would require gun dealers to be considered “financial institution(s)” in order to charge the suspects.³⁸⁸

By the end of 2010, one of the final briefing papers on Fast and Furious summarized the total cost of the operation as follows: “From October 2009 to October 2010 agents have documented that this organization spent approximately 1.25 million dollars in cash at various Phoenix area Federal Firearms Licensees to acquire in excess of 1,900 firearms.”³⁸⁹ Despite this vast amount of money being spent by straw buyers, some of whom were on public assistance, ATF failed to confront the vast majority of them.

³⁸⁵ *Id.* (emphasis added).

³⁸⁶ Hoover Transcript at 74-76 (Exhibit 121).

³⁸⁷ E-mail from Jason Weinstein to Amy Pope (Nov. 8, 2010) [HOGR 003533-003534] (emphasis added) (Exhibit 182).

³⁸⁸ See e-mail from Emory Hurley to Joe Koehler (Dec. 6, 2010) [HOGR 005988]; e-mail from Tonya English to Emory Hurley (Nov. 29, 2010) [HOGR 005987-005988] (Exhibit 183).

³⁸⁹ Phoenix Group VII, Phoenix Field Division, ATF, *Briefing Paper, Operation: Fast & Furious*, at 1 (Dec. 3, 2010) [HOGR 001408] (Exhibit 178).

14. High Profile Casualties of Fast and Furious

FINDING: **“Ugh...things will most likely get ugly”: ATF knew that any deaths tied to Fast and Furious weapons would cause an immediate public outcry. ATF tried to minimize this fallout by limiting access to information and avoiding discussions of links between any deaths and weapons associated with the case.**

Despite mounting evidence of the volume of guns reaching Mexico and the damage they were causing, the U.S. Attorney’s Office did not move any faster with the indictments, nor did ATF leadership insist that Group VII agents apprehend the straw purchasers. As the Committees’ second joint staff report and the July 26, 2011 hearing before the House Committee on Oversight and Government Reform demonstrated, the situation in Mexico deteriorated further with the high-profile killing of Mario Gonzalez.

A. The Death of Mario Gonzalez

On November 5, 2010, drug cartel members murdered Mario Gonzalez, brother of Patricia Gonzalez, then-Attorney General of the State of Chihuahua in Mexico. A subsequent shootout between police and the murder suspects resulted in the recovery of sixteen weapons, two of which traced back to Operation Fast and Furious. Though ATF quickly became aware of the connection between Fast and Furious guns and the high-profile murder of Gonzalez, which dominated the news in Mexico, ATF declined to inform Mexican government officials about the link—or about Fast and Furious.

On November 15, 2010, Co-Case Agent Tonya English e-mailed David Voth and Hope MacAllister regarding the recovery of these two Fast and Furious weapons.³⁹⁰ She revealed that at least two of the 16 firearms recovered were Fast and Furious guns. She also urged Voth and MacAllister not to disclose this information.³⁹¹

³⁹⁰ E-mail from Tonya English to David Voth (Nov. 15, 2010) [HOCR 001792] (Exhibit 184).

³⁹¹ *Id.*

From: English, Tonya A.
Sent: Monday, November 15, 2010 2:42 PM
To: Voth, David J.
CC: MacAllister, Hope A.
Subject: FW: seizure

Ref this seizure. Alex called me to let me know that at least 2 of the 16 firearms recovered are Fast and Furious f/a's. He wanted to know if any of the firearms were purchased or associated with the guns recovered in El Paso. I thought this was interesting that in light of the recent communication with the El Paso office. One of the guns was purchased by Steward on 12-14-09. Ten days later he bought the 40 that were recovered in El Paso. My thought is not to release any information on the f/a's including the highlighted info. above. I was going to simply email him and say not part of that purchase. Please advise if you have an alternate idea or suggestion.

Thanks,

Tonya

MacAllister responded that evening with the names of the two purchasers of the firearms found at the scene: Patino and Steward.³⁹²

To: MacAllister, Hope A. [RC-1]
Cc: Voth, David J. [RC-1]
From: English, Tonya A.
Sent: Mon 11/15/2010 7:23:47 PM
Subject: FW: seizure

[RC-5] - Patino

[RC-5] - Steward

It was not until the spring of 2011, after Fast and Furious had become a public scandal, when ATF first informed Mexico about the link between Fast and Furious and Mario Gonzalez's death. Unfortunately, his murder would not be the only one tied to Fast and Furious.

B. The Death of Border Patrol Agent Brian Terry

Tragically, Fast and Furious also cost a U.S. Border Patrol agent his life. U. S. Border Patrol Agent Brian Terry was murdered on December 14, 2010. The *Los Angeles Times* reported on the circumstances of his murder:

Late in the night on Dec. 14, in a canyon west of Rio Rico, Ariz., Border Patrol agents came across Mexican bandits preying on illegal immigrants.

³⁹² E-mail from Hope MacAllister to David Voth (Nov. 15, 2010) [HOCR 006700] (Exhibit 185).

According to a Border Patrol “Shooting Incident” report, the agents fired two rounds of bean bags from a shotgun. The Mexicans returned fire. One agent fired from his sidearm, another with his M-4 rifle.

One of the alleged bandits, Manuel Osorio-Arellanes, a 33-year-old Mexican from Sinaloa, was wounded in the abdomen and legs. Agent Brian Terry — 40, single, a former Marine — also went down. “I’m hit!” he cried.

A fellow agent cradled his friend. “I can’t feel my legs,” Terry said. “I think I’m paralyzed.” A bullet had pierced his aorta. Tall and nearly 240 pounds, Terry was too heavy to carry. They radioed for a helicopter. But Terry was bleeding badly, and he died in his colleague’s arms.

The bandits left Osorio-Arellanes behind and escaped across the desert, tossing away two AK-47 semiautomatics from [FFL cooperating with ATF].³⁹³

The fallout from Agent Terry’s murder was broad and dramatic. Following his death, on December 15, 2010, ATF requested an urgent trace of the two weapons found at the scene of the crime. Both were Fast and Furious guns. Ironically, ATF also held a firearms trafficking seminar in Mexico City on that same day.³⁹⁴ At the seminar, ATF touted Fast and Furious as a model case to the seminar participants.³⁹⁵

Meanwhile, U.S. Attorney Dennis Burke was apparently working with the Justice Department on having Attorney General Eric Holder attend the takedown press conference scheduled for January 2011. On December 14, 2010, Burke sent an e-mail to his staff with the subject “Fast and Furious”:³⁹⁶

```
----- Original Message -----  
From: Burke, Dennis (USAAZ)  
Sent: Tuesday, December 14, 2010 12:28 PM  
To: Cunningham, Patrick (USAAZ)  
Cc: Scheel, Ann (USAAZ); Hernandez, Norma (USAAZ)  
Subject: Fast and Furious  
  
AG' office is now expressing interest in the AG coming out for it. Will you send me 4 or 5 lines abt it that I can brief Monty on it -- esp time window. Thx.
```

³⁹³ Richard Serrano, *Gun store owner had misgivings about ATF sting*, L.A. TIMES, Sept. 11, 2011 (<http://articles.latimes.com/2011/sep/11/nation/la-na-atf-guns-20110912>).

³⁹⁴ E-mail from Karine Taxman to [U.S. Department of State] (Dec. 16, 2011) [HOCR 006722-006723] (Exhibit 186).

³⁹⁵ See e-mail from Josh Parecki to Karine Taxman (Jan. 31, 2011) [HOCR 006755] (Exhibit 187).

³⁹⁶ E-mail from Dennis Burke to Patrick Cunningham (Dec. 14, 2010) [HOCR 003070] (Exhibit 188).

According to Burke, “Monty” was Monty Wilkinson, Attorney General Holder’s Deputy Chief of Staff.³⁹⁷ Burke testified Wilkinson “was someone you would contact if the Attorney General were doing any travelling in your area. He would coordinate through him.”³⁹⁸

At 2:14 am the next morning, Burke e-mailed Wilkinson:³⁹⁹

----- Original Message -----
From: Burke, Dennis (USAAZ)
Sent: Wednesday, December 15, 2010 02:14 AM
To: Wilkinson, Monty (OAG) (SMO)
Subject: Re: You available for a call today?

Sorry for going dark on you. I was at Navajo and Hopi all day and coverage was weak at best. I did get your vm. We have a major gun trafficking case connected to Mexico we are taking down in January. 20+ defendants. Will call today to explain in detail.

Yet Burke and Wilkinson apparently never spoke on December 15, 2010. Within hours on that early morning of December 15, 2010, Burke received an e-mail notifying him of Agent Terry’s death.⁴⁰⁰ Burke and Wilkinson exchanged e-mails throughout the day as Burke updated Wilkinson on the developments related to the Terry’s murder.⁴⁰¹

That evening, after attending the press conference in Tucson that night announcing Agent Terry’s death, the Assistant U.S. Attorney in charge of the Tucson field office e-mailed Burke:⁴⁰²

From: Clemens, Shelley (USAAZ)
Sent: Wednesday, December 15, 2010 5:19 PM
To: Burke, Dennis (USAAZ); Scheel, Ann (USAAZ)
Subject: Fw: FBI/CBP Presser

BP decided to make a statement and not allow questions. RC-5 [REDACTED] Based on that, we chose not to make a formal statement. RC-5 [REDACTED]
RC-5 [REDACTED] They referenced that John and I were there for the USAO and to support their office.

Nate Grey was here and advised that the 2 guns are tied to an on-going Phoenix ATF inv. You will probably get a call from Bill Newell.
Shelley

³⁹⁷ Burke December Transcript at 86 (Exhibit 171).

³⁹⁸ *Id.* at 45.

³⁹⁹ E-mail from Dennis Burke to Monty Wilkinson, Deputy Chief of Staff and Counselor, Office of the Attorney General, DOJ (Dec. 15, 2010) [HOCR 003073] (Exhibit 189).

⁴⁰⁰ E-mail from Marco Lopez to Dennis Burke (Dec. 15, 2010) [HOCR 005872] (Exhibit 190).

⁴⁰¹ See, for example, e-mail from Dennis Burke to Monty Wilkinson (Dec. 15, 2010) [HOCR 005872]; e-mail from Monty Wilkinson to Dennis Burke (Dec. 15, 2010) [HOCR 005876]; and e-mail from Monty Wilkinson to Dennis Burke (Dec. 15, 2010) [HOCR 005888] (Exhibit 190).

⁴⁰² E-mail from Shelley Clemens to Dennis Burke (Dec. 15, 2010) [HOCR 003076] (Exhibit 191).

Two hours later, at 7:21 pm, Burke responded: “Thanks. I just talked to Bill Newell about it. The guns tie back to Emory’s Fast and Furious case.”⁴⁰³ Burke almost immediately updated Wilkinson:⁴⁰⁴

From: Burke, Dennis (USAAZ)
To: Wilkinson, Monty (OAG)
Sent: Wed Dec 15 19:22:26 2010
Subject: FW: FBI/CBP Presser

The guns found in the desert near the murder BP officer connect back to the investigation we were going to talk about – they were AK-47s purchased at a Phoenix gun store.

In response, Wilkinson e-mailed back that he would call the next day.⁴⁰⁵

Meanwhile, word of the connection to Fast and Furious was spreading within ATF. At 6:49 pm, Group Supervisor Voth sent Case Agent MacAllister an e-mail with the subject: “[N]o more rose colored glasses.”⁴⁰⁶

From: Voth, David J.
Sent: Wednesday, December 15, 2010 6:49 PM
To: MacAllister, Hope A.
Subject: no more rose colored glasses

If you have not heard a Border Patrol agent was shoot and killed here in Arizona. The trace came back to Fast and Furious, Jamie Avila, January 2010, [REDACTED]..

Ugh...! Call as soon as you can, things will most likely get ugly!

David Voth
Group Supervisor
Phoenix Group VII
[REDACTED]

“[N]o more rose colored glasses”

“The trace came back to Fast and Furious . . . Call as soon as you can, things will most likely get ugly!”

Fifteen minutes after his first e-mail, Voth sent MacAllister another, this time with just one sentence in the subject line:⁴⁰⁷

⁴⁰³ E-mail from Dennis Burke to Shelley Clemens and Ann Scheel (Dec. 15, 2010) [HOCR 003076] (Exhibit 191).

⁴⁰⁴ E-mail from Dennis Burke to Monty Wilkinson (Dec. 15, 2010) [HOCR 005917] (Exhibit 192).

⁴⁰⁵ E-mail from Monty Wilkinson to Dennis Burke (Dec. 15, 2010) [HOCR 005917] (Exhibit 192).

⁴⁰⁶ E-mail from David Voth to Hope MacAllister (Dec. 15, 2010) [HOCR 002346] (Exhibit 193).

⁴⁰⁷ E-mail from David Voth to Hope MacAllister (Dec. 15, 2010) [HOCR 002783] (Exhibit 194).

From: Voth, David J.
Sent: Wednesday, December 15, 2010 7:04 PM
To: MacAllister, Hope A.
Subject: GAG order in place per Division! Don't talk outside of Group VII or SAC/ASAC. Emory knows

David Voth
Group Supervisor
Phoenix Group VII

"GAG order in place per Division!"

According to Voth's testimony: "When they determined that the two guns found at the scene were purchased by Jaime Avila I got a phone call from ASAC George Gillett, and he said that he wanted Mr. Avila arrested 15 minutes ago, expressing to me a sense of urgency."⁴⁰⁸ ATF and the U.S. Attorney's Office immediately realized the implications, as evidenced by how Avila was charged. At 11:41 pm that night, Group Supervisor Voth e-mailed SAC Newell and ASACs Needles and Gillett: "We are charging Avila with a standalone June 2010 firearms purchase where he used a bad (old) address on the 4473. . . . **This way we do not divulge our current case (Fast & Furious) or the Border Patrol shooting case.**"⁴⁰⁹ The next morning, on December 16, 2010, Voth again e-mailed SAC Newell and ASAC Gillett: "After speaking with Emory he saw the wisdom in not charging the AK-47 rifles in question so as to not complicate the FBI's investigation. As such **we are back to our original plan to charge the June guns purchased by Jaime AVILA.**"⁴¹⁰

For the first time, ATF was making an arrest in Fast and Furious, but only because a Border Patrol agent was dead. The arrest was not tied to the straw purchase of the guns found at the scene, but rather to a different straw purchase in June 2010. ATF had observed hundreds of similar straw purchases over the previous year, but only after a federal agent was murdered did ATF do what they should have been doing all along—make arrests. A tragedy of precisely this sort had been predicted months earlier, both by a cooperating FFL in an e-mail to ATF⁴¹¹ and by whistleblower ATF Agent John Dodson in a confrontation over gunwalking tactics with Case Agent Hope MacAllister and Group VII Supervisor David Voth.⁴¹²

On December 16, 2010, Special Agent John Dodson, who had worked on Fast and Furious for nearly a year and made his concerns with the case known, suddenly found that Fast and Furious was no longer on the list of ongoing investigations to which he had case file

⁴⁰⁸ Voth Transcript at 183 (Exhibit 49).

⁴⁰⁹ E-mail from David Voth to William Newell, et al. (Dec. 15, 2010) [HOCR 002017] (emphasis added) (Exhibit 195).

⁴¹⁰ E-mail from David Voth to William Newell and George Gillett (Dec. 16, 2010) (Exhibit 196).

⁴¹¹ E-mail from [FFL2] to David Voth (Jun. 17, 2010) (Exhibit 139).

⁴¹² Dodson Transcript at 136 (Exhibit 93).

access.⁴¹³ That same day, Voth responded to a request from Newell to tally the number of guns that had been recovered in Fast and Furious. Voth's e-mail read:⁴¹⁴

From: Voth, David J.
To: Newell, William D.
Sent: Thu Dec 16 19:22:42 2010
Subject: simple numbers on F&F recoveries
Sir,

I can make this more grand tomorrow if you wish but right now by my count;

- **Firearms recovered in Mexico = 241**
- **Firearms recovered in the USA = 350**

Voth added ten minutes later, “For what it’s worth our numbers did not reflect the guns recovered yesterday [at Agent Terry’s murder scene] so actually the USA recovered are 352.”⁴¹⁵ Like other “recoveries” Voth and Newell are taking credit for, the recovery of the guns at Brian Terry’s murder scene were obviously not the result of ATF interdicting weapons from straw buyers—quite the opposite.

The discovery of these two weapons at the Terry crime scene represented a watershed moment for Fast and Furious. For Glen Cook, Resident Agent in Charge of the ATF Dallas Field Division, it was immediately apparent that ATF had a big problem on its hands. Cook made a suggestion to his supervisor, ASAC Charles Smith:⁴¹⁶

[INTENTIONALLY BLANK]

⁴¹³ Telephone interview of Michael Chapman (Apr. 3, 2012).

⁴¹⁴ E-mail from David Voth to William Newell (Dec. 16, 2010) [HOCR 001935] (Exhibit 144).

⁴¹⁵ E-mail from David Voth to William Newell (Dec. 16, 2010) [HOCR 005471] (Exhibit 197).

⁴¹⁶ E-mail from Glen Cook to Charles Smith (Dec. 17, 2010) [HOCR 001941] (Exhibit 198) .

From: Cook, Glen W.
Sent: Friday, December 17, 2010 2:14 PM
To: Smith, Charles E.
Cc: Cook, Glen W.
Subject:

“I advised AUSA . . . to provide me with a Grand Jury Subpoena for RAC David [V]oth . . . ATF Phoenix refuses to provide us with the evidence.”

Charlie,

I advised AUSA Russ Leachman through SAs Steve Hall and Curtis Williams to provide me with a Grand Jury Subpoena for RAC David Roth and Holly in Phoenix to obtain the required evidence needed in our investigation here. AUSA Leachman has now advised the AUSA in Phoenix that the ATF agents here need access to the case in Phoenix since the ATF Phoenix office refuses to provide us with the evidence.

I wish that Leachman would have given those subpoenas to me but if the AUSA in Phoenix refuses to comply then maybe Phoenix should start preparing their explanations for the way that they conducted their straw purchase cases there. They should probably hire a media expert anyway to assist them in explaining the 2000 firearms and the possible connection in the murder of the Border Patrol Agent.

Thanks,

Glen

“They should probably hire a media expert . . . to assist them in explaining the 2000 firearms and the possible connection to the murder of the Border Patrol Agent.”

Cook’s e-mail shows that ATF personnel in other field divisions were acutely aware of the likely consequences of the fatalities caused by Fast and Furious.

Even SAC Newell, who had been an ardent proponent of the strategy in Fast and Furious, became nervous almost immediately about potential charges that his group had permitted guns to “walk”—even though such accusations were not yet in the public realm. Just as AUSA Hurley had anticipated the gunwalking controversy months earlier, Newell seemed to be aware of the risks ATF had been taking and started building a defense before the charges were even known. Just a week after Terry’s death, on December 21, 2010, Newell wrote to McMahon:⁴¹⁷

From: Newell, William D.
Sent: Tuesday, December 21, 2010 11:21 AM
To: McMahon, William G.
Subject: Fw: simple numbers on F&F recoveries

For what it’s worth and since I don’t like the perception that we allowed guns to “walk”, I had David Voth pull the numbers of the guns recovered in Mexico as well as those we had a direct role in taking off here in the US. Almost all of the 350 seized in the US were done based on our info and in such a way to not burn the wire or compromise the bigger case. The guns purchased early on in the case we couldn’t have stopped mainly because we weren’t fully aware of all the players at that time and people buying multiple firearms in Arizona is a very common thing.

⁴¹⁷ E-mail from William Newell to William McMahon (Dec. 21, 2010) [HOCR 001935] (Exhibit 144).

As discussed previously, notwithstanding Newell's e-mail, many of the guns seized in the U.S. were *not* seized based on information from the Phoenix Field Division, much less "almost all" of them.

Despite Newell's efforts, the "perception that [ATF] allowed guns to 'walk'" was widespread and had other consequences. Later in the same day as Newell's e-mail, U.S. Attorney Dennis Burke e-mailed Monty Wilkinson in the Attorney General's office.⁴¹⁸

From: Burke, Dennis (USAAZ)
To: Wilkinson, Monty (OAG)
Sent: Tue Dec 21 19:43:19 2010
Subject: Gun Trafficking case in Az

I would not recommend the AG announce this case. I can explain in detail at your convenience. Thx.

Wilkinson responded, "Ok . . . I'll call tomorrow."⁴¹⁹ Both Burke and Wilkinson, however, denied having any recollection of this communication or any subsequent conversation they may have had.⁴²⁰ Wilkinson also denied having any indication from any source as to why Burke gave the advice that the Attorney General Holder not announce Fast and Furious.⁴²¹ Wilkinson's denial that the decision about having the Attorney General attend wasn't linked to Fast and Furious is simply not credible.

On December 22, 2010, the day after the above e-mails, the gunwalking allegations appeared on Internet message boards primarily used by ATF agents. That same day, Acting Intel Group Supervisor Marjorie Zicha sent an e-mail within the ATF's Phoenix Field Division stating that access to the Fast and Furious folder should be limited only to a select list of personnel, including herself, Case Agent MacAllister and Co-Case Agent English, Group Supervisor Voth, ASACs Needles and Gillett, and SAC Newell.⁴²²

In Newell's December 21, 2010, e-mail, he defended ATF's decision not to "burn the wire or compromise the bigger case."⁴²³ The "bigger case," however, never materialized. Instead, when the Fast and Furious suspects were finally indicted on January 19, 2011, nineteen of the twenty defendants were exactly the kind of low-level straw purchasers that the ATF Phoenix Field Division and U.S. Attorney's Office avoided arresting early on in favor of

⁴¹⁸ E-mail from Dennis Burke to Monty Wilkinson (Dec. 21, 2010) [HOCR 006614] (Exhibit 199).

⁴¹⁹ E-mail from Monty Wilkinson to Dennis Burke (Dec. 21, 2010) [HOCR 006614] (Exhibit 199).

⁴²⁰ Letter from Ronald Weich, Assistant Attorney General, DOJ, to Darrell Issa, Chairman, House Committee on Oversight and Government Reform (Mar. 16, 2012), at 4; see also Transcript, Interview of Monty Wilkinson by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Apr. 13, 2012), at 35-36 [hereinafter Wilkinson Transcript] (Exhibit 200).

⁴²¹ Wilkinson Transcript at 39-42 (Exhibit 200).

⁴²² Telephone interview with Jose Medina (Apr. 17, 2012).

⁴²³ E-mail from William Newell to William McMahon (Dec. 21, 2010) [HOCR 001935] (Exhibit 144).

pursuing the larger case. Sadly, the individuals who purchased the vast majority of the guns had been identified as straw purchasers as early as December 2009, more than one year earlier.

15. The End of Operation Fast and Furious

FINDING: A pre-planned defense: Even before allegations of gunwalking were made public in the media, ATF officials knew that the risky gunwalking tactics in Operation Fast and Furious would be criticized and prepared to respond to that criticism.

By January 5, 2011, ATF Acting Director Ken Melson was apparently inquiring about the allegations that gunwalking occurred in Fast and Furious. On January 5, 2011, ATF Chief Counsel Steve Rubenstein e-mailed ATF Acting Director Ken Melson:

This is in response to your request regarding information posted on “Clean Up ATF.” Specifically, on December 22, 2010, “1desertrat” stated that “word is” that Phoenix FD ASAC George Gillet [sic] “[a]llegedly approved more than 500 AR-15 type rifles from Phoenix and Tucson cases to be ‘walked’ into Mexico.” The post further states that “[o]ne of those rifles is rumored to have been linked to the recent killing of a Border Patrol Officer in Nogales, AZ.”⁴²⁴

Melson responded, “Thanks, Steve. I am going to forward this to [Internal Affairs].”⁴²⁵

That same day, Cunningham wrote to others in the Arizona USAO: “Mr. Melson has advised Bill he still wants to attend our F and F rollout. . . . Have we heard from the New DAG that he is not attending?”⁴²⁶

From: Cunningham, Patrick (USAAZ)
Sent: Wednesday, January 05, 2011 2:36 PM
To: Burke, Dennis (USAAZ); Scheel, Ann (USAAZ); Tarango, Manuel (USAAZ)
Cc: Morrissey, Mike (USAAZ)
Subject: ATF and Fast and Furious

Friends: Mr Melson has advised Bill he still wants to attend our F and F rollout.

Bill is looking for information on our side of the press event that he can share with Melson. Have we heard from the New DAG that he is not attending?
Can we arm Bill with the answer?

⁴²⁴ E-mail from Steve Rubenstein to Kenneth Melson (Jan. 5, 2010) [HOCR 001571] (Exhibit 201).

⁴²⁵ E-mail from Kenneth Melson to Steve Rubenstein (Jan. 5, 2010) [HOCR 001572] (Exhibit 201).

⁴²⁶ E-mail from Patrick Cunningham to Dennis Burke, et al. (Jan. 5, 2011) [HOCR 003087] (Exhibit 202).

A few days later, on January 11, 2011, Newell e-mailed the Chief of ATF's Public Affairs Division at headquarters, Scot Thomasson: "Just heard Melson's coming for the Fast/Furious press conf on the 25th. I hope he realizes how politically charged Arizona is right now especially regarding gun issues, was that way even before the Tucson shooting."⁴²⁷

By the next day, the Public Affairs Division had prepared internal talking points that specifically anticipated the issue of gunwalking would come up.⁴²⁸ The sample questions in the internal document included:

Some media reports, referencing an anonymous ATF official, claim that ATF knowingly "walked" about 1,900 firearms across the U.S.-Mexico border as part of this operation. What can you tell me about that?

We understand that a firearm bought in connection with this ATF investigation was used to murder Border Patrol Agent Brian A. Terry. Can you please comment on this information?⁴²⁹

After over a year of allowing hundreds of weapons to be purchased by straw purchasers, ATF and the U.S. Attorney's Office indicted twenty defendants on January 19, 2011, charging them mainly with straw buying for the Mexican drug cartels.⁴³⁰ The indictment was to be unsealed and accompanied by a press conference the following week. The indictment was named after Jaime Avila, the straw purchaser who had purchased the two guns found at the Terry murder scene on January 16, 2010. However, the media plan regarding the takedown avoided any mention of the link between Fast and Furious and the death of Agent Terry. As Patrick Cunningham wrote to his colleagues in the U.S. Attorney's Office on January 19, 2011:⁴³¹

⁴²⁷ E-mail from William Newell to Scot Thomasson, ATF (Jan. 11, 2011) [HOCR 005479] (Exhibit 203).

⁴²⁸ ATF Official Statements, "Operation: Fast and Furious and Corresponding Investigations" (Jan. 12, 2011) [HOCR 005543-005546] (Exhibit 204).

⁴²⁹ *Id.* at 2.

⁴³⁰ Press Release, Dennis K. Burke, Office of the United States Attorney for the District of Arizona, Grand Juries Indict 34 Suspects in Drug and Firearms Trafficking Organization (Jan. 25, 2011).

⁴³¹ E-mail from Patrick Cunningham to Mike Morrissey, et al. (Jan. 19, 2011) [HOCR 006016] (Exhibit 205).

"As I understand it we plan to make no connections between the two cases in our public statements . . ."

----- Forwarded Message -----
From: "Cunningham, Patrick (USAAZ)" <RC-1 [REDACTED]>
To: "Morrissey, Mike (USAAZ)" <RC-1 [REDACTED]>; "Hurley, Emory (USAAZ)" <RC-1 [REDACTED]>
Cc: "Evans, John (USAAZ) 3" <RC-1 [REDACTED]>; "Figueroa, Jesse (USAAZ)" <RC-1 [REDACTED]>; "Burke, Dennis (USAAZ)" <RC-1 [REDACTED]>; "Scheel, Ann (USAAZ)" <RC-1 [REDACTED]>; "Hernandez, Rachel (USAAZ)" <RC-1 [REDACTED]>; "Tarango, Manuel (USAAZ)" <RC-1 [REDACTED]>
Sent: Wed, January 19, 2011 9:14:12 AM
Subject: Fast and Furious

Mike and Emory: please speak with Jesse Figueroa regarding the connection of one defendant in our Fast and Furious case to the Terry murder case so that Jesse is aware of our press conference on Tuesday. As I understand it we plan to make no connections between the two cases in our public statements and hope to obtain our defendant's cooperation as to how the firearms went from him to Southern Arizona. Thanks. PJC

On January 20, 2011, the day after the indictments, Hoover, Chait, and McMahon received an e-mail from their legal counsel office stating:⁴³²

From: Orlow, Barry S.
Sent: Thursday, January 20, 2011 9:48 AM
To: Hoover, William J.; Chait, Mark R.; McMahon, William G.
Cc: Rubenstein, Steve R.; Serres, Greg; Bacon, Valerie L.
Subject:

You may well already be aware of this but I wanted to make sure. Attached is what purports to be an "Open Letter To Senate Judiciary staff on 'Project Gunwalker'." The letter states "ATF employees are looking to come forward and provide testimony and documentation about guns being illegally transported to Mexico, with management cognizance" and that In order for these people to come forward, they require whistle-blower protection."

<http://www.examiner.com/gun-rights-in-national/open-letter-to-senate-judiciary-committee-staff-on-project-gunwalker>

Barry Orlow
Associate Chief Counsel (Field Operations and Information)
Bureau of Alcohol, Tobacco, Firearms and Explosives

Two days before this e-mail, the Phoenix Field Division was still expecting Acting Director Melson to attend the press conference for the takedown.⁴³³ However, apparently in the same time period as Orlow's January 20, 2011, e-mail, Melson decided not to attend. The day after Orlow's e-mail, Deputy Assistant Director McMahon e-mailed the January 12, 2011, press documents denying gunwalking to the Deputy Chief in the Public Affairs Division, writing: "With the Director not going to Phoenix for the press conference, could you please make sure the

⁴³² E-mail from Barry Orlow to William Hoover, et al. (Jan. 20, 2011) [HOCR 001583] (Exhibit 206).

⁴³³ E-mail from William Newell to Matthew Allen, et al. (Jan. 18, 2011) [HOCR 003575] (Exhibit 207).

Field Division still gets a copy of the press book you guys put together. I think there are some very good things in that book that Newell would be able to use.”⁴³⁴

On January 25, 2011, the Department of Justice issued a press release announcing the unsealing of the 53-count indictment.⁴³⁵ At the press conference that day, when a reporter asked SAC Newell whether ATF had purposely allowed firearms to enter Mexico as part of an investigation, Newell answered, “Hell, no!”⁴³⁶ Two days later, ATF received its first letter from Senator Grassley inquiring about whistleblower allegations of gunwalking.⁴³⁷

As previously discussed, Special Agent Gary Styers, assigned to Group VII for a portion of Fast and Furious, detailed his experience in a February 3, 2011, memo.⁴³⁸ He wrote the memo to document his interview with congressional investigators on February 2, 2011. The Justice Department produced documents in January 2012 showing that the memo was sent to Deputy Director Hoover and ATF’s General Counsel, Joel Roessner.

The memo, which the Department has made available only for an *in camera* review apparently due to its embarrassing contents rather than concerns about sensitive law enforcement information, includes a clear example of cessation of the surveillance of weapons in Fast and Furious. It also highlights the lack of agents in the group assigned to surveillance.⁴³⁹ Yet the Justice Department, in its now-infamous February 4, 2011, letter to Senator Grassley, stated in no uncertain terms:

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.**⁴⁴⁰

Many officials within ATF and the Justice Department could have, and clearly should have, put an end to this case long before the indictments were handed down. Those responsible for failing to do so are examined in the next part of this report.

⁴³⁴ E-mail from William McMahon to Drew Wade (Jan. 21, 2011) [HOG 005537] (Exhibit 208).

⁴³⁵ Press Release, Dennis K. Burke, Office of the United States Attorney for the District of Arizona, Grand Juries Indict 34 Suspects in Drug and Firearms Trafficking Organization (Jan. 25, 2011).

⁴³⁶ Dennis Wagner, *Phoenix-area gun store, ATF sting may be linked to border shootout*, ARIZ. REPUBLIC (Feb. 1, 2011), available at <http://www.azcentral.com/arizonarepublic/news/articles/2011/02/01/20110201phoenix-gun-store-atf-sting-border-shootout.html>.

⁴³⁷ Letter from Ranking Member Charles Grassley to ATF Acting Director Kenneth Melson (Jan. 27, 2010).

⁴³⁸ Memorandum from Gary Styers to Robert Champion, “Contact with Congressional Investigators” (Feb. 3, 2011) (Exhibit 95).

⁴³⁹ *Id.* at 2-3.

⁴⁴⁰ Letter from Assistant Attorney General Ronald Weich to Ranking Member Charles Grassley (Feb. 4, 2011) (emphasis added).

V. Assessing Culpability

This report assesses only the culpability of ATF officials. The following report will assess the culpability of Justice Department Officials including U.S. Attorney Dennis Burke, Assistant Attorney General Lanny Breuer, Deputy Assistant Attorney General Jason Weinstein, Associate Deputy Attorney General Edward Siskel, Acting Deputy Attorney General Gary Grindler, and Deputy Chief of Staff Monty Wilkinson.

1. *Special Agent in Charge of the Phoenix Field Division William Newell*

| | |
|-----------------|--|
| FINDING: | <u>Repeatedly risky:</u> When he became a SAC, Bill Newell consistently pushed the envelope of permissible investigative techniques. He had been reprimanded by William Hoover before for crossing the line, but under a new Administration and new Attorney General he reverted back to the use of risky gunwalking tactics. |
|-----------------|--|

As Special Agent in Charge (SAC) of the ATF Phoenix Field Division, William Newell oversaw all ATF operations in both Arizona and New Mexico, including 552 miles of the U.S.-Mexico border.⁴⁴¹ Under Newell's leadership, the strategy of Operation Fast and Furious was conceived and implemented. With his approval, Operation Fast and Furious lasted over a year as hundreds of weapons flowed into Mexico and found their way into the possession of the increasingly violent Mexican drug cartels.⁴⁴²

A. Earlier Operations

Newell became SAC of ATF's Phoenix Field Division in June 2006.⁴⁴³ Around that same time, ATF began walking guns in a case in the Tucson Field Office of the Phoenix Field Division called Operation Wide Receiver. In Operation Wide Receiver, ATF agents worked with a cooperating FFL to obtain real-time data regarding weapons sales to known straw purchasers. Yet despite having the legal authority to do so, agents did not use this information to conduct arrests or interdict weapons.⁴⁴⁴ As one internal e-mail from a Resident Agent in Charge in Tucson to a Resident Agent in Charge in San Diego detailed, "[W]e believe at this point there is more value in the surveillance, identification of locations, persons, and asset[s] rather than making sight arrests."⁴⁴⁵ Later, the Phoenix Field Division discussed coordinating with the

⁴⁴¹ *Hearing Before the Subcomm. on Commerce, Justice, Science and Related Agencies of the H. Comm. on Appropriations*, 111th Cong. (2009) (statement of William Newell, Special Agent in Charge, ATF Phoenix Field Division).

⁴⁴² See Firearms Trafficking to the United Mexican States Thorough Arizona: "Project Iron River," ATF Phoenix Field Division (Sept. 2005) [HOCR 001356 – 001394] (Exhibit 209).

⁴⁴³ Newell Transcript at 9 (Exhibit 140).

⁴⁴⁴ Memorandum to Jason Weinstein from Laura Gwinn, "Operation Wide Receiver (Tucson, AZ USAO)" (Oct. 1, 2009) [HOCR 003391-003393] (Exhibit 210).

⁴⁴⁵ E-mail from Chuck Higman to Shawn Hoben (Jun. 15, 2006) [HOCR 005189] (Exhibit 211).

Mexican government to arrest these straw purchasers across the U.S.-Mexican border.⁴⁴⁶ The idea was to conduct a controlled delivery in which ATF agents would follow the weapons to the border and watch them cross over into Mexico, where Mexican authorities would be waiting to pick up the surveillance.⁴⁴⁷ Once the straw purchasers crossed the border with the weapons, Mexican authorities would follow the firearms to their final destination in Mexico.⁴⁴⁸

However, a controlled delivery was apparently never attempted.⁴⁴⁹ The straw purchasers simply continued to traffic to Mexico. Only in June 2007, over a year into the case, did one ATF official finally write: “We have reached that stage where I am no longer comfortable allowing additional firearms to ‘walk,’ without a more defined purpose.”⁴⁵⁰ Altogether, approximately 350 weapons went to Mexico.⁴⁵¹ ATF seized approximately 50 of these firearms, and 20 of them had been recovered in connection with crimes in Mexico as of early 2010.⁴⁵²

Prosecutors in the Arizona U.S. Attorney’s Office refused to prosecute the straw purchasers from Wide Receiver because they believed ATF had misled them about the level of coordination among the Phoenix Field Division, the cooperating FFL, and the Mexican government. According to one e-mail: “[T]he first AUSA that was on Wide Receiver [said] the reason he chose not to prosecute it was because ATF lied to him and said that the guns were being followed/interdicted by the Mexican authorities on the other side of the border. . . . The next AUSA chose not to prosecute it for the same reason.”⁴⁵³ Others within ATF also had moral objections to such tactics.⁴⁵⁴

Another fall 2007 case conducted out of Newell’s Phoenix Field Division was known by its main suspect, Fidel Hernandez, and just like Operation Fast and Furious, had Special Agent Hope MacAllister as the case agent. In the Hernandez case, ATF agents actually communicated with Mexican authorities in order to try to set up a controlled delivery. The idea was for Mexican authorities to arrest straw purchasers once they crossed the border.⁴⁵⁵ One internal

⁴⁴⁶ ATF Operational Plan, Operation Wide Receiver (Oct. 7, 2006) [HOCR 003367-003368] (Exhibit 212).

⁴⁴⁷ E-mail from [ATF Tucson Office] to Chuck Higman (Apr. 10, 2007) [HOCR 5315] (Exhibit 213).

⁴⁴⁸ ATF Operational Plan, Operation Wide Receiver (May 31, 2007) [HOCR 006279-006280] (Exhibit 214).

⁴⁴⁹ Phoenix Field Division, ATF, Briefing Paper, *Operation WIDE RECEIVER #785085 06 0051* (Aug. 21, 2006) [HOCR 005243-005246] (Exhibit 215).

⁴⁵⁰ E-mail from Chuck Higman to [ATF Southwest Region OCDETF Coordinator] (Jun. 26, 2007) [HOCR 005412-005413] (Exhibit 216).

⁴⁵¹ S. Subcomm. on Crime and Terrorism Hearing, *Combating International Organized Crime*, 112th Congress (Nov. 1, 2011), at 9; *see also* e-mail from James Small to George Gillett (Aug. 3, 2009) [HOCR 005432] (Exhibit 10).

⁴⁵² “Project Gunrunner Investigations with a Nexus to Mexico Cartels,” Phoenix Field Division (Feb. 25, 2010) [HOCR 004993-004997] (Exhibit 217).

⁴⁵³ E-mail from [FFL4] to Laura Gwinn (Sep. 22, 2011) [HOCR 006278] (Exhibit 218).

⁴⁵⁴ *See* Memo from Jennifer Maldonado to U.S. Att’y Paul Charlton (July 13, 2006) [HOCR 003365] (Exhibit 219).

⁴⁵⁵ ATF Operational Plan, Case Number 785045-07-[redacted] (Sep. 26, 2007) [HOCR 006330-006331] (Exhibit 220).

Phoenix Field Division briefing paper characterized the operation as “part of an experimental effort to prosecute firearms trafficking cases in Mexico through an International agreement.”⁴⁵⁶

All did not go according to plan, however. When traffickers crossed the border with 19 firearms,⁴⁵⁷ Mexican authorities, waiting on the other side of the border, missed the surveillance handoff.⁴⁵⁸ The next week, Newell reported:

We are potentially going to give it another shot They have already purchased another dozen or so firearms since returning from Mexico last weekend. They are up to about 250 of the “weapons of choice” so **if this goes we’ll be able to cement our role as the lead firearms trafficking agency on this side of the border** and score some major points with the Mexicans, thus ensuring that they clearly understand we are willing and able to do these very sorts of things to address their very vocal concerns.⁴⁵⁹

Upon learning about this case and the missed surveillance handoffs, Newell’s supervisors at ATF headquarters were worried. Then-Assistant Director for Field Operations William Hoover had many questions for Newell:

Have we discussed the strategy with the US Attorney’s Office re letting the guns walk? Do we have this approval in writing? Have we discussed and thought thru the consequences of same? Are we tracking south of the border? Same re US Attorney’s Office. Did we find out why they missed the hand off of the vehicle? What are our expected outcomes?⁴⁶⁰

Hoover continued: “Also, did the Mexico Country Office speak to anyone in Field Op’s prior to briefing the Ambassador? What exactly did we tell him? Why was this necessary at this time in the Inv?”⁴⁶¹

Twenty minutes after receiving these questions from Hoover, Newell responded: “[J]ust got notified that the subjects are heading south with another load of guns—right now.”⁴⁶² In an effort to placate Hoover and allow his operation to continue, Newell responded:

⁴⁵⁶ Weekly Activity Report for the Phoenix II Field Office, August 25-August 31, 2007 [HOCR 006303] (Exhibit 221).

⁴⁵⁷ E-mail from Carson Carroll to Robert Champion (Sept. 28, 2007) [HOCR 006350-006352] (Exhibit 222).

⁴⁵⁸ E-mail from Carson Carroll to William Hoover (Sep. 28, 2007) [HOCR 002269] (Exhibit 223).

⁴⁵⁹ E-mail from William Newell to Carson Carroll, et al. (Oct. 2, 2007) [HOCR 006364-006368] (emphasis added) (Exhibit 224).

⁴⁶⁰ E-mail from William Hoover to William Newell and Carson Carroll (Oct. 4, 2007) [HOCR 002243-002246] (Exhibit 225).

⁴⁶¹ E-mail from William Hoover to William Newell and Carson Carroll (Oct. 4, 2007) [HOCR 002253-002256] (Exhibit 226).

⁴⁶² E-mail from William Newell to William Hoover (Oct. 4, 2007) [HOCR 002253-002256] (Exhibit 226).

I know you have reservations but please rest assured that this will go down as planned . . . and will have big payoffs for us and the Department in addressing Mexico's concerns that we (US) aren't doing enough to address their concerns. Trust me, I'm with Gov't.⁴⁶³

However, the operation did not go down as planned. Newell summarized the next morning:

As you might know this deal did not go down last night. Unfortunately the Mex Feds overreacted to their embarrassing loss of the vehicle last week at the border by sending way too many people last night and word must have gotten out that crossing the border last night with contraband was not a good idea. This caused the subjects to drop off a large portion of their load of firearms at a previously unknown residence in Nogales (U.S. side) and then head back to Phoenix. . . . Lessons learned.⁴⁶⁴

Ironically, Newell also suggested to another colleague, "It might be worth our while to prepare a [sic] 'International Firearms Trafficking 101' briefing paper outlining the ins and outs of working a case to Mexico, focusing on the legalities."⁴⁶⁵

That day, Hoover made it clear to then-Deputy Assistant Director Carson Carroll that he did "not want any firearms to go South until further notice."⁴⁶⁶ He also stated, "I expect a full briefing paper on my desk Tuesday morning from SAC Newell with every question answered."⁴⁶⁷ Newell's briefing paper for Hoover again laid out his rationale for the case:

Taking off this "straw purchasing" ring would only create a situation in which another ring would need to be put together by the . . . drug trafficking organization. Doing this would never give us the opportunity to find out who the middle-men in Mexico are

[W]e in the division started discussions about using this investigation as a "test case" to pursue something we had never tried before but something that would be in line with one of the key elements of "Gunrunner" which is establishing a closer working and trusting relationship with our Mexican law enforcement counterparts.⁴⁶⁸

Even if Hoover did not accept Newell's argument for not "taking off" the straw purchasing ring was not accepted, Hoover must have accepted the merits of coordinating with Mexico, because

⁴⁶³ E-mail from William Newell to William Hoover (Oct. 4, 2007) [HOCR 002243-002244] (Exhibit 225).

⁴⁶⁴ E-mail from William Newell to Anne Marie Paskalis (Oct. 5, 2007) [HOCR 006777] (Exhibit 227).

⁴⁶⁵ E-mail from William Newell to Davy Aguilera (Oct. 5, 2007) [HOCR 006777] (Exhibit 227).

⁴⁶⁶ E-mail from William Hoover to Carson Carroll (Oct. 5, 2007) [HOCR 001907] (Exhibit 228).

⁴⁶⁷ *Id.*

⁴⁶⁸ *Responses to Questions by ADFO Hoover RE: Phoenix to Mexico Firearms Trafficking Case*, at 2-3 (Oct. 9, 2007) [HOCR 002759-002763] (Exhibit 229).

in preparation for a November 16, 2007, meeting between brand new Attorney General Michael Mukasey and Mexican Attorney General Medina Mora, ATF contributed to a portion of the memo to the Attorney General which read:

ATF has recently worked jointly with Mexico on the first-ever attempt to have a controlled delivery of weapons being smuggled into Mexico by a major arms trafficker. . . . [T]he first attempts at this controlled delivery have not been successful **To that end, it is essential that a Mexican vetted unit be assigned to work with ATF in this regard. ATF's attaché in Mexico City has briefed Attorney General Medina Mora on this attempted controlled delivery, and stressed the importance of a vetted unit being assigned.**⁴⁶⁹

The targets in Hernandez were arrested in the U.S. on November 26, 2007.⁴⁷⁰ Ultimately, the case appears to have lasted only a few months, and the cooperation issues raised by the Attorney General with Mexico seem to be an example of fruitful collaboration with Mexico.

Hoover had been given notice that Bill Newell was willing to push the envelope. At one point, Newell indicated to Deputy Assistant Director Carroll that he was done taking such approaches:

I think we both understand the extremely positive potential for a case such as this but at this point I'm so frustrated with this whole mess I'm shutting the case down and any further attempts to do something similar. **We're done trying to pursue new and innovative initiatives** – it's not worth the hassle.⁴⁷¹

However, just a few months later, on January 2, 2008, Carroll e-mailed Newell with a request: "I was wondering if you could have someone do a powerpoint [sic] on the recent case where you tried to walk the guns to Mexico."⁴⁷² Newell forwarded the e-mail to his ASACs, writing: "**We're back in business.**"⁴⁷³

Later that year, Newell again attempted a similar approach to Wide Receiver and Hernandez in a case involving a straw purchasing network led by Alejandro Medrano.⁴⁷⁴ According to one description of the case, Medrano involved a "plan to let firearms walk to Mexico with the agreement that the Mexican authorities would conduct surveillance of the

⁴⁶⁹ *Meeting of the Attorney General with Mexican Attorney General Medina Mora* (Nov. 16, 2007) [HOCR 003239-003240] (Exhibit 230).

⁴⁷⁰ Phoenix Field Division, ATF, *After Action Report* (Nov. 26, 2007) [HOCR 006494] (Exhibit 231).

⁴⁷¹ E-mail from William Newell to Carson Carroll (Oct. 6, 2007) [HOCR 001906] (Exhibit 228).

⁴⁷² E-mail from Carson Carroll to William Newell (Jan. 2, 2008) [HOCR 001895] (Exhibit 232).

⁴⁷³ E-mail from William Newell to James Needles and Thomas Mangan (Jan. 2, 2008) [HOCR 001895] (emphasis added) (Exhibit 232).

⁴⁷⁴ ATF Operational Plan, Case Number 785085-08-[redacted] (Aug. 9, 2008) [HOCR 006600-006602] (Exhibit 233).

subjects once they crossed into Mexico in an attempt to locate the ‘drop house’ and possibly the ‘money guy’ in Agua Prieta Mexico [sic].”⁴⁷⁵ The Phoenix Field Division again received complaints that the tactics used by ATF agents in the Medrano case were unacceptable. The Resident Agent in Charge of the Tucson field office, who had also been involved in Operation Wide Receiver, informed ASAC George Gillett on August 12, 2008 that “ICE would not support the concept of letting guns ‘walk’ to Mexico.”⁴⁷⁶ That same day, a SAC at ICE e-mailed Newell:

[O]ur agents left that meeting with the understanding that any weapons that were followed to the border would be seized. On Friday night, however, **our agents got an op plan that stated that weapons would be allowed to go into Mexico for further surveillance** by LEAs there.

This would be a very sensitive undertaking if this were to be done. **Since this hadn’t been discussed in advance** and we had not had an opportunity to coordinate with our Attache in Mexico, **we balked at the plan.**⁴⁷⁷

Newell responded that the ICE SAC “was told that your folks were aware of the plan to allow the guns to cross, in close cooperation with both our offices in Mexico as well as the Mexico Feds.”⁴⁷⁸ This defiance by Newell in the face of opposition to his plan typified Newell’s attitude as SAC of the Phoenix Field Division.

Newell later admitted that his attempt to use controlled deliveries in the Medrano and Hernandez cases had not been successful:

Q. But to your knowledge, in each instance there was a -- there was a control on the delivery such that there were authorities on the other side of the border that then were responsible?

A. Of the ones I'm aware of, yes.

Q. And the guns were actually interdicted or seized after -- at the end of the operation of operations?

* * *

[A]re you aware of that occurring in multiple other cases and that in each case, that that was successful, that the handoff to the

⁴⁷⁵ E-mail from Brandon Garcia to George Gillett (Aug. 12, 2008) [HOCR 006656-006660] (Exhibit 234).

⁴⁷⁶ E-mail from Chuck Higman to George Gillett (Aug. 12, 2008) [HOCR 006656] (Exhibit 234).

⁴⁷⁷ E-mail from Matthew Allen to William Newell (Aug. 12, 2008) [HOCR 001195-001196] (emphasis added) (Exhibit 235).

⁴⁷⁸ E-mail from William Newell to Matthew Allen (Aug. 12, 2008) [HOCR 001195] (Exhibit 235).

authorities on the other side was successful and the guns were actually interdicted, is that what happened?

A. In the instances I'm aware of, **it was not successful.**

Q. And how many instances are we talking about approximately?

A. I believe it was just a couple that I'm aware.

Q. So 2 or 3?

A. 2 or 3, yes.

Q. And none of them were successful?

A. To my knowledge, no.⁴⁷⁹

When others raised concerns about Newell's strategy, he sought to assuage their worries about these dangerous operations by assuring them that he had obtained the necessary approvals and insisting appropriate safeguards were in place. Though Newell genuinely believed his use of innovative techniques would yield strong results, his superiors within ATF and peers outside of ATF were well aware of the dangers of such tactics.

B. Cartel-Based Strategy

Newell apparently began to believe that the new political leadership in the Justice Department in 2009 might welcome the use of the previously eschewed investigative tactics. Two early efforts by the new Department leadership sent such signals. One was that Assistant Attorney General Lanny Breuer, head of the Criminal Division at Justice Department headquarters, assigned a prosecutor to Arizona to resurrect and prosecute the Wide Receiver case despite its use of gunwalking tactics. The U.S. Attorney's Office had not previously prosecuted Wide Receiver because ATF had not been forthcoming about the use of these controversial tactics. As one individual in ATF's Phoenix Field Division summarized on August 3, 2009, when proposing that the Criminal Division consider the case, the "AUSA was . . . pushing back w/ moral dilemma w/ the G[overnment] allowing the targets to traffic 300+ firearms to Mexico."⁴⁸⁰ Breuer's Criminal Division found no problems with prosecuting the case and formally accepted it at the end of September 2009.⁴⁸¹ It may have appeared to Newell that gunwalking tactics were no longer a bar from prosecution.

⁴⁷⁹ Newell Transcript at 103-104 (Exhibit 140).

⁴⁸⁰ E-mail from James Small to George Gillett (Aug. 3, 2009) [HOCR 005432] (Exhibit 10).

⁴⁸¹ E-mail from George Gillett to William Newell (Sep. 26, 2009) [HOCR 005441]; e-mail from Kevin Carwile to William Newell (Sep. 30, 2009) [HOCR 003389] (Exhibit 13).

The next signal from Department leadership that the tactics might be welcomed came in the form of the Department's fall 2009 draft "Strategy for Combating the Mexican Cartels."⁴⁸² Distributed throughout the Department and ATF, the strategy aimed to shift focus to building large, complex cases against organizations rather than prosecuting straw purchasers.

The new Justice Department strategy encouraged the use of "prosecutor-led, multi-agency task forces, specifically using the Organized Crime Drug Enforcement Task Forces (OCDETF) Program."⁴⁸³ The strategy noted that "OCDETF has established actual, brick-and-mortar Co-Located Strike Forces, for the pursuit of the highest level traffickers of drugs, guns, and money."⁴⁸⁴ Phoenix, Arizona was one of the locations where a Strike Force was established. The strategy noted in several places that the task force model should be "prosecutor-led," indicating the need to have the local U.S. Attorney's Office on board.

The strategy also stated:

[M]erely seizing firearms through interdiction will not stop firearms trafficking to Mexico. We must identify, investigate, and eliminate the sources of illegally trafficked firearms and the networks that transport them.⁴⁸⁵

Newell and his agents in Phoenix may have viewed this statement as the green light they had been waiting for. Arresting straw purchasers was not enough to stop the flow of weapons to Mexico, and new strategies were needed. To develop a bigger case under this new strategy, ATF leadership in Phoenix believed that agents could watch the straw purchasers, not interdict, and gather intelligence for long periods of time in order to work their way up the hierarchy of a straw purchasing organization. This was the essence of Fast and Furious.

The Assistant Special Agent in Charge in Phoenix, George Gillett, testified that he believed the Justice Department's draft strategy provided the direction for Fast and Furious:

- Q. Was it your understanding that at that time DOJ was looking to ATF to focus on cartels and more of an organized crime level rather than straw purchasers?
- A. Yes, sir. **The content of that plan specifically addressed wanting ATF not to focus on straw purchasers, but to focus on cartels and larger complex conspiracy type investigations.**

⁴⁸² *Draft Department of Justice Strategy for Combating the Mexican Cartels* (Oct. 22, 2009) [HOCR 001451-001459] (Exhibit 2).

⁴⁸³ *Id.*

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.* (emphasis added).

Q. How did that initiative trickle down to the agents in the Phoenix field office?

A. Well, to kind of paint the picture, there was the IG reports that addressed the ineffective nature of straw purchasers. The drug enforcement for the office here in Phoenix was looking to stand up an organized crime drug enforcement task force strike force, OCDETF. And the special agent in charge of the DEA office was asking for ATF's participation in this joint multi-agency strike force. ATF here was not able to get any straw purchase prosecutions at the time because of an interpretation of the law by the U.S. Attorney's Office here in the District of Arizona. **So this strategy in October 2009 handed down by the DAG's office, actually from the Phoenix perspective, was well timed and provided us with direction on how to proceed in these types of firearms trafficking investigations.**⁴⁸⁶

Newell agreed with Gillett's comments. Newell testified:

Q. The Department level strategy was communicated to you and you had to implement it.

A. Right.

Q. And was there any guidance as to specifically how down at the agent level?

A. It was -- we received instruction, **but we wanted to focus on firearms trafficking networks, organizations as per the strategy that the Department had pushed out**, yes.

Q. And was there a goal to not merely focus on straw buyers?

A. The goal was to go after the infrastructure, the organizations themselves; and straw buyers are considered the low rung and one part of a larger organization, yes.⁴⁸⁷

The new cartel-focused strategy promulgated by the Department of Justice provided Newell justification to go forward with another gunwalking operation—the fourth during his tenure as SAC. This one would be bigger and riskier. One week after Justice Department headquarters announced the new strategy, Fast and Furious began. According to Newell, Fast and Furious aimed to reach the highest levels of a gun trafficking operation. He stated:

⁴⁸⁶ Gillett Transcript at 12-13 (emphasis added) (Exhibit 4).

⁴⁸⁷ Newell Transcript at 11 (emphasis added) (Exhibit 140).

The goal of the investigation . . . is **using the straw purchasers, identifying the straw purchasers, to get, using information we gleaned from them in a sense of where they're going**, where they're dropping the guns off, to identify the middlemen, to identify the decision makers and seize assets when appropriate, and we have the ability to do that, identify bank accounts, identify transporters, identify anything so that when we make the arrests, do the takedown, that we take down the whole organization.⁴⁸⁸

C. Initiation of Operation Fast and Furious

From the outset, Newell was aware of the investigative tactics in Operation Fast and Furious. He suggested strategy, got updates about significant gun recoveries in Mexico as soon as they occurred, and frequently met with the U.S. Attorney to apprise him of the case's progress. The very first recovery of Fast and Furious weapons, in Agua Prieta, Sonora, Mexico, just days after the inception of Fast and Furious, piqued Newell's interest. Newell e-mailed ASAC Gillett to alert him to the significance of the recovery, stating: "[T]his seizure has the potential of being a 'hot' issue in many ways."⁴⁸⁹ That very day, Newell reviewed the Fast and Furious case management log.⁴⁹⁰ A few days later, Newell wanted to create a chart demonstrating the links between Fast and Furious and the gun recoveries in Sonora.⁴⁹¹ Newell knew from the very first Fast and Furious briefing paper that he sent to ATF headquarters on December 2, 2009, that cooperating Federal Firearms Licensees (FFLs) were notifying ATF's Phoenix Field Division of suspicious purchases as those purchases occurred.⁴⁹²

In the very first Fast and Furious briefing paper Newell sent to ATF headquarters on December 2, 2009, he stated in no uncertain terms that Jacob Chambers was one of the individuals whose purchases the cooperating FFLs were reporting to ATF. Newell later testified, however, that "ATF did not knowingly allow Mr. Chambers to continue to purchase firearms after becoming a target of the investigation."⁴⁹³ According to an internal Phoenix Field Division document prepared at Newell's request, however,⁴⁹⁴ **after** becoming a target in the investigation,

⁴⁸⁸ Newell Transcript at 92-93 (emphasis added) (Exhibit 140).

⁴⁸⁹ E-mail from William Newell to George Gillett (Nov. 24, 2009) [HOGR 002023] (Exhibit 24).

⁴⁹⁰ ATF Management Log, Case 785115-10-[redacted] (Nov. 24, 2009) (Exhibit 25).

⁴⁹¹ E-mail from William Newell to George Gillett and James Needles (Nov. 30, 2009) [HOGR 001956] (Exhibit 30).

⁴⁹² E-mail from William Newell to William McMahon (Dec. 2, 2009) (Exhibit 15); CHAMBERS Trafficking Case IN#785115-10-[redacted], "INVESTIGATIVE STEPS TAKEN/INVESTIGATIVE PLAN" (Dec. 2, 2009), at 2 (Exhibit 15).

⁴⁹³ William Newell Responses of Sept. 9, 2011, Questions for the Record, *Operation Fast and Furious: The Other Side of the Border, Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. (Jul. 26, 2011), at 8.

⁴⁹⁴ E-mail from William Newell to James Needles and George Gillett (Mar. 16, 2011) [HOGR 001477-001478] (Exhibit 236).

Chambers purchased 37 more firearms from cooperating FFLs, which were giving ATF contemporaneous notice.⁴⁹⁵

In the early stages of Fast and Furious, Newell closely monitored the case management log. He reviewed it three times between November 24 and December 11, 2009.⁴⁹⁶ Newell also frequently inquired about the case's status. For example, on December 13, 2009, Newell sent an e-mail to Gillett entitled "Hope's case status?"⁴⁹⁷ Gillett responded:

At least 17 of the guns recently recovered in [Tijuana] are from Hope's purchasers. The OCDETF proposal was drafted yesterday. **Total purchased last week (including yesterday)** were [sic] approximately 175.⁴⁹⁸

Newell even suggested specific operational tactics to use. For instance, on January 6, 2010, he asked: "Have we explored using LPRs [License Plate Readers] in Hope's case? Possibly outside the auto body shop . . . ?"⁴⁹⁹

Newell was also aware that ATF personnel had expressed reservations about Fast and Furious in the early stages. He knew about ASAC Gillett's discussion with ATF Southwest Border Coordinator Ray Rowley over Rowley's concerns.⁵⁰⁰ Newell, however, bristled at the intrusion of someone from ATF headquarters into his operation, calling Rowley a "hand wringer" with "no control over, or say in," Newell's case.⁵⁰¹

D. Strategy and Execution of Fast and Furious

Because Fast and Furious was a direct result of the cartel-based strategy, Newell relied on guidance from the U.S. Attorney's Office in Phoenix regarding strategy, legal issues, and investigative techniques, including interdiction. Due to Newell's reliance on federal prosecutors in the Arizona U.S. Attorney's Office, ATF did not interdicted weapons until the U.S. Attorney's Office believed there was enough evidence to successfully prosecute. Newell later recalled of this time period:

And we were doing everything we could because we saw that there was a lot of purchases going on and we still didn't have enough evidence to stop this legally, we felt, in conjunction with, as we read in the briefing paper earlier with the Attorney General's Office, we had minimal evidence at that point. Now, this is December 17th [2009]. The

⁴⁹⁵ ATF Phoenix Field Division chart, purchases by indicted targets before and after entered in Operation Fast and Furious (Jun. 149, 2011) [HOGR 001479] (Exhibit 237).

⁴⁹⁶ ATF Management Log, Case 785115-10-[redacted] (Nov. 24, 2009; Dec. 2, 2009; Dec. 11, 2009) (Exhibit 25).

⁴⁹⁷ E-mail from William Newell to George Gillett (Dec. 13, 2009) [HOGR 001461] (Exhibit 36).

⁴⁹⁸ E-mail from George Gillett to William Newell (Dec. 13, 2009) [HOGR 001461] (Exhibit 36).

⁴⁹⁹ E-mail from William Newell to George Gillett (Jan. 6, 2010) (Exhibit 238).

⁵⁰⁰ *Id.*

⁵⁰¹ E-mail from William Newell to Steve Martin (Dec. 18, 2009) [HOGR 002395] (Exhibit 53).

briefing paper from earlier is January 8th [2010], so we're talking 3 weeks later. **And at that point we, in conjunction with the U.S. Attorney's Office we still felt we had minimal evidence.** So that's just a step that was taken to try to develop more information on these individuals.⁵⁰²

It was *not* Newell's job, however, to wait until there was evidence beyond a reasonable doubt to order the interdiction of weapons. Newell's position required him to balance public safety interests against building a case.

Newell demonstrated a poor understanding of the fundamental legal standards involved in law enforcement. He testified that ATF's Phoenix Field Division believed they had not met the legal standards required for anticipated *prosecution*. However, he repeatedly conflated that standard with the standard required for merely *questioning* suspected straw purchasers, which is the much lower "reasonable suspicion" standard. At one point during his transcribed interview, Newell miraculously managed to use all three legal thresholds for questioning, interdicting, and prosecuting in a single sentence:

Again, when you're conducting an investigation like this . . . you don't want to show your hand. **I mean, if you suspect something is occurring, but you're well short of probable cause to be able to prove something beyond a reasonable doubt,** especially in a jury in a place like Arizona, a State that has a lot of guns, and that is okay, you want to be able to say, okay, this purchase just occurred, okay?⁵⁰³

Yet this statement from Newell also reveals a bigger problem. Rather than questioning straw purchasers, Newell was of the opinion that ATF shouldn't "show [its] hand." Therefore, so as to avoid tipping off the straw purchasers, Newell and others in ATF's Phoenix Field Office favored avoiding all contact with straw purchasers so as not "compromise the bigger case."⁵⁰⁴

Newell's lack of experience as an actual street agent may have hampered his understanding of how to approach straw purchasers. When questioned about what agents *should* have done in *Fast and Furious*, Newell testified:

Q. Going back to my hypothetical, you're at the FFL, your badge is displayed, and the buyer looks over to you, acknowledges that you're with the ATF, and initiates conversation with you and says, do you have any questions? What other types of questions would you ask that potential buyer who initiated the conversation with you and wants to be completely open and honest with you?

⁵⁰² Newell Transcript at 66 (emphasis added) (Exhibit 140).

⁵⁰³ Newell Transcript at 37 (emphasis added) (Exhibit 140).

⁵⁰⁴ E-mail from William Newell to Kevin O'Reilly (Jul. 28, 2010) [NSS F&F 000020-000026] (Exhibit 143); e-mail from William Newell to William McMahon (Dec. 21, 2010) [HOCR 001935] (Exhibit 144).

A. . . . I would guess I would ask, **how come you like AK-47s so much? You seem to like AK-47s. You must have a niche for AK-47s.**⁵⁰⁵

Newell later stated: “There are a number of ways to initiate contact with ‘straw’ purchaser suspects, many of which were used in this investigation.”⁵⁰⁶ Yet much to the dismay of many of his field agents, Newell believed that they needed more than reasonable suspicion simply to confront a suspected straw purchaser and ask him some basic questions.⁵⁰⁷

Newell’s desire to not “show [ATF’s] hand” or “compromis[e] the case” played a large role in *Fast and Furious*. When Deputy Assistant Director Steve Martin suggested to Newell in December 2009 that “the target is the top in the cartel and not the straw purchase urchin (whose brain should be sucked dry for intel),”⁵⁰⁸ Newell responded, “Amen brother.”⁵⁰⁹ However, the “straw purchase urchin” could only have their “brain . . . sucked dry for intel” if ATF agents confronted or arrested them. Instead, Newell wanted to identify the whole network *before taking action*:

The arrest of the suspected “straw” purchasers, before the organizers and financiers of the criminal network could be detected and identified, would have allowed the conspirators to continue to traffic guns unabated, as the arrested purchasers, facing negligible jail time, have both little incentive and little helpful information to offer law enforcement. Experience dictates that they would have been quickly replaced by new “straw” purchasers unknown to law enforcement. This literally would have empowered the organization to continue to operate and illegally traffic firearms in virtual anonymity; an irresponsible situation we sought to avoid in seeking OCDETF approval.⁵¹⁰

Newell wanted to wait and make the arrests—top to bottom—all at once. Rather than merely working his way up the chain by flipping cooperating witnesses at each stage, which did not win headlines, Newell seemed to like the idea of taking down a cartel in spectacular fashion.

Later, in testimony before the House Committee on Oversight and Government Reform, Newell attempted to synthesize his goals in *Fast and Furious*:

⁵⁰⁵ Newell Transcript at 36 (emphasis added) (Exhibit 140).

⁵⁰⁶ William Newell, Responses of Sep. 9, 2011, Questions for the Record, *Operation Fast and Furious: The Other Side of the Border, Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 112th Cong. (Jul. 26, 2011), at 6.

⁵⁰⁷ Newell Transcript at 43-45 (Exhibit 140).

⁵⁰⁸ E-mail from Steve Martin to William Newell (Dec. 18, 2009) [HOGR 002395] (Exhibit 53).

⁵⁰⁹ E-mail from William Newell to Steve Martin (Dec. 18, 2009) [HOGR 002395] (Exhibit 53).

⁵¹⁰ William Newell, Responses of Sept. 9, 2011, Questions for the Record, *Operation Fast and Furious: The Other Side of the Border, Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 112th Cong. (Jul. 26, 2011), at 7.

- (1) [T]he desire to establish to the satisfaction of the USAO that the suspects were indeed unlawful “straw” purchasers and members of the criminal enterprise;
- (2) [T]o identify the breadth, scope and methodologies of the criminal enterprise; and
- (3) [T]o seize firearms and arrest the criminally culpable members of the organization when lawfully permitted to do so.⁵¹¹

Even if the U.S. Attorney’s Office had *not* required ATF to meet a burdensome legal standard, accomplishing the second goal would come at the expense of the third. AUSA Emory Hurley’s contemporaneous memo summarizing the January 5, 2010, meeting with ATF identified this tradeoff, stating ATF wanted to “pursue a longer term investigation to target the leader of the conspiracy,” instead of succumbing to “pressure from ATF headquarters to immediately contact identifiable straw purchasers just to see if this develops any indictable cases and to stem the flow of guns.”⁵¹² The Arizona U.S. Attorney’s Office supported ATF’s Phoenix Field Division in this decision.

Newell later told the Committees: “[C]ontact was made with Mr. Patino . . . during the course of this investigation.”⁵¹³ ATF Deputy Director Hoover, however, provided testimony to the contrary:

A. [T]he choice that the folks on the ground make between the strategy deployed by the strike force and the U.S. Attorney's Office was, we cannot step to Patino.

Q. What about arresting him and flipping him?

A. That's -- well, you can either -- you can step to him and do several different things. You can approach him and give him the opportunity to flip and work for you. You can approach him, and if he doesn't do that, then you can arrest him and then see if he will work for you. You can approach him and arrest him and then take him completely out of the picture. Those are the options you have at that time.

Q. But none of those options were employed. They let him sit. They didn't touch him. They didn't talk to him.

⁵¹¹ William Newell, Supplemental Statement of Sep. 21, 2011, *Operation Fast and Furious: The Other Side of the Border*, Hearing Before the H. Comm. on Oversight & Gov’t Reform, 112th Cong. (Jul. 26, 2011), at 4-5.

⁵¹² *Id.*

⁵¹³ William Newell, Responses of Sep. 9, 2011, Questions for the Record, *Operation Fast and Furious: The Other Side of the Border*, Hearing Before the H. Comm. on Oversight & Gov’t Reform, 112th Cong. (Jul. 26, 2011), at 3.

A. That's correct.

Q. They didn't step to him.

A. That's correct. . . . [T]hey did not step to him, period. And I think that was a mistake that we made.⁵¹⁴

The “mistake” in not confronting Patino was a deliberate strategy resulting from ATF’s January 5, 2010, meeting with the U.S. Attorney’s Office. Shortly after that meeting, Newell added a new line to a Fast and Furious briefing paper that went to ATF headquarters: “Phoenix Special Agent in Charge Newell has repeatedly met with USA Burke regarding the on-going status of this investigation **and both are in full agreement with the current investigative strategy.**”⁵¹⁵

ATF’s Phoenix Field Division could have taken steps to confront straw purchasers and disrupt the trafficking network in the interests of getting guns off the street, as they “believe[d] that there [might] be pressure from ATF headquarters” to do.⁵¹⁶ Instead, Newell followed the new October 2009 strategy that stated, “merely seizing firearms through interdiction will not stop firearms trafficking to Mexico. We must identify, investigate, and eliminate the sources of illegally trafficked firearms and the networks that transport them.”⁵¹⁷

Since ATF already knew that Manuel Celis-Acosta was the head of the straw purchasing ring, there is no reason why ATF could not have disrupted the straw purchasers while it worked its way from Celis-Acosta up through the traffickers and to the cartel. ATF even had information about the higher-ups from the DEA wire. As previously discussed, ATF Deputy Director William Hoover admitted that Newell’s Phoenix Field Division “dropped the ball” with regard to this information. Instead, Group VII focused entirely on the straw purchasing ring *under* Celis-Acosta—a body that even without disruption from ATF was constantly changing, with the exception of the few main purchasers ATF had identified by December 2009. Five of the straw purchasers bought 90% of the guns in Fast and Furious.⁵¹⁸ ATF supervisors later testified that there were always new people being added. While at the time it may have been unclear whether each of these new individuals was a part of Celis-Acosta’s ring, Group VII failed to work up the ladder from individuals they knew were tied to Celis-Acosta.

⁵¹⁴ Hoover Transcript at 70-71 (Exhibit 121).

⁵¹⁵ Phoenix Group VII, Phoenix Field Division, ATF, *Briefing Paper on 785115-10-[redacted]* (Jan. 8, 2010) [HOCR 001916] (emphasis added) (Exhibit 59); compare Phoenix Group VII, Phoenix Field Division, ATF, *Briefing Paper on 785115-10-[redacted]* (Jan. 8, 2010) [001144-001146] (emphasis added) (Exhibit 54).

⁵¹⁶ Memorandum from Emory Hurley to Mike Morrissey, “Manuel Celis Acosta Trafficking Investigation” (Jan. 5, 2010) [HOCR 002960-002961] (Exhibit 57).

⁵¹⁷ *Draft Department of Justice Strategy for Combating the Mexican Cartels* (Oct. 22, 2009) [HOCR 001451-001459] (Exhibit 2).

⁵¹⁸ Those five purchasers were Jacob Montelongo, Alfredo Celis, Joshua Moore, Sean Steward, and Uriel Patino. See ATF Suspect Gun Database.

Newell should have recognized the limitations of Phoenix Group VII's surveillance capability would have seriously hindered his goal of identifying the trafficking network. Newell's January 5, 2010, e-mail to McMahon stated:

I need help though, in the form of detailees to conduct surveillance. I was hoping to wait until the GRIT but this case has progressed so fast, much quicker than any other case we've been involved with, that **I need bodies asap**. If it's OK with you I'll start reaching out to non-SWB [Southwest Border] SACs tomorrow to feel them out about letting us have some bodies to assist with surveillance.⁵¹⁹

Newell later acknowledged that, in hindsight, he would have "ensured a more effecting [sic] flow of information, between the field and ATF headquarters regarding . . . the need for additional resources in support of the investigation."⁵²⁰

One month later, in February 2010, Newell knew that the case was still understaffed. At that point, ATF deployed a GPS firearms "tracker" since it did not have the manpower to surveil Fast and Furious weapons after the straw purchases took place. The Phoenix Field Division attempted to place a tracker in one of the hundreds of guns that it knew the cooperating FFLs were selling to known straw purchasers. In a February 14, 2010, e-mail to ASAC Gillett, Newell stated:

Any movement on the gun with the tracker? **I told HQ we had plenty of surveillance (loosely the truth)** but that we may end up losing the tracker if the battery runs out before it goes south. After that we'll have to wait for the gun to get seized before we can potentially track it back.⁵²¹

Without functional trackers, the only way to determine where weapons ended up was when they were recovered at crime scenes in Mexico or the United States.

Though the use of a tracker had potential, Newell knew that many other weapons bought by straw purchasers had successfully entered Mexico. He was also well aware ATF was not monitoring or tracking the vast majority of the guns. When the U.S. Attorney's Office expressed doubts on February 22, 2010, Newell reassured them:

Also, I talked to the USA this morning about this case and advised him of the seizure and link to the Tucson OCDETF case. He was **taken aback by some of the facts I informed him about (including the fact that we are up to approx 800 guns)** so I am setting up a briefing for him (alone

⁵¹⁹ E-mail from William Newell to William McMahon (Jan. 5, 2010) [HOCR 002107] (Exhibit 56).

⁵²⁰ William Newell Responses of Sep. 9, 2011, Questions for the Record from H. Comm. on Oversight & Gov't Reform Hearing, *Operation Fast and Furious: The Other Side of the Border*, 112th Congress (Jul. 26, 2011), at 3.

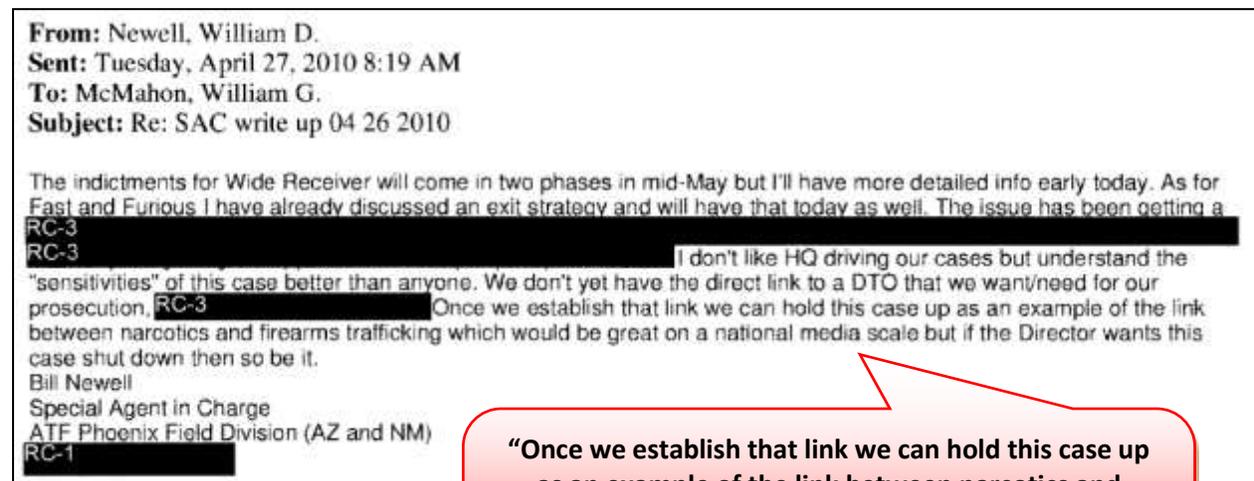
⁵²¹ E-mail from William Newell to George Gillett (Feb. 14, 2010) [HOCR 001467] (emphasis added) (Exhibit 57).

no USAO “posse”) about this case and several other cases I feel he is being misled about.⁵²²

Shortly thereafter, Newell knew the case involved 900 firearms and that “ATF is continuing to receive data [redacted] which overwhelmingly shows the connection amongst these straw purchasers and the FFLs.”⁵²³

Although ATF had sufficient evidence to indict the straw purchasers by late April 2010, Newell was evidently determined to make the bigger case. In his April 27, 2010, e-mail to McMahon, after McMahon had asked for an exit strategy, Newell mentioned his desire for a larger case that would gain national media attention:⁵²⁴

[INTENTIONALLY BLANK]



Though the exit strategy itself acknowledges that enough evidence existed for Patino’s arrest, ATF Phoenix, under Bill Newell’s leadership, chose not to pursue this course.⁵²⁵

⁵²² E-mail from William Newell to David Voth and George Gillett (Feb. 22, 2010) [HOGR 001339] (emphasis added) (Exhibit 73).

⁵²³ E-mail from William Newell to Tanya Young, et al. (Feb. 26, 2010) [HOGR 004992-004997] (Exhibit 74).

⁵²⁴ E-mail from William Newell to William McMahon (Apr. 27, 2010) [HOGR 002416] (emphasis added) (Exhibit 123).

⁵²⁵ “Operation Fast and Furious Exit Strategy” (Apr. 27, 2010), at 1 [HOGR 001179-001181] (Exhibit 126).

E. Death of Agent Terry

Not until the tragic murder of Border Patrol Agent Brian Terry on December 14, 2010, did law enforcement officers finally arrest one of the straw buyers. After Agent Terry's murder, ATF traced two of the weapons recovered at the scene to straw purchaser Jaime Avila, who bought the weapons in January 2010. Immediately, law enforcement set out to arrest Avila. The guns recovered at the scene of Terry's murder were the only new evidence allowing for Avila's arrest. Although scores of similar Fast and Furious weapons had already turned up at violent crime scenes in both the U.S. and Mexico, ATF had not arrested any straw purchasers.

Brian Terry's murder did not present any additional evidence of the straw purchasing scheme that Newell was after. The rapid arrest of Avila after Terry's death belies the claim that a lack of legal authority to intervene caused the months of delay by ATF. Additionally, the initial basis of charges against Avila was a weapon purchased in June 2010—not the weapons found at the scene, which he purchased in January 2010.

Newell was unable to explain what changed between the morning of December 14, 2010, when Avila was a known straw purchaser, and the evening of December 15, 2010, when Avila was arrested. He was unable to point to any additional evidence discovered during that timeframe that established probable cause to arrest Avila and was unable to explain what additional evidence ATF had on Avila that they did not on the other straw purchasers:

Q. If these defendants hadn't been identified yet shortly after the Brian Terry incident, where a border patrol agent was killed, immediately Avila was arrested and that is different than the rest of the defendants, what was unique about that? **Was it the specific tragedy that changed things?**

A. **I mean, what was different there was additional evidence later on in the case concerning Avila. That gave us the ability to charge him with using a false address which is what we charged him in the complaint.**

Q. But you had 40 suspects at that point that you weren't going after their house. 20 of them were indicted subsequently?

A. 20, right.

Q. But you had 40 or so suspects. **And the moment these firearms are found at the Terry scene traced back to Jaime Avila, boom, he is arrested, which is different than everything else that has been described to us with the other suspects in the case.** So we are asking why.

- A. **One of the guns was traced back to him, he was a suspect.**
- Q. But there is guns being traced back that are found in Mexican crime scenes that are being traced back, there is guns that are found in El Paso, there are guns that are found in Naco and that arrest didn't happen.
- A. Well, again, at that point in time, we were still proceeding toward doing one indictment against . . . the whole series of people. **And that incident happened and then there was evidence that it was gathered later in the case to be able to arrest him on a complaint.**
- Q. Surely you're not suggesting that you learned of the address change and the falsehood about the address on the form, you happened to learn about that on December 14th, the same night that Agent Terry was killed? That's not what you are suggesting, is it?
- A. No. I'm not suggesting it at all.
- Q. **So you had the information that allowed you to make the complaint on him long before you actually did it, right?**
- A. **I don't think it was long** -- as I recall, the complaint lists purchases that were made in -- **it was June or July.**
- Q. **6 months earlier, right?**
- A. **Sure. Okay.**⁵²⁶

ATF did not arrest the straw purchasers because the crimes related to the guns they purchased were lower profile in nature, or shamefully because the crimes occurred in Mexico. ATF allowed suspected straw purchasers to continue arming criminals. ATF had enough information to arrest Avila and the other straw purchasers months earlier, yet it chose not to make the arrests. Newell and his agents wanted to build a bigger case. When Brian Terry was killed, ATF was forced to act. Since Avila's straw purchases were connected to a high-profile crime, ATF felt pressure to arrest him immediately—"15 minutes ago," in the words of ASAC George Gillett.⁵²⁷ Other straw purchasers were tied to crimes that had occurred throughout 2010. Those crimes, however, did not motivate ATF to make arrests, likely because they did not generate any media attention or public awareness. In fact, ATF agents had gathered little new evidence against the suspected straw purchasers for months. The fundamental change in the case

⁵²⁶ Newell Transcript at 109-111 (emphasis added) (Exhibit 140).

⁵²⁷ Voth Transcript at 183 (Exhibit 49).

involving Avila was that the murder U.S. Border Patrol agent was inextricably linked to Fast and Furious.

Newell also testified that he was not aware of complaints from agents about ceasing surveillance in Fast and Furious:

I became aware of that when some of the documents were released that I saw. And I want to say it was probably February, early February, something like that, of this year [2011]. . . . To the best of my recollection, the first time I became aware that agents were being -- disagreed with the surveillance tactics was I believe the beginning of this year when the documents that I saw were released.⁵²⁸

The day after Terry's death, six weeks prior to the February 2011 timeframe, Newell ordered Group Supervisor Voth to compile the number of Fast and Furious weapons that were seized in the case—whether by ATF or otherwise.⁵²⁹ In a follow-up e-mail to Deputy Assistant Director McMahon, Newell stated:⁵³⁰

From: Newell, William D.
Sent: Tuesday, December 21, 2010 11:21 AM
To: McMahon, William G.
Subject: Fw: simple numbers on F&F recoveries

“For what it’s worth and since I don’t like the perception that we allowed guns to “walk”, I had David Voth pull the numbers of the guns recovered in Mexico . . .”

For what it's worth and since I don't like the perception that we allowed guns to "walk", I had David Voth pull the numbers of the guns recovered in Mexico as well as those we had a direct role in taking off here in the US. Almost all of the 350 seized in the US were done based on our info and in such a way to not burn the wire or compromise the bigger case. The guns purchased early on in the case we couldn't have stopped mainly because we weren't fully aware of all the players at that time and people buying multiple firearms in Arizona is a very common thing.

For Newell, not compromising “the bigger case” was of paramount importance.

On January 27, 2011, Senator Grassley sent his first letter to ATF regarding Fast and Furious. That night, Newell e-mailed McMahon:⁵³¹

⁵²⁸ Newell Transcript at 57 (Exhibit 140).

⁵²⁹ E-mail from David Voth to William Newell and George Gillett (Dec. 16, 2010) [HOCR 001935] (Exhibit 144).

⁵³⁰ E-mail from William Newell to William McMahon (Dec. 21, 2010) [HOCR 001935] (emphasis added) (Exhibit 144).

⁵³¹ E-mail from William Newell to William McMahon (Jan. 27, 2011) [HOCR 003735] (Exhibit 239).

From: Newell, William D.
To: McMahon, William G.
Sent: 1/27/2011 8:22:29 PM
Subject: Fw: Avila purchase ROI
Attachments: SKMBT_C25311012718130.pdf

“Buying 3 AKs does not rise to the level of initiating a criminal investigation especially when at that time we were not aware of Avila’s role.”

This is the ROI which refers to Avila's purchase of the 3 AKs in January of 2010. As you can see it was due to an SA's following up on another straw purchaser's activity that we came across this info, 3 days after the sale. Buying 3 AKs does not rise to the level of initiating a criminal investigation especially when at that time we were not aware of Avila's role. It was after the fact when he started buying more guns and was seen with Patino that we considered him part of this same organization. After the sale.

Information about Avila’s role in the straw purchasing organization, which Newell had reviewed in the Case Management Log a year earlier, contradicts Newell’s e-mail to McMahon.

Recognizing that intense scrutiny of Fast and Furious was imminent, Newell apparently did not want to shoulder the blame for the entire operation. According to DEA’s Special Agent in Charge in Phoenix, Elizabeth Kempshall, as the congressional investigation expanded in the spring of 2011, Newell told her: **“I’m not taking the fall alone. If I go down, I’m taking Dennis Burke with me.”**⁵³²

On July 26, 2011, in testimony before the House Committee on Oversight and Government Reform, Newell admitted a failure to assess the risks of Fast and Furious adequately:

[I]t was incumbent upon me to have more risk assessments throughout the investigation. I acknowledge that. I acknowledge the fact that one of the things I should have done was more frequently throughout the investigations conduct risk assessments to ensure whether this was still a prudent strategy to occur.⁵³³

When asked in Congressional Questions for the Record (“QFRs”) when he actually *did* conduct risk assessments, Newell backpedaled: “Because public safety is always our concern we routinely evaluated the efficacy of the investigative techniques being used throughout the course of the operational phase of this investigation.”⁵³⁴

Newell also acknowledged that the Phoenix Field Division should have interdicted more firearms:

[W]ith 20/20 hindsight I now see that I should have conducted more frequent assessments during the course of the investigation in order to

⁵³² Telephone interview of Elizabeth Kempshall (Sep. 22, 2011) (emphasis added).

⁵³³ H. Comm. on Oversight & Gov’t Reform Hearing, *Operation Fast and Furious: The Other Side of the Border*, 112th Congress Cong. (Jul. 26, 2011), at 85.

⁵³⁴ William Newell, Responses of Sep. 9, 2011, Questions for the Record, *Operation Fast and Furious: The Other Side of the Border, Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 112th Cong. (Jul. 26, 2011), at 2.

determine whether our surveillance and seizure efforts were effective in those instances where **we had advance knowledge of an attempt by a suspected member of the firearms trafficking organization to purchase weapons.**⁵³⁵

When asked specifically what he would have done differently under Fast and Furious, Newell again shifted focus back to the criminal prosecutions in the Arizona U.S. Attorney’s Office, over which he had no control: “I would have communicated a greater sense of urgency to my staff and the U.S. Attorney’s Office as to the need for the return of expeditious charges addressing the criminal violations of the organization.”⁵³⁶

As the Special Agent in Charge of the Phoenix Field Division, Bill Newell had the ability and the duty to end Operation Fast and Furious much sooner than it did. Instead, it ended as a reaction to a foreseeable tragedy. Newell authorized, endorsed, and even encouraged this investigation, and allowed it to continue for over a year after the scope of the trafficking ring was known and even after sufficient evidence against the straw buyers had been garnered.

But Newell was not the only senior ATF official to share blame for the failures of Fast and Furious. Another senior ATF official in Washington could have put a stop to Fast and Furious: William McMahon.

2. Deputy Assistant Director for Field Operations William McMahon

| | |
|-----------------|---|
| FINDING: | <u>Rubber stamp signatures and false denials:</u> Though he served as the crucial link between ATF headquarters and the Phoenix Field Division, Bill McMahon admittedly rubber stamped critical documents that came across his desk without reading them. In McMahon’s view, it was not his job to ask any questions about what was going on in the field. McMahon gave false testimony to Congress about signing applications for wiretap intercepts in Fast and Furious. |
|-----------------|---|

A. Position and Role

A 24-year ATF veteran, William McMahon served as the DAD in charge of Western Field Operations during Fast and Furious. As DAD for Western Field Operations, McMahon had seven ATF supervisors reporting directly to him—including SACs along the Southwest Border, the Southwest Border Coordinator, and ATF’s Chief of International Affairs. McMahon

⁵³⁵ William Newell Supplemental Statement of Sep. 21, 2011, *Operation Fast and Furious: The Other Side of the Border, Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 112th Cong. (Jul. 26, 2011), at 4 (emphasis added).

⁵³⁶ William Newell Responses of Sep. 9, 2011, Questions for the Record, *Operation Fast and Furious: The Other Side of the Border, Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 112th Cong. (Jul. 26, 2011), at 3.

served as the chief liaison between ATF's Phoenix Field Division and ATF headquarters, and had significant supervisory duties during Fast and Furious.

McMahon was briefed on and aware of Fast and Furious from its earliest stages. He was among the first to be notified of the first large recovery of weapons in Naco, Sonora on November 20, 2009—just four days after ATF officially opened the Fast and Furious case.⁵³⁷ He learned that this large recovery traced back to an ongoing case out of Phoenix.⁵³⁸ McMahon also received a detailed briefing paper about Fast and Furious as early as December 2, 2009.⁵³⁹ That briefing paper explained that the Phoenix Field Division was working with four FFLs to receive contemporaneous notice of suspect purchases or orders and enter them into ATF's Suspect Gun Database.⁵⁴⁰

| | |
|---------------------|---|
| From: | Newell, William D. |
| Sent: | Wednesday, December 02, 2009 4:01 PM |
| To: | McMahon, William G. |
| Subject: | Phoenix VII Firearms Trafficking Case, ref: Naco, Sonora Seizure Case of 42 AKs |
| Attachments: | American Auto Body.pdf, Phoenix Naco Seizure Case.docx |

Bill, FYI. This is a good overview of the efforts of SA Hope MacAllister and crew to date on her case which directly relates to the recent seizure in Naco, Sonora, Mexico of 42 AK-47 type firearms. This case is evolving daily and they are doing a great job keeping on top of this considering it's only 3 of them and this is not the only case they are working on. Dave Voth, the new Group VII supervisor, arrives on Monday and that will allow Hope to not have to be the acting sup anymore. I'll keep you posted as this case develops but for now we've got it handled.

ATF personnel in Phoenix knew that McMahon was closely monitoring Fast and Furious from the launch of the operation. In mid-December 2009, McMahon ordered ATF's Criminal Intelligence Division to perform a link analysis on Fast and Furious.⁵⁴¹ ASAC George Gillett invoked his name and authority to prevent the case agent, Hope MacAllister, from temporarily leaving her duties for medic tactical recertification.⁵⁴²

Phoenix SAC Bill Newell reported directly to McMahon. Newell had a reputation as an "overreporter" at headquarters, an assessment with which McMahon agreed:

Q. We have heard some testimony that he [Newell] had a tendency to over report to you, always wanting to keep you in the loop about what was going on in Phoenix?

A. Bill was pretty good at that, yeah.

⁵³⁷ E-mail from William Newell to Mark Chait, et al. (Nov. 25, 2009) [HOCR 001983] (Exhibit 29).

⁵³⁸ *Id.*

⁵³⁹ E-mail from William Newell to William McMahon (Dec. 2, 2009) (Exhibit 15).

⁵⁴⁰ CHAMBERS Trafficking Case IN#785115-10-[redacted], "INVESTIGATIVE STEPS TAKEN/INVESTIGATIVE PLAN" (Dec. 2, 2009), at 2 (Exhibit 15).

⁵⁴¹ E-mail from Kevin O'Keefe to George Gillett (Dec. 14, 2009) [HOCR 002275-002276] (Exhibit 240).

⁵⁴² E-mail from George Gillett to Joshua Knapp (Dec. 4, 2009) [HOCR 000884] (Exhibit 241).

Q. That was not necessarily just phone calls but written product, whether it is briefing points or memorandum or things like that?

A. That's correct.

Q. **So as a result, you probably had a pretty good idea of what was going on in Phoenix?**

A. **I did.**⁵⁴³

Newell often wrote long and thorough e-mails and prepared detailed briefing papers for McMahan. These updates kept McMahan fully informed about what was happening on the ground in Phoenix during Fast and Furious.

After Southwest Border Coordinator Ray Rowley expressed concern in December 2009 to Gillett about the number of guns involved in Fast and Furious, Gillett contacted Newell, who in turn relayed Rowley's comments to McMahan. McMahan later recalled Newell's principal complaint was that someone from headquarters was attempting to interfere in the case:

Q. Okay. Can you describe some more about that conversation with Mr. Newell?

A. Sure. It was **some concerns that Ray was dictating things from headquarters to the field which was not his job. I agreed. I said I would speak to Ray. That is about what I remember from this.**⁵⁴⁴

When pressed, however, McMahan finally acknowledged that he had been informed of the substance of Rowley's concerns:

Q. And again, did he [Newell] express Mr. Rowley's specific concerns about this to you?

A. I believe he did.

Q. You believe he did. And what did you do with that information knowing that Mr. Rowley was concerned about this?

A. **I would explain to Ray what was going on in Phoenix at the time, about this is not Virginia where Ray spent most of his**

⁵⁴³ McMahan Transcript at 17-18 (emphasis added) (Exhibit 120).

⁵⁴⁴ *Id.* at 35.

career, or New York, where I spent most of my career. This was Phoenix, Arizona.

Q. Okay. And was he satisfied with that explanation?

A. I don't remember whether Ray was satisfied or not.

Despite the fact that two of the individuals reporting to him were bickering, McMahon did nothing to adequately address Rowley's concerns .

McMahon was also present at the January 5, 2010, Fast and Furious briefing in which Rowley and OSII Deputy Assistant Director Steve Martin brought up the subject of the volume of guns involved.⁵⁴⁵ McMahon remained silent. After this meeting, Martin met with McMahon and asked if he planned to shut down Fast and Furious. McMahon again remained silent.⁵⁴⁶

Newell e-mailed McMahon a Fast and Furious briefing paper on the evening of January 8, 2010. The briefing paper stated that the Phoenix Field Division's strategy was to "allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow for the identification of additional co-conspirators who would continue to operate and illegally traffic firearms to Mexican DTOs."⁵⁴⁷

From: Newell, William D.
Sent: Friday, January 08, 2010 6:45 PM
To: McMahon, William G.
Subject: Fast and Furious Briefing Paper
Attachments: Fast and Furious Briefing Paper.docx

FYI.

Yet McMahon testified that he did not receive this briefing paper. This statement is part of a pattern whereby McMahon claimed that he did not remember e-mails he received:

Q. So you didn't receive this briefing paper in January of 2010?

A. Not this briefing paper, no.⁵⁴⁸

Despite having received this briefing paper, which laid out the Phoenix Field Division's investigative strategy, McMahon did not order the implementation of any operational controls in

⁵⁴⁵ H. Comm. on Oversight & Gov't Reform and S. Comm. on the Judiciary Joint Staff Report, *The Department of Justice's Operation Fast and Furious: Fueling Cartel Violence*, 112th Congress (July 26, 2011), at 20.

⁵⁴⁶ *Id.*

⁵⁴⁷ Phoenix Group VII, Phoenix Field Division, ATF, *Briefing Paper on 785115-10-[redacted]* (Jan. 8, 2010) [HOCR 001915-001918] (emphasis added) (Exhibit 59); *see also* e-mail from William Newell to William McMahon (Jan. 8, 2010) (Exhibit 58).

⁵⁴⁸ McMahon Transcript at 73-74 (Exhibit 120).

Operation Fast and Furious. Instead, he believed that ATF could rely on ICE or the Border Patrol to stop weapons from flowing south:

Q. And what -- what I guess operational safeguards were in place to ensure that the guns weren't going to go to Mexico, weren't going to end up at crime scenes in Mexico? What safeguards were in place?

A. Well, I mean, every individual in this case was put into the [Treasury Enforcement Communication System (TECS)]. So if they ever had a border crossing that would be checked, if ICE -- if CBP was doing the check southbound.

All the guns that we suspected being purchased by this group were put into our suspect gun database. We were obtaining a wiretap to help us identify when and if people are buying weapons and who is orchestrating that. So all of those safeguards and all of those techniques were put in place during this investigation.⁵⁴⁹

Although ICE Agent Layne France was receiving case management reports through the TECS investigation management system when Fast and Furious targets crossed the border, ATF was not using that information to interdict weapons.⁵⁵⁰ Further, the information contained within ATF's Suspect Gun Database was of no use to other agencies that would be conducting southbound searches, such as CBP. As detailed above in Part II of this report, the Department of Homeland Security stated that when U.S. Border Patrol agents encounter weapons, they only run National Crime Information Center database searches—not eTrace searches. A U.S. Border Patrol intelligence office would only conduct an eTrace search in certain situations.⁵⁵¹ ATF case agents in Phoenix strictly controlled the flow of information about Fast and Furious in the Suspect Gun Database. They even prevented ATF personnel in Mexico from having access to certain information in eTrace, let alone personnel from other agencies. McMahon should have been aware that ATF's Suspect Gun Database had very little value in ensuring guns were not moving to Mexico. His apparent misunderstanding of these systems and their capabilities was a crucial error in Fast and Furious, akin to Newell's misunderstanding of the legal standards of reasonable suspicion and probable cause.

B. Progression of Fast and Furious

McMahon testified that he did not review ATF's Fast and Furious OCDETF proposal in January 2010 because “[i]t is not something that comes up to my level.”⁵⁵² When the Phoenix

⁵⁴⁹ McMahon Transcript at 47-48 (Exhibit 120).

⁵⁵⁰ *In camera* review of documents, the Department of Homeland Security (July 3, 2012).

⁵⁵¹ E-mail from [Office of Legislative Affairs, Department of Homeland Security] to [Senate Judiciary Committee staff] (Oct. 25, 2011) (Exhibit 65).

⁵⁵² McMahon Transcript at 71 (Exhibit 120).

Field Division's OCDETF proposal was approved on January 26, 2010, however, Newell sent a copy of the proposal to McMahon.⁵⁵³ McMahon continued to receive several Fast and Furious updates per week from the Phoenix Field Office.⁵⁵⁴ By February 26, 2010, McMahon was aware that Fast and Furious straw purchasers had bought over 900 firearms.⁵⁵⁵

By February 2010, ATF personnel in Mexico alerted McMahon as to the number of guns ending up in Mexico.⁵⁵⁶ McMahon later acknowledged this. He testified:

A. Oh, I mean, yeah, we have talked about it, at some point during the case, about the number of guns ending up in Mexico, Dan [Kumor] would usually express his concern from the concern he was getting from his people in Mexico.

Q. And what concern was that?

A. That there was a large number of guns being recovered in Mexico.

Q. And what was your response to that?

A. My response to—

Q. To Mr. Kumor's concern.

A. That it is our concern as well. We are working this investigation the best we can to take down this group of individuals and stop them from putting the guns in Mexico.⁵⁵⁷

These firearm recoveries should have signaled to McMahon that operational safeguards, such as entering firearm serial numbers into the Suspect Gun Database and CBP's southbound checks, were not stemming the flow of weapons. Instead of instituting better safeguards, McMahon did nothing, letting the operation continue unabated. While his words after the fact reflect a concern over the number of weapons involved and desire to shut down Fast and Furious, his actions, or lack thereof, at the time tell a different story.

Complaints were streaming in from various parts of ATF about Fast and Furious, including some voiced by Assistant Director Chait. Even so, McMahon failed to intervene, even when he saw a problem:

⁵⁵³ E-mail from William Newell to William McMahon (Jan. 26, 2010) [HOCR 002217] (Exhibit 68).

⁵⁵⁴ See, e.g., e-mail from William McMahon to George Gillett (Feb. 10, 2010) [HOCR 001418] (Exhibit 242); see also e-mail from William Newell to William McMahon (Feb. 13, 2010) [HOCR 002523] (Exhibit 243).

⁵⁵⁵ E-mail from William Newell to Tanya Young, et al. (Feb. 26, 2010) [HOCR 004992-004997] (Exhibit 74).

⁵⁵⁶ H. Comm. on Oversight & Gov't Reform and S. Comm. on the Judiciary Joint Staff Report, *The Department of Justice's Operation Fast and Furious: Fueling Cartel Violence*, 112th Cong. (July 26, 2011), at 33-37.

⁵⁵⁷ McMahon Transcript at 39-40 (Exhibit 120).

- Q. Well, what would be done normally? What was not done in this case? And as the Deputy Assistant Director for the Western Field Operations, you know that this is occurring over and over and over again. So what steps did you take to make sure that, for example, Uriel Patino and other suspects in this case do not continue to buy weapons, do not continue to illegally transfer them to prohibited third parties, and they did continue to end up in Mexico?
- A. Sure. Again, when you have a large group of people buying a large number of weapons, that is an issue. So there is constant communication between me – what are we doing to slow this down? What are we – what is our endgame? What is our plan? That is the direction I give.

I mean, I don't ever, in this position, dictate how someone conducts an investigation. That is not what this position is. My position is to monitor, to support, to provide assistance to the people under my position.⁵⁵⁸

Contrary to McMahon's testimony, it is precisely the responsibility of the Deputy Assistant Director to provide guidance, oversight, and supervision to a SAC in the field. Such instruction and guidance are especially important in a large operation such as Fast and Furious. McMahon, along with Chait, exemplified the hands-off attitude towards Fast and Furious at ATF headquarters. With more active involvement of senior ATF officials such as McMahon, Fast and Furious might have ended a year earlier. McMahon and Chait both knew full well that Fast and Furious jeopardized public safety. Straw purchasers were acquiring large numbers of guns from cooperating FFLs and distributing them in an uncontrolled fashion. Somehow, high-ranking ATF officials did not feel compelled to intervene.

Even after he was given extreme details of the public safety hazard that Fast and Furious created, McMahon still did not intervene. Those details came in the form of wiretap applications.

C. Wiretap Authorization

The Office of Enforcement Operations (“OEO”), part of the Justice Department’s Criminal Division, is “primarily responsible for the Department’s statutory wire intercept authorizations.”⁵⁵⁹ Lawyers in OEO review these wiretap packages to ensure that they “meet statutory requirements and DOJ policies.”⁵⁶⁰ When OEO completes its review of a wiretap package, federal law requires that the Attorney General or his designee—in practice, a Deputy

⁵⁵⁸ McMahon Transcript at 49 (Exhibit 120).

⁵⁵⁹ Letter from Deputy Attorney General James Cole Chairman Darrell Issa et al., at 6 (Jan. 27, 2012).

⁵⁶⁰ *Id.*

Assistant Attorney General in the Criminal Division—authorizes it.⁵⁶¹ Each wiretap package includes an affidavit which details the factual basis upon which the authorization is sought.

The wiretap application must show that the federal law enforcement agents cannot achieve the investigative goals they seek in spite of having exhausted all traditional law enforcement techniques, such as consensual encounters, pretext stops, and *Terry* stops, or that such techniques are too dangerous.⁵⁶² Applications must also lay out probable cause for an intercept through an affidavit provided by a law enforcement agent. This statement of probable cause typically contains rich detail, including—in the case of a firearms trafficking investigation—relevant weapons purchases, significant recoveries, and specific details about the suspects. Given their intrusive nature, the use of the wiretaps requires the approval of a federal judge. In *Fast and Furious*, the Justice Department authorized at least six applications to the court in 2010.

Generally, the use of federal wiretaps is rare in ATF cases. It is exceedingly rare in firearms trafficking cases. Obtaining authorization for these wiretaps represented a significant achievement for ATF and the Phoenix Field Division. According to documents and testimony, McMahon was the highest ranking ATF official who received the *Fast and Furious* wiretap affidavits. He approved them before they went to OEO at Justice Department headquarters. McMahon inexplicably claims he *never* signed any memorandum, *never* saw the affidavits, and does *not* remember ever reading them. McMahon testified:

Q. So this is dated February 5, 2010, a memorandum to Deputy Assistant Director, West Field Operations. I assume that is you?

A. That is. That is my title.

Q. Through the Special Agent in Charge, Phoenix Field Division, from Group Supervisor, Phoenix Group 7.

Subject: Request for Authorization to Seek Title 3 Intercept of Telephonic Communications.

So this is a memo to you requesting authorization to seek Title 3 intercept. There is some good detail in here. Not as strong detail as the actual wiretap applications themselves. Are you saying that you never read this, that you just approved it and sent it up to the next level?

A. If I – if I – if I had read this, I would have signed it and dated it. I don't believe I have ever read this.

⁵⁶¹ See 18 U.S.C. § 2516(1).

⁵⁶² 18 U.S.C. § 2518(c).

Q. You don't believe you have ever read this. So what is the point of even sending it to you then?

A. **I'm not sure if it was sent to me.**⁵⁶³

Documents show that Newell sent the memo to McMahon on February 5, 2010.⁵⁶⁴ In that e-mail, Newell told McMahon that he would send the actual affidavit along with the original memo to him via FedEx.⁵⁶⁵

```
-----Original Message-----
From: Newell, William D.
Sent: Friday, February 05, 2010 1:59 PM
To: McMahon, William G.
Cc: Vidoli, Marino F.
Subject: Phoenix "Fast and Furious" OCADETF Strike Force F/As Traff - TIII Affidavit Memo

Attached is the cover memo requesting authorization to conduct a T-III intercept on the main suspect in our on-going OCADETF Strike Force firearms trafficking case out of Phoenix entitled "The Fast and Furious", OCADETF SWB# ██████████. I could not scan the actual affidavit due to its size so I am FedExing that to you along with the original memo.

Bill Newell
Special Agent in Charge
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Phoenix Field Division (Arizona and New Mexico) Office - ██████████
```

McMahon adamantly denied receiving the package and blamed his secretary for his having not received it. He testified:

Q. Okay. This email was sent to you from Mr. Newell, talking about how attached is the memo requesting the authorization, which is Exhibit 4. He also said that he could not scan the actual affidavit due to its size, that he was FedExing that to you, along with the original memo.

A. Okay.

Q. So I presume, based on your testimony, you never received that FedEx package. Is that right?

A. Not that I recall.

Q. So how many FedEx packages get delivered to your office on a daily, weekly, monthly basis that you don't even see? Especially

⁵⁶³ McMahon Transcript at 53 (Exhibit 120).

⁵⁶⁴ E-mail from William Newell to William McMahon (Feb. 5, 2010) (Exhibit 71).

⁵⁶⁵ *Id.*

ones that you are aware that they are going to show up?

A. Well, most of the times, the secretaries open up the FedEx packaging and then put, like, a pink envelope in my box.

Q. Okay.

A. So I don't know how many things come in on –

Q. So the secretary probably did it, put the pink envelope in your box for this one?

A. I don't know. I don't recall seeing this memo.

Q. Okay. And even though Mr. Newell clearly sent it to you on a Friday afternoon, you never asked about the memo or the affidavit that he was sending?

A. Correct.

Q. Okay.

Q. **How frequently did Mr. Newell send you FedEx packages?**

A. **Very infrequently. . . But, you know, I don't actually get a FedEx. The secretary gets the FedEx.** And then it is broken down from there and then passed out to whoever needs to sign things.⁵⁶⁶

McMahon said he did not read any of the wiretap affidavits in Fast and Furious. He offered the following explanation:

Q. Seven. So there were seven wiretaps and you never bothered to read any of them?

A. Absolutely not. And there was no way I could. Some of these wiretaps would be up for, like, 2 days; and then we would be applying for another one.

Q. But you never bothered to read any of the applications –

A. I knew that –

⁵⁶⁶ McMahon Transcript at 167-169 (Exhibit 120).

Q. – rich in detail?

A. **I knew that we were applying for wires and that was what was important for me.**⁵⁶⁷

Applying for the wiretaps was important to McMahon—the contents of the applications were not. McMahon made no effort at even a cursory review of the detailed wiretap applications before they went to the Department of Justice.

McMahon further testified that he had never signed an authorization for a Title III wire intercept:

Q. Okay. So, just to be clear, you never—you’ve never seen this document before?

A. Not that I recall, no.

Q. Okay.

Q. Feel free to take some time to review it, just to make sure.

A. Sure. Some of the facts in here I am familiar with, but, again, this memo does not – I don’t recall seeing this memo. **I don’t recall ever signing a memo of request for authorization to seek Title IIIs in any of my divisions.**⁵⁶⁸

Next, McMahon claimed that he was not part of the process to authorize the affidavits at ATF. He testified:

Q. The first sentence here, “this memorandum serves to request authorization” – the memorandum is to you – “to initiate a Title 3 cellular telephone intercept.” So if you never approved this, if you never saw it in the memorandum request authorization, how was this authorized?

A. By a judge signing the order. I mean, that’s how wiretaps work.

Q. [Group VII Supervisor] Mr. Voth can’t simply sign it in – sign it by himself and submit a wiretap application to a Federal judge.

A. No. It has to go through the process I just described.

⁵⁶⁷ McMahon Transcript at 52 (Exhibit 120).

⁵⁶⁸ McMahon Transcript at 54 (Exhibit 120).

Q. **It seems as though you're a part of the process here.**

A. **Not the process I described, no.**⁵⁶⁹

McMahon's supervisor, Assistant Director Chait, clearly identified McMahon as part of the process.⁵⁷⁰ Before the Department of Justice submits the wiretap application to a federal judge for approval, the Criminal Division requires an approval memorandum from ATF to complete the application process. This memorandum calls for the signature of a senior ATF official. As Chait explained, that official is usually the Deputy Assistant Director:

Q. Let me ask real quickly about the Title IIIs. So what is the process for getting the Title III approved? How does that work?

A. The field works with the assistant U.S. attorney to prepare an affidavit for a Title III. It goes through – I think it was dual tracked, and I think the process may have changed recently. We actually send one version through our house. **We have an attorney that reviews it, a DAD.** At the same time I believe –

Q. **Who is the DAD that reviewed that?**

A. **Well, DAD in this case of the West, Bill McMahon.**

Similarly, Acting Director Melson confirmed that McMahon would have been involved in the wiretap approval process, and that the authorization would not rise above the DAD level in ATF's management structure:

I would assume that the authority to authorize these types of things should be pushed down to the DAD because everything can't come up to Chait, and certainly Hoover can't handle another thing. I mean, he is just overwhelmed with things that are going on in the agency. So whether – so I wouldn't be surprised either if it should stay at the DAD level unless there is something extraordinary about it that raises a question that you need the Assistant Director's approval on.⁵⁷¹

When asked directly if he was the individual who signed off on forwarding a memo for a wiretap application, McMahon stated he was not:

Q. [A] memo for a wiretap application, isn't that your job to sign off on that?

⁵⁶⁹ McMahon Transcript at 55 (Exhibit 120).

⁵⁷⁰ Chait Transcript at 37-38 (Exhibit 122).

⁵⁷¹ Melson Transcript at 172 (Exhibit 52).

A. No, **I never signed off on a memo for a wiretap application.**⁵⁷²

Contrary to his initial testimony, documents confirm that McMahon **did in fact sign at least four approval memos** on behalf of Assistant Director Mark Chait. One such document shows McMahon's signature on behalf of Mark Chait:⁵⁷³

[INTENTIONALLY BLANK]

⁵⁷² McMahon Transcript at 52-53 (Exhibit 120).

⁵⁷³ Memorandum to Julie Wuslich, Electronic Surveillance Unit Chief, DOJ, from Assistant Director (Field Operations), "Wire Communications Intercept Authorization," Mar. 31, 2010 (Exhibit 244).



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC 20226

701140:DCH
3264

MAR 31 2010

MEMORANDUM TO: Julie Wuslich
Chief, Electronic Surveillance Unit

FROM: Assistant Director
(Field Operations)

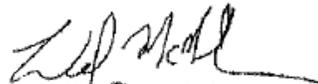
SUBJECT: Wire Communications Intercept Authorization

An affidavit prepared by Special Agent Hope MacAllister, of the Bureau of Alcohol, Tobacco, Firearms and Explosives, in support of an application for Authorization to Intercept Wire Communications, is attached for your review. The affidavit supports the authorization to intercept the wire communications of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and other persons yet unknown over a cellular telephone identified as follows:

[REDACTED]

The affidavit supports the authorization to monitor incoming and outgoing calls to and from this number.

Special Agent MacAllister's affidavit has been reviewed by our Chief Counsel and contains all the requirements deemed appropriate. We hereby request authorization to proceed with this matter. Should you have any questions, please contact Lisa Kincaid, Chief, Case Management Branch, Field Management Staff, at [REDACTED]


Mark R. Chait

Attachment

When confronted at a congressional hearing about the evidence contradicting his prior testimony, McMahon maintained his denials:

A. The last slide that you put up that had my signature for Mark Chait –

Q. Yes.

A. – that would transmit the actual application for wiretap, yes.

Q. Okay. **Now, in your interview, were you asked about this?**

A. **Not this specifically, no.**

Q. **Okay. Did you volunteer it?**

A. **Not that I recall, no.**

Q. Okay. Any reason why not?

A. I am trying to figure out what I need to volunteer. **I think I did tell the staff when I was interviewed that I don't recall – I did[n't] recall receiving applications.**

It was not until Chairman Issa pressed McMahon that he finally admitted that failing to review the wiretap applications was a mistake:

Q. So if I am to understand, just as a lay person, I am one of the nonlawyers up here, so that is why I introduced the qualified people early on. But as a lay person, it looks to me like you had an intimate part in the wiretap request. Your signature was part of a request process. And yet when we asked you about your being involved in them, you did not volunteer to tell us about this part. You simply relied on you didn't actually sign the affidavit. Is that what you are saying? The truth was you didn't sign the affidavit, even though you signed this document and saw other documents and were sent other documents that you may not remember?

A. I signed this document that transmitted the application for the wiretap to our counsel's office for them to review.

Q. But you never looked at it?

A. No, I did not. Again, I think I said earlier on mistakes were made.

And one of the first questions you asked me, sir, is what mistakes. **And that mistake is not doing a thorough enough review of the documents that were coming across my desk. I accept full responsibility for that.**⁵⁷⁴

Failing to review wiretap applications thoroughly was a critical error made by both McMahon and Criminal Division leadership in the Justice Department during Fast and Furious. Acting Director Melson later noted that when he finally read one of the wiretap affidavits after the public uproar over Fast and Furious, “the affidavit certainly caught my attention.”⁵⁷⁵ Had McMahon read the wiretap affidavits that he received, he would have undoubtedly become aware of red flags and could have taken appropriate action.

Office of Enforcement Operations lawyers in the Criminal Division did read the affidavits. Three Deputy Assistant Attorneys General, under the authority of the Assistant Attorney General, Lanny Breuer, signed the applications. That a Deputy Assistant Director was the most senior ATF official to sign off on the Fast and Furious wiretap applications created a counterintuitive result: the Criminal Division actually knew more about the specifics of the case than ATF’s senior management.

D. Delay in Requesting Exit Strategy and Subsequent Delays in Indictment

The blame for delaying the request for an exit strategy from the Phoenix Field Division lies directly with William McMahon. Although McMahon visited the Phoenix Field Division in mid-April,⁵⁷⁶ he apparently did not ask for an exit strategy until April 27, 2010.⁵⁷⁷ The resulting document McMahon received that night indicated that ATF’s Phoenix Field Division could arrest Uriel Patino, but wanted to pursue bigger charges.⁵⁷⁸ Just one day later, McMahon was in the meeting where Weinstein raised the issue of gunwalking in Operation Wide Receiver. It is unclear who raised Fast and Furious in that meeting, since notes indicate the case was discussed.⁵⁷⁹ As previously indicated, McMahon described the meeting to Chait as having “[s]ome surprises but nothing terrible.”⁵⁸⁰

It does appear that ATF leadership, including McMahon and Chait, subsequently had an extended discussion in late May and early June 2010 regarding “the transfers of firearms during the course of an investigation” and “what volume of firearms is acceptable to allow to ‘walk’

⁵⁷⁴ H. Comm. on Oversight & Gov’t Reform Hearing, *Operation Fast and Furious: The Other Side of the Border*, 112th Congress (Jul. 26, 2011), at 136-137 (emphasis added).

⁵⁷⁵ *Id.* at 173.

⁵⁷⁶ *Id.*

⁵⁷⁷ E-mail from William McMahon to William Newell (Apr. 27, 2010) [HOCR 002416] (Exhibit 123).

⁵⁷⁸ E-mail from William Newell to Dennis Burke (Apr. 27, 2010) [HOCR 002588] (Exhibit 127).

⁵⁷⁹ Notes of Alisa Finelli, Office of Public Affairs, Justice Department (Apr. 28, 2010) [HOCR 006989] (Exhibit 116).

⁵⁸⁰ E-mail from William McMahon to Mark Chait (Apr. 28, 2010) [HOCR 005455] (Exhibit 118).

before we intervene”⁵⁸¹ However, the Committees have seen no documentation of McMahon addressing this issue with ATF’s Phoenix Field Division.

McMahon later claimed that the number of guns that had reached the street upset him. He testified:

- Q. So was your concern that they were purchasing it in ways that – was your concern that they were purchasing it in ways that you didn’t know about or –
- A. No, my concern was that **we had enough to arrest these individuals** and we can’t allow them to continue making these purchases that we know are illegal at that point because we have indictable suspects at that point. That is the concern. We have made our case against these individuals, **it is time to shut them down.**⁵⁸²

His communications at the time, however, did not convey any such sense of urgency. The exit strategy does not appear to have been deeply discussed between McMahon and Newell in June or July 2010. On August 6, 2010, Newell told McMahon that Fast and Furious would not be ready for indictment until early October.⁵⁸³ Despite the exit strategy in place that called for an end to Fast and Furious by the end of July and McMahon’s supposed concerns about the number of guns on the street as a result of the case, McMahon response to Newell asked simply, “[W]hat are our plans between now and October on Fast/Furious?”⁵⁸⁴

From: McMahon, William G.
To: Newell, William D.
Sent: Fri Aug 06 16:19:32 2010
Subject: RE: Cases ready for indictment
10-4 Bill. That is great news about the cases regarding GRIT in Tucson and Phoenix. We can talk next week at the SAC Conference but what are our plans between now and October on Fast/Furious?

In response, Newell offered to include McMahon via videoconference in a briefing of U.S. Attorney Burke on August 17, 2010.⁵⁸⁵ McMahon responded that he might do just that.⁵⁸⁶

McMahon also testified that ATF was interested in having a major press event on Fast and Furious as soon as possible:

- Q. And why did you want [the indictments] as soon as possible?

⁵⁸¹ E-mail from Stuart Lowrey to Raymond Rowley (Jun. 1, 2010) [HOCR 002077] (Exhibit 112).

⁵⁸² McMahon Transcript at 83-84 (emphasis added) (Exhibit 120).

⁵⁸³ E-mail from William Newell to William McMahon (Aug. 6, 2010) [HOCR 002527] (Exhibit 162).

⁵⁸⁴ E-mail from William McMahon to William Newell (Aug. 6, 2010) [HOCR 002739] (Exhibit 245).

⁵⁸⁵ E-mail from William Newell to William McMahon (Aug. 6, 2010) [HOCR 002739] (Exhibit 245).

⁵⁸⁶ E-mail from William McMahon to William Newell (Aug. 6, 2010) [HOCR 002739] (Exhibit 245).

A. Well, it was time to take this case down. It was time to . . . round everybody up and –

Q. Because you didn't want them buying any more guns.

A. Well, it was also, **we wanted to show everybody what great work we have done. And that was key. There was a lot of discussion about that.** You know, can we take it down right around the end of GRIT, because then **we could have a bigger press conference.**⁵⁸⁷

Thus, McMahon's supposed desire to bring Fast and Furious to a close was based as much on the timing of a large press event as on the public safety hazard created by the mounting number of walked weapons.

E. Allegations of Gunwalking

McMahon testified that he first learned of allegations of gunwalking in Fast and Furious in late January 2011:

Q. All right. When did you first become aware of allegations that gun walking might have occurred in the Fast and Furious case?

A. **Shortly after a takedown** in January of 2011.

* * *

Q. So **shortly after the takedown** in January 2011?

A. [Nods.]

Q. How did that come to your attention?

A. I think there was some media reports or blog reports that that sort of thing were on our news clippings that we get every day.

Q. So you weren't aware of that before January 25 or the press conference or –

A. Correct.⁵⁸⁸

⁵⁸⁷ McMahon Transcript at 199-200 (Exhibit 120).

⁵⁸⁸ McMahon Transcript at 13 (Exhibit 120).

The December 21, 2010 e-mail McMahon received from Newell over a month earlier, however, suggests that he became aware of gunwalking allegations shortly after Brian Terry was killed. The e-mail, which was produced to the Committees after McMahon's transcribed interview so he was unable to answer questions about it, specifically mentions gunwalking allegations, so he was aware of the allegations about gunwalking at least by December 21, 2010.⁵⁸⁹

Given the gravity of such allegations and the connection to the Terry murder, McMahon should have informed his superiors. He had testified that he probably would if he were aware of such allegations:

Q. So if, for example, Mr. Newell called and said hey, we got a problem with gun walking in Phoenix, that would go . . . straight to Mr. Chait and then you would just leave it at that?

A. If that happened, yes. I would bring it to Mr. Chait's attention. And I'm sure we would have a meeting after that.⁵⁹⁰

Upon receiving Newell's e-mail, however, McMahon did no such thing. Newell's e-mail suggests that the two men, who communicated frequently, had discussed the subject before. In light of Newell's e-mail, McMahon's testimony that he did not learn about allegations of gunwalking until after the takedown is not credible.

Finally, on January 21, 2011, a week before the takedown press conference and Senator Grassley's January 27 letter, McMahon directed the Deputy Chief of ATF's Public Affairs Division to forward a press book to Newell that explicitly addressed allegations of gunwalking.⁵⁹¹ McMahon took no further action.

McMahon testified about his actions once he learned about the allegations of gunwalking:

Q. Did you do anything in your capacities as Deputy Assistant Director to investigate those allegations?

A. Investigate, I mean I have talked to the individuals involved and tried to figure out where this was all coming from.

Q. Who were those individuals that were involved at that point?

A. Usually it was just Bill Newell.

Q. Bill Newell?

A. Right.

⁵⁸⁹ E-mail from William Newell to William McMahon (Dec. 21, 2010) [HOCR 001935] (Exhibit 144).

⁵⁹⁰ McMahon Transcript at 20 (Exhibit 120).

⁵⁹¹ E-mail from William McMahon to Drew Wade (Jan. 21, 2011) [HOCR 005537] (Exhibit 208).

Q. So Bill Newell had an allegation that gun walking occurred? Is that what I'm understanding?

A. No. When I read these reports I would talk to Bill and say what are they talking about here? And we just had a discussion about that, that . . . it was not true and that sort of thing.

Q. But you didn't go and reach out to the actual agents who were making these reports?

A. **There were no agents identified until a month or two later.**⁵⁹²

Other e-mails, provided to the Committees by confidential sources, call into question McMahon's statement that "there were no agents identified until a month or two later." The e-mails show that McMahon directed the Phoenix Field Division to contact one whistleblower *the day after* ATF received Senator Grassley's January 27, 2011, letter detailing whistleblower allegations of gunwalking. Specifically, on Friday, January 28, 2011, Newell sent McMahon an e-mail saying that Newell "might have to go pay [Special Agent John Dodson] a visit" at his house, late on a Friday night, to find out what he told Senator Grassley's staff.⁵⁹³

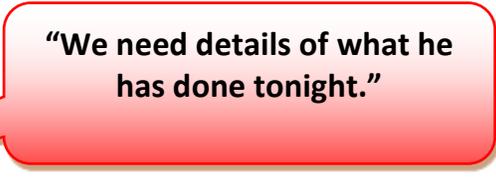
```
----- Original Message -----
From: Newell, William D.
To: McMahon, William G.
Sent: Fri Jan 28 20:04:38 2011
Subject: Contact with SA Dodson

May have to go pay him a visit tonight because he's not answering any of his contact #s.
```

McMahon responded nine minutes later, authorizing Newell to take the highly unusual step of visiting an agent at his home. McMahon also wrote:⁵⁹⁴

```
----- Original Message -----
From: McMahon, William G.
To: Newell, William D.
Cc: Chait, Mark R.
Sent: Fri Jan 28 20:13:30 2011
Subject: Re: Contact with SA Dodson

10-4 Bill. We need details of what he has done tonight.
```



"We need details of what he has done tonight."

For the next three days, McMahon ordered Newell and Gillett to get the complete details about Special Agent Dodson's interactions with Senator Grassley's staff. It was not until

⁵⁹² McMahon Transcript at 13-14 (Exhibit 120).

⁵⁹³ E-mail from William Newell to William McMahon (Jan. 28, 2011) (Exhibit 246).

⁵⁹⁴ E-mail from William McMahon to William Newell (Jan. 28, 2011) (Exhibit 246).

Senator Grassley wrote a letter regarding retaliation against Dodson on January 31, 2011, that McMahon finally rescinded his order to Newell and Gillett. McMahon's actions at the time stand in stark contrast to his congressional testimony.

F. Congressional Inquiry

After McMahon's testimony at a hearing before the House Oversight and Government Reform Committee on July 26, 2011, the Committee sent him a series of QFRs. These QFRs are a standard practice of congressional committees seeking to obtain further information from witnesses regarding questions and topics that may not have been fully addressed during a hearing. Questions for the Record also give Congress a chance to probe additional topics not covered at the hearing due to time constraints. McMahon, like SAC Newell, was given a month to answer the QFRs that the Oversight Committee sent to him. Although the Committee made inquiries as to whether he planned to provide responses in a timely fashion, McMahon provided none. Instead, six weeks later, on September 8, 2011, he wrote a terse letter to Chairman Issa:

Over the past few weeks, I have attempted to answer these questions but I have found that impossible without unfettered access to the transcripts of both my interview and the hearing testimony. I have also conferred with agency counsel and we both believe that to ensure I accurately and thoroughly respond to your questions, I require the official transcript of both of these events.⁵⁹⁵

Contrary to the misleading implication in his letter, the Committee had accommodated McMahon's request before the July 26, 2011, hearing to review his transcribed interview transcript on multiple days accompanied by agency counsel. But not once during the intervening six-week period did McMahon request the opportunity to review transcripts of his hearing or transcribed interview. His actions signaled bad faith and thinly-veiled contempt for the Committee's investigative work.

Despite the Oversight Committee's repeated requests in the fall of 2011, McMahon did not provide his answers to the QFRs until January 26, 2012—six months after they were issued to him.⁵⁹⁶ Prior to that, no one at the Department of Justice instructed him to cooperate with the Committee's inquiries. The dialogue between Committee staff and ATF officials regarding McMahon's responses revealed a disorganized, bureaucratic agency, more interested in stonewalling the investigation than cooperating with Congress. Above all, there were no consequences for McMahon's stonewalling.

Bill McMahon acted as the chief liaison between the Phoenix Field Division and ATF headquarters. He frequently acquired detailed information from Bill Newell about Fast and

⁵⁹⁵ Letter from William McMahon to Chairman Darrell Issa (Sept. 8, 2011).

⁵⁹⁶ William McMahon, Responses of Jan. 26, 2012, Questions for the Record, *Operation Fast and Furious: The Other Side of the Border, Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. (Jul. 26, 2011).

Furious, and McMahon often passed this information up the chain to his boss, Assistant Director for Field Operations Mark Chait.

3. Assistant Director for Field Operations Mark Chait

FINDING: **A failure to supervise: Though he was a senior ATF official and received frequent updates on Operation Fast and Furious, Mark Chait played a surprisingly passive role during the operation. He failed to provide the supervisory oversight that his experience should have dictated and his position required.**

A. Position and Role

On November 25, 2009, ATF Assistant Director for Field Operations Mark Chait learned that 20 firearms recovered in Mexico had been purchased in two transactions. Chait learned that the firearms had times-to-crime of as little as one day.⁵⁹⁷ Chait immediately recognized “how hot this is” and wrote to Bill Newell “to make sure we put all resources on this.”⁵⁹⁸ Chait wanted ATF to start working its way up the straw purchasing chain by interviewing the transporter of the guns, the exact steps the Phoenix Field Division should have been taking.⁵⁹⁹ Newell informed Chait that the firearms recovery was already part of an active Phoenix case—Operation Fast and Furious.⁶⁰⁰

Two weeks later, on December 6, 2009, Acting Director Ken Melson designated Chait as the ATF point-of-contact for a new initiative between ATF and the Justice Department’s Criminal Division.⁶⁰¹ The arrangement called for a Criminal Division attorney to “help coordinate weapons seizure investigations.”⁶⁰² Shortly thereafter, Chait forwarded Deputy Director Hoover his prior e-mail correspondence with Newell regarding the significant weapons recovery in Sonora, Mexico. Chait apparently believed that ATF should cooperate with the Department’s Criminal Division on Fast and Furious.⁶⁰³

In preparation for a meeting with the Criminal Division in mid-December 2009 as part of this coordination, Chait ordered his subordinates to prepare an i2 chart of the Phoenix suspects.⁶⁰⁴ This intelligence analysis tool generated a visual chart linking all of the suspected straw purchasers into a single network. Chait wanted to show the Criminal Division how much

⁵⁹⁷ E-mail from Mark Chait to William Newell (Nov. 25, 2009) [HOCR 001983-001984] (Exhibit 29).

⁵⁹⁸ *Id.*

⁵⁹⁹ *Id.*

⁶⁰⁰ E-mail from William Newell to Mark Chait (Nov. 25, 2009) [HOCR 001983] (Exhibit 29).

⁶⁰¹ E-mail from Kenneth Melson to Lanny Breuer and Mark Chait (Dec. 6, 2009) [HOCR 001985] (Exhibit 247).

⁶⁰² E-mail from Jason Weinstein to Kevin Carwile and James Trusty (Dec. 6, 2009) [HOCR 003405] (Exhibit 248).

⁶⁰³ *See* e-mail from Mark Chait to William Hoover (Dec. 9, 2009) [HOCR 001983] (Exhibit 29).

⁶⁰⁴ E-mail from Lorren Leadmon to David Voth and Hope MacAllister (Dec. 17, 2009) [HOCR 001887] (Exhibit 249).

progress ATF had made in identifying Fast and Furious suspects. According to Jason Weinstein, Lanny Breuer was “very eager” for somebody from the Criminal Division to work with Chait on this initiative.⁶⁰⁵ Chait reciprocated this interest by delivering a detailed briefing on Fast and Furious to the Criminal Division on December 17, 2009. At this briefing, Chait was able to explain the chart in detail.⁶⁰⁶

B. Briefed Weekly

Assistant Director Chait received weekly briefings on Fast and Furious. Even so, during his transcribed interview he claimed to have little knowledge of the investigative tactics used in Operation Fast and Furious during its pendency:

Q. I mean you have admitted that there was a massive number of guns here. Did you ever call Bill Newell and say what are the techniques that you are using? Are we doing any knock and talks? Are we doing any aerial surveillance? Are we doing any trackers?

A. I don’t believe I did. I think probably the first briefing we had around the – what was somewhat happening was with Dave Voth. Most of these things never rose to my level. It is easy to see now things very differently, but at that time what we were seeing wasn’t exactly the same thing as what we see now. We see a very different perspective today.⁶⁰⁷

The facts contradict Chait’s testimony. ATF’s OSII division held a briefing every Tuesday to discuss firearms recoveries and some of ATF’s major cases. Nearly every week, starting in December 2009 until April 2010, Fast and Furious was a topic of discussion at these meetings. Chait attended, but remained silent.⁶⁰⁸

During a January 5, 2010 briefing, Chait learned that Fast and Furious straw purchasers had bought 685 firearms in the preceding two months. Several individuals present reacted strongly to the mounting weapons count. In a private meeting after the briefing, Steve Martin confronted Chait as to whether he actually had a plan in place to stop the flow of weapons. Martin testified:

A. From my notes, **I asked Mr. Chait and Mr. McMahon, I said, what’s your plan? I said, what’s your plan?** And I said, hearing none, **and I don’t know if they had one.** I said . . . there are some

⁶⁰⁵ E-mail from Jason Weinstein to Kevin Carwile and James Trusty (Dec. 6, 2009) [HOCR 003405] (Exhibit 248).

⁶⁰⁶ Melson Transcript at 76 (Exhibit 52).

⁶⁰⁷ Chait Transcript at 138-139 (Exhibit 122).

⁶⁰⁸ After April 2010, OSII simply stopped briefing Fast and Furious. Congressional investigators were told that OSII believed that nobody was paying attention anymore to their concerns, so there was no longer a point in briefing the case since it had gotten so big.

things that we can do. Ray Rowley, who was the [S]outhwest [B]order czar at the time, asked, **how long are you going to let this go on?**

* * *

Q. You said this to who again, Mr. Chait?

A. Mr. Chait, Mr. McMahon, Mr. Kumor. My boss was there, Jim McDermond, who agreed with me because we talked probably daily.

Q. **Did any of those folks step up at that time and say, “Oh, no, no, no. We’ve got another great plan in place”?**

A. **No. No.**

Q. **They were silent?**

A. **Yes. And I don’t know if they had one.** I mean, they could have. I don’t know.⁶⁰⁹

Chait had come to the ATF briefing immediately after a meeting with Assistant Attorney General Lanny Breuer. The meeting with Breuer focused on weapons seizures in Mexico—seizures subsequently discussed in detail at the ATF meeting.⁶¹⁰

In February 2010, Chait received notification that Fast and Furious had become so big that it had intersected with a separate investigation in ATF’s Dallas Field Division.⁶¹¹ Chait found the correlation between the two cases so significant that he wanted to keep Deputy Director Hoover fully informed. He requested the preparation of maps so that he could link the cases. In his transcribed interview, Chait stated:

[A]t any given time we have about 40-plus-thousand open investigations across field operations, and I certainly don’t have the ability to know enough about every one of those cases.⁶¹²

⁶⁰⁹ Transcript, Interview of Steven Martin by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Jul. 6, 2011), at 43-45 [hereinafter Martin Transcript] (Exhibit 250).

⁶¹⁰ Meeting on Weapons Seizures in Mexico, Jan. 5, 2010, 10:00 AM, Required Attendees Lanny Breuer, William Hoover, Mark Chait, Sam Kaplan [HOCR 001987] (Exhibit 251).

⁶¹¹ E-mail from Robert Champion to Mark Chait, et al. (Feb. 25, 2010) [HOCR 001424-001428] (Exhibit 252).

⁶¹² Chait Transcript at 71 (Exhibit 122).

Yet of the more than 40,000 open investigations at ATF, Fast and Furious was so important that Chait updated Acting Director Melson on it and requested updated bullet points to brief Deputy Director Hoover.⁶¹³

When questioned further about Fast and Furious, Chait claimed that he was not even sufficiently aware of the details of Fast and Furious to have been concerned:

I have to rely on my people. I rely on the [D]eputy [A]ssistant [D]irector, I rely on the SACs, I rely on ASACs, I rely on group supervisors, and I rely on AUSAs to work with us closely. And I don't get in the weeds. **I really, I have too many other things going. I just, I don't feel that is my role as the assistant director.**⁶¹⁴

Chait knew that Melson and Hoover were concerned about Fast and Furious. He seemed to share their concerns. His failure to intervene was not the result of a lack of information about Fast and Furious. Rather, his view of his position as Assistant Director for Field Operations made him reluctant to step in and confront McMahon, his deputy, or Newell, the head of the Phoenix Field Division, about Fast and Furious. Chait let the operation continue because he believed that his role as Assistant Director did not call for him to intervene. This attitude mirrors McMahon's attitude that it was not his job to intervene in the affairs of his SACs in the event things were going poorly.

Mark Chait had enough information about Fast and Furious to ask the right questions. There were ample warning signs for him to do so. He did not.

C. Exit Strategy and Similar Operations

Along with Deputy Director Hoover, in March 2010, Assistant Director Chait requested a Fast and Furious exit strategy. Chait testified that at that time, ATF leadership saw the need for the case to be shut down.⁶¹⁵ No one complied with the request for an exit strategy, however, until May 3, 2010—nearly two months later.⁶¹⁶ Chait did not do anything during those two months to speed up the process:

Q. So there was a significant time lag between your request as [A]ssistant [D]irector and your receipt of the exit strategy?

A. That is correct.

Q. Did you receive any explanation for that timeline?

⁶¹³ E-mail from Mark Chait to Ken Melson (Feb. 24, 2010) [HOCR 001424-001428] (Exhibit 253).

⁶¹⁴ Chait Transcript at 71 (Exhibit 122).

⁶¹⁵ Chait Transcript at 26-27 (Exhibit 122).

⁶¹⁶ E-mail from William McMahon to Mark Chait (May 3, 2010) [HOCR 001178] (Exhibit 126).

- A. I really don't recall if there was.
- Q. Did it concern you that -- that a request like that had taken over, well over a month to provide to you and the deputy director?
- A. I really don't remember at the time. I mean obviously, you know, we would have liked to have it sooner.⁶¹⁷

This lack of oversight and lax attitude was typical of ATF leadership during Fast and Furious. No one seemed particularly intent on shutting down the operation. It is difficult to understand why.

After finally receiving the Fast and Furious exit strategy on May 3, 2010, Chait and Hoover monitored the Phoenix Field Division's timeliness. Chait testified about their strategy:

- Q. And were you engaged in the close-out of Operation Fast and Furious in monitoring the performance of the exit strategy between when you received the document and the closure of the case in January of 2011?
- A. I think I would say this. We – **I was monitoring it as far as timeliness.** As far as the specifics, I would leave that for my deputy and really the command on the ground to carry it out. And I think there are probably some e-mails and things of me asking why we – as far as closure, because I was under the impression we would be able to get this thing closed, I was hoping, in the July time frame, end of July, possibly August was my impression at the time.
- Q. And did you have discussions with Deputy Director Hoover about -- about that timeline about the exit strategy?
- A. I believe -- I believe I did.⁶¹⁸

With McMahon, Chait was part of a discussion in late May and early June 2010 regarding “the transfers of firearms during the course of an investigation” and “what volume of firearms is acceptable to allow to ‘walk’ before we intervene”⁶¹⁹ However, like McMahon, Chait does not appear to have addressed this issue with ATF's Phoenix Field Division.

⁶¹⁷ Chait Transcript at 62-63 (Exhibit 122).

⁶¹⁸ Chait Transcript at 64 (Exhibit 122).

⁶¹⁹ E-mail from Stuart Lowrey to Raymond Rowley (Jun. 1, 2010) [HOCR 002077] (Exhibit 112).

D. Failure to Act

Chait testified that he wanted to adhere to the exit strategy and bring the case to a close. He apparently understood the importance of taking the suspects off the street given the public safety risk they posed. But Chait failed to ensure that Phoenix Field Division executed the exit strategy. Although he gave his superiors the impression he was conducting effective oversight of Fast and Furious, he was actually doing little, if anything, to end it.

Chait became aware of several large recoveries of Fast and Furious weapons during the summer of 2010. While he alerted Deputy Director Hoover, Acting Director Melson, and the Office of Deputy Attorney General Gary Grindler of various seizures, he did not take decisive action. This inaction contradicts his insistence that he wanted the case shut down:

Q. So you wanted the operation shut down, you know, much earlier than it did. Did you want to get these folks off the street because they were dangerous? Is that what you were hoping, to get them behind bars?

A. I wanted to stop the activity.

Q. Stop the activity?

A. Once – you know, **sometimes there is a point where it is just time.**⁶²⁰

Contrary to the view of the Phoenix Field Division, which believed that the exit strategy came at the expense of building a bigger case, Chait only wanted the case to be taken down. He testified:

I would be concerned about evidence. I am less concerned about how far an investigation can go. When it is time to take a case down, it is time to take a case down.⁶²¹

It was clear it was time to close the case. Whatever law, whatever charges they could make at the time – because I know was other conspiracy [sic] and what have you, **but bottom line is I was not looking for moving it further. It was time to exit.**⁶²²

Chait's actions at the time did not live up to these later words. It was not until July 2010, when Acting Director Melson began asking Chait when the operation was going to be shut down that

⁶²⁰ Chait Transcript at 143 (Exhibit 122).

⁶²¹ Chait Transcript at 76 (Exhibit 122).

⁶²² Chait Transcript at 77 (Exhibit 122).

Chait began to make these inquiries. According to documents produced by the Department, Chait sent just one single e-mail to SAC Newell to ask when Fast and Furious was going to be shut down.⁶²³

Like McMahan, Chait was also interested in media attention for the case. On July 14, 2010, Chait sent two e-mails to Associate Deputy Attorney General Ed Siskel, alerting him to two recoveries of weapons linked to Fast and Furious. One recovery totaled 73 firearms,⁶²⁴ and a second recovery included 20 weapons.⁶²⁵ Chait wanted to use these recoveries to “plan a media event . . . that would highlight the initiative like Fast and Furious [sic].”⁶²⁶

Like Hoover, Chait demanded an exit strategy, but took no action when the 90-day period set forth in the strategy expired. Acting Director Melson testified that beginning in August 2010, he began asking Chait at the weekly staff meeting when Fast and Furious was going to be taken down.⁶²⁷ In spite of Melson’s inquiries, Chait still did not believe it to be his role to bring the failed operation to an end.

Only in late October 2010, three months after the takedown date proposed in the Fast and Furious exit strategy, did Chait finally raise the issue of continuing gun purchases with ATF Phoenix leadership. On October 29, 2010, Chait e-mailed SAC Newell to ask: “Any news on a quicker indictment?”⁶²⁸ When informed that the indictment had again been pushed back another six weeks, Chait responded, “I’m concerned that we are not shutting down the activity waiting on an indictment.”⁶²⁹ Once again, Chait expressed his concern without ordering any concrete action.

E. New ATF Strategy

In September 2010, Mark Chait disseminated ATF’s own “Cartel Focused Strategy.” This document, a year in the making, drew inspiration from the Deputy Attorney General’s October 2009 draft Strategy for Combating the Mexican Cartels. The ATF strategy was designed to focus specifically on the Sinaloa cartel—the same cartel ATF allowed to arm itself with thousands of guns through Fast and Furious.⁶³⁰ The new ATF strategy stated:

However, straw purchasers should more frequently be viewed as persons whose conduct should be investigated as part of a larger conspiracy and as persons whose information, cooperation, and assistance should be exploited to the extent possible in furtherance of the ultimate goal of

⁶²³ E-mail from Mark Chait to William Newell (Jul. 10, 2010) [HOCR 001167-001169] (Exhibit 254).

⁶²⁴ E-mail from Mark Chait to Ed Siskel (Jul. 14, 2010) [HOCR 001175-001177] (Exhibit 255).

⁶²⁵ E-mail from Mark Chait to Ed Siskel (Jul. 14, 2010) [HOCR 002847] (Exhibit 150).

⁶²⁶ E-mail from Mark Chait to William Newell (Jul. 26, 2010) [HOCR 001991] (Exhibit 256).

⁶²⁷ Melson Transcript at 82 (Exhibit 52).

⁶²⁸ E-mail from Mark Chait to William Newell (Oct. 29, 2010) [HOCR 001912] (Exhibit 76).

⁶²⁹ E-mail from Mark Chait to William Newell (Oct. 29, 2010) [HOCR 001912] (Exhibit 76).

⁶³⁰ Martin Transcript at 111-112 (Exhibit 250).

identifying key members of the trafficking enterprise and disrupting or dismantling the trafficking operation.⁶³¹

This language mirrored the controversial language that appeared in a January 2010 briefing paper on Fast and Furious, discussed in detail above in section IV.5. Despite his professed concerns about Fast and Furious, Chait did not add any safeguards to the September 2010 strategy in order to prevent gunwalking.

Mark Chait was passively involved in supervising Operation Fast and Furious from the beginning of the case. It appears that he appreciated the significance of Fast and Furious to ATF, valuing the end result over the tactics used to achieve it. Although he was briefed on the details of the investigation, he did not step in at critical junctures to provide supervision and leadership consistent with his title and position.

4. Deputy Director William Hoover

| | |
|-----------------|---|
| FINDING: | <u>Danger signs ignored:</u> Though he ordered the Fast and Furious exit strategy, William Hoover failed to make certain the strategy was executed. Hoover knew that Bill Newell had employed the use of risky tactics in the past, but simply allowed Newell to continue to conduct Operation Fast and Furious. Hoover was derelict in his duty to ensure that public safety was not jeopardized during Operation Fast and Furious. |
|-----------------|---|

Deputy Director William Hoover played a hands-on role during Fast and Furious—curiously, more so than Assistant Director Chait. Hoover ordered the exit strategy, failed to ensure its implementation, briefed senior Justice Department officials on the operation, and knew that Bill Newell had employed the use of risky tactics in the past. Due to his position as Deputy Director, Hoover had the ability to order Fast and Furious to be shut down without delay. However, he did not do this.

A. Early Concerns Raised

William Hoover was aware of key details and events of the Fast and Furious investigation from its earliest stages. When weapons tracing back to Fast and Furious were recovered in Sonora, Mexico, on November 20, 2009, Hoover received notification that the Phoenix Field Division knew about these straw purchasers prior to their recovery in Mexico.⁶³² For the Deputy Director to receive such detailed information about a specific investigation in its infancy demonstrates the importance of Fast and Furious to ATF leadership from the beginning.

⁶³¹ “PROJECT GUNRUNNER: A Cartel Focused Strategy,” Bureau of Alcohol, Tobacco, Firearms, and Tobacco, September 2010, at 11.

⁶³² E-mail from Mark Chait to William Hoover, Deputy Director, ATF (Dec. 9, 2009) [HOCR 001983] (Exhibit 29).

In mid-December 2009, Southwest Border Initiative Coordinator Ray Rowley brought his concerns about Fast and Furious to Hoover.⁶³³ Hoover testified:

Q. What do you recall about Ray Rowley's concerns?

A. He -- I remember running into Ray in headquarters. And I'm trying to think what the -- I don't remember where -- I don't remember if we just passed each other in the hallway and we had a discussion.

. . . I don't remember exactly how the conversation came up. And he asked me if I was aware of the case out of Phoenix, and I said, yes, I had heard. And he said, you know, there is some significant movement of firearms in that case. And I go, I understand that. And this was -- and, as I recall, I think I said, well, I'm getting ready to have a briefing on that case, or be briefed on that case. And that was what I recall of Ray raising concerns about Fast and Furious.

Q. When people are raising concerns like Ray Rowley did and like a lot of other people did when they first learned about the numbers of guns . . . is there sort of an unspoken undertone to that, that, you know, why aren't we doing more to stop these, or can we be doing more to stop the flow?

A. I think the prudent thing to do, in my opinion, is to get all the information about what's going on and what's taking place.

I mean, at that time, I believe -- don't hold me to this, but I believe Ray was what we call our southwest border coordinator. And he was looking at not only Phoenix but all of our southwest border divisions and helping develop strategies and trying to determine if there were cases that crossed division boundaries and those types of things. And he would have had the ability to go hopefully talk to Bill Newell or Mark Chait -- or, Bill Newell or Bill McMahon and discuss those types of concerns.⁶³⁴

Hoover apparently took no immediate action in response to Rowley's concerns.

⁶³³ E-mail from George Gillett to William Newell (Dec. 17, 2009) [HOCR 002491] (Exhibit 50).

⁶³⁴ Hoover Transcript at 112-114 (Exhibit 121).

B. Asking the Right Questions About Fast and Furious

Deputy Director Hoover was briefed on Fast and Furious in January 2010. At that time, he learned that a large number of firearms from Fast and Furious were being recovered in Mexico.⁶³⁵ According to Hoover:

- A. I knew that we had a large number of straw purchasers purchasing firearms. I knew that -- didn't know the specific numbers of firearms. I knew that there was a lot of money involved and it involved all cash transactions.
- Q. Which is suspicious, correct?
- A. It would be for that number of firearms, that's absolutely correct.
- Q. And you knew that some of these weapons were showing up in Mexico?
- A. We did know that.⁶³⁶

Hoover also learned from the January 2010 briefing that Fast and Furious involved cooperating FFLs in the Phoenix area.⁶³⁷ Hoover, however, did not inquire further as to the details of the cooperation:

- Q. So did you have an understanding then, in January of 2010, that there was an ongoing relationship of cooperation with not only that FFL but other FFLs?
- A. I did not inquire as to the level of the relationship. I didn't ask that question.⁶³⁸

Hoover testified that he didn't recall being informed in the spring of 2010 that "we weren't looking at the major players in that investigation and maybe going to them and trying to flip them or otherwise utilize the information."⁶³⁹ Hoover stated that his inquiry as to what agents in the Phoenix Field Division knew about the sales of firearms to straw purchasers in Fast and Furious and when they knew it resulted in the briefing he received in late March 2010. Hoover stated:

⁶³⁵ *Id.* at 9.

⁶³⁶ *Id.*

⁶³⁷ *Id.* at 99-100.

⁶³⁸ *Id.* at 100-101.

⁶³⁹ *Id.* at 58.

- A. I knew that we had made some seizures of firearms that we believed to be headed south or destined for the border.

I also knew that there were firearms that were being recovered in Mexico; did not know how those were moving. And I understood it to be the case that we were trying to determine how they were moving those firearms. Did we know, you know, we were trying to find out the information of **when we knew about the sale, what we knew about the sale**, and those kinds of questions.

That's, kind of, the things that led up to the briefing I received in March that called for me to ask for the exit strategy.

- Q. In March of 2010?

- A. March of 2010, that calls for me to ask for that exit strategy, that I want a 30-, 60-, 90-day plan to end this investigation.⁶⁴⁰

The answers to those questions—that the Phoenix Field Division was receiving contemporaneous notice of purchases from cooperating FFLs and had even installed pole cameras to monitor sales in real time—should have been warning signs to Hoover. They revealed that weapons recovered in Mexico after the Phoenix Field Division began receiving such notices were the result of either a complete failure of surveillance after the purchases, or a conscious strategy to let the weapons walk.

Hoover was briefed in late March 2010 about operational details of Fast and Furious. At the briefing, he received the latest statistics on the weapons purchased. This briefing led Hoover to request an exit strategy. Hoover testified:

[T]here was a slide that popped up about our headquarters' Intelligence Division, and it listed the straw purchasers, the amount of firearms that they had purchased, and, I believe, the value of money that would have been placed on each one of those firearms. And I was concerned about the top echelon of that chart and the number of firearms that they had purchased and the fact that we had not stepped to them.⁶⁴¹

Hoover's undated notes, produced to the Committees by the Justice Department, may be from the meeting in which he requested the exit strategy. The notes read:⁶⁴²

⁶⁴⁰ *Id.* at 57.

⁶⁴¹ *Id.* at 60.

⁶⁴² Handwritten notes of William Hoover [HOCR 001589] (Exhibit 257).

FAST & FOLLOWS

- 105 FIA PURCHASES SINCE 3/15/10. (3 BARRETS)
- STILL CASH \$9K EACH
- TRACKERS ON CARS & 2
- BOUGHT FN 5.7'S
- APPROXIMATELY \$1M IN CASH PURCHASES. ↙

MURKIN
& PATINO

STRATEGY?

=====
=====

Hoover testified that after requesting the exit strategy, he followed up repeatedly with his deputies Chait and McMahon regarding its status:

- Q. After you asked for the exit strategy in March of 2010, what did you do to ensure that that was going to be implemented?
- A. We have staff meetings twice a week. I would continually ask. If I would see Mr. McMahon I would say, hey, Bill, you know, we're developing the exit strategy, and he would tell me that Phoenix is working on it. And I would continually ask questions about how the case was progressing. I knew that they were also into a [T]itle 3 stage and that they were obtaining information from that. And I would just ask questions when I would see Mr. Chait or Mr. McMahon.⁶⁴³

It does not appear that Hoover did anything beyond asking for updates. He stated:

- Q. And at that time did you request, in addition to the exit strategy, did you request any specific actions on the part of the Phoenix folks to make sure these guns didn't get out of their control?

⁶⁴³ Hoover Transcript at 20 (Exhibit 121).

A. I did not specifically request that. I allowed field operations to run that investigation. I did not make any specific request. Obviously, that's a concern anytime firearms get out of our control.⁶⁴⁴

* * *

Q. And during this lengthy wiretap process --

A. Yes.

Q. -- you wanted a way out. But the question is, were there any other operational controls put in place that gave you personal comfort that fewer guns -- or that ATF was going to get control of this?

A. I did not get any specific instruction. I remember having conversations with -- actually, the day of that briefing when I asked for the strategy, I had discussions with Mark Chait and also Bill McMahon around that strategy and how we needed to ensure that we were taking steps to interdict as many firearms as possible and to move to close that investigation down.⁶⁴⁵

Hoover understood the significance of the number of firearms involved in Fast and Furious. He testified:

A. **I was concerned about the number of firearms that were being purchased in this investigation**, and I decided that it was time for us to have an exit strategy and I asked for an exit strategy. It was a conversation that was occurring between Mark Chait, Bill McMahon and myself. And I asked for the exit strategy 30, 60, 90 days, and I wanted to be able to shut this investigation down.

Q. And by shutting the investigation down, you were interested in cutting off the sales of weapons to the suspects, correct?

A. That's correct.

Q. And you were worried, is it fair to say, that **these guns were possibly going to be getting away and getting into Mexico and showing up at crime scenes?**

⁶⁴⁴ *Id.* at 11.

⁶⁴⁵ *Id.* at 64-65.

- A. I was concerned not only that that would occur in Mexico, but also in the United States.⁶⁴⁶

C. Decision to Pursue a Larger Case

The fact that at least as early as April 2010 Hoover learned that weapons had walked in Operation Wide Receiver compounds his failure to recognize the warning signs in Operation Fast and Furious. Hoover knew Wide Receiver had been run out of ATF's Phoenix Field Division, and the discussion with Deputy Assistant Attorney General Jason Weinstein about guns being walked in that case should have set off warning bells for Hoover more than anyone else in ATF, since Hoover had already had concerns about Newell's use of such tactics. Since Weinstein raised these issues with Hoover directly, Hoover should have exercised the leadership expected of the Deputy Director.

Hoover understood the dangers of the lack of interdiction in Fast and Furious. He took no action, however, to prevent the uncontrolled distribution of the weapons once they left the FFLs. Although the Fast and Furious exit strategy he received in May 2010 reported that ATF had sufficient evidence to arrest Patino, it also clearly documented that the Phoenix Field Division was most likely delaying Patino's arrest in order to hold out for bigger charges:

- Q. On the bottom page -- on the bottom paragraph of the first page of the exit strategy, not the email, it reads, "If we arrest Uriel Patino the firearms he has straw purchased thus far, we will only minimally impact the organization before Patino is replaced by another member of the organization."

That would seem to read to me like they had the evidence to arrest Uriel Patino at that time. Is that fair? Was that your reading at the time?

- A. Yes, sir.

- Q. But what? Uriel Patino is the single largest purchaser, the person that you were principally concerned about --

- A. Right.

- Q. -- in the March briefing.

- A. Yes.

⁶⁴⁶ *Id.* at 10-11 (emphasis added).

Q. They have enough evidence to arrest him. And yet this details a 90-day strategy until he might ever be arrested.

A. Right.⁶⁴⁷

Hoover said he believed that Field Operations at ATF headquarters was asking the Phoenix Field Division to do everything it could to interdict the firearms being illegally purchased.⁶⁴⁸ If that was the case, Hoover should have followed up to ensure that the Phoenix Field Division immediately began interdicting weapons. In the interest of public safety, he also could have discarded the 90-day exit strategy and immediately shut the case down. Instead, Hoover did neither.

D. Delay in Takedown

Hoover was not willing to risk extending the risky strategy of building a bigger case beyond the 90-day timeframe the Phoenix Field Division identified in its exit strategy. He testified:

[W]e were talking about a significant number of firearms, and I didn't feel comfortable with that. And I wanted us to have an exit strategy that allowed us to get to a point and we were going to wrap this investigation up, whether we were able to move up the chain or not.⁶⁴⁹

Still, as of August 2010—the end of the 90-day time frame as outlined in the exit strategy—approached, ATF was taking few steps to shut the operation down other than handing the case off to the U.S. Attorney's Office. In mid-July 2010, Acting Director Melson e-mailed Hoover and Chait to ask when *Fast and Furious* would be taken down.⁶⁵⁰ Hoover testified:

Q. Were you ever told in July or any point leading up to July that the case was not being brought down potentially because they hadn't yet perfected a 924(c) charge?

A. No, sir. . . .

Q. If Bill Newell or Mr. McMahon had come in and said, Well, but we're still working to perfect bigger and bigger charges, what would you have said to them at that point?

A. I would have allowed them to have a discussion with me. It's hard to speculate at this time based on what they would tell me, but I do

⁶⁴⁷ *Id.* at 68.

⁶⁴⁸ *Id.* at 69.

⁶⁴⁹ Hoover Transcript at 58 (Exhibit 121).

⁶⁵⁰ E-mail from Kenneth Melson to Mark Chait and William Hoover (Jul. 14, 2010) [HOCR 002084] (Exhibit 149).

not believe -- it would have had to have been an extraordinary circumstance for me to want to extend this beyond my original request for that 30, 60, 90 day exit strategy.⁶⁵¹

Nevertheless, when 90 days came and went at the end of July 2010, Hoover did not step in to shut down the case. Hoover did not exert any pressure on or express any disappointment at the Phoenix Field Division that the case was still ongoing. Hoover did, however, continue to receive updates on Fast and Furious weapons recoveries, including the seizure of a .50 caliber rifle on August 3, 2010.⁶⁵² But Hoover never intervened.

Hoover acknowledged that he raised the issue of the indictments with the Deputy Attorney General's office, with little effect. Hoover spoke to Ed Siskel frequently about Fast and Furious. Hoover testified:

Q. Did you ever put any pressure on the U.S. Attorney's Office or Department of Justice to get this going?

A. We had conversations with -- I had field ops have conversations with Bill Newell to get to the U.S. Attorney's Office to imply the importance of this. There were -- I'm trying to think -- there were conversations -- we had conversations with Ed Siskel, I had conversations with Ed, speaking to the possible delay of the indictment. I do not recall that I ever called the Phoenix U.S. Attorney's Office directly.

Q. Did he take any action?

A. I don't recall right now.

Q. What did you tell him?

A. I just told him that we were hoping to have this case indicted much more quickly than it is being indicted. The information we were getting back through field ops was that it's the normal process through the indictment stage, and that they needed this to be able to run, or draft the indictments on 20 individuals, and we were obviously concerned about the time it was taking.

Q. Did you ask Ed Siskel to take action within the Department of Justice to expedite this?

A. No.

⁶⁵¹ Hoover Transcript at 80-81 (Exhibit 121).

⁶⁵² E-mail from William Hoover to Kenneth Melson, et al. (Aug. 4, 2010) [HOCR 002688] (Exhibit 258).

- Q. Put command pressure down that chain?
- A. I don't recall asking Ed specifically to do that, no.
- Q. So you were –
- A. Just gave him my concerns.⁶⁵³

Hoover never ordered the Phoenix Field Division to make any arrests to get the straw purchasers off the street.

E. Failure to Properly Monitor SAC Newell

Perhaps Hoover's biggest failure as Deputy Director of ATF was his lack of close supervision of SAC Newell. Several years before Fast and Furious began, dating back to 2006, Hoover knew that Bill Newell was willing to employ risky tactics in his investigations. SAC Newell oversaw multiple cases during his early days as Phoenix SAC that utilized either gunwalking or controlled deliveries across the border as investigative techniques.

Hoover knew about Newell's prior operations, and he did not condone them. Upon learning about the Hernandez case in 2007, Hoover, then Assistant Director of Field Operations, demanded answers from Newell about the operation. Newell first reassured Hoover by stating that Newell had conducted similar operations "all the time in Colombia."⁶⁵⁴ Newell finally recognized that Hoover had serious concerns about the Hernandez operation. He wrote to Hoover in an e-mail:

OK, I know you have reservations but please rest assured that this will go down as planned, as allowed per MLAT (Mutual Legal Assistance Treaty) with Mexico, with full approval of the USAO (confirmed again late this afternoon), and will have big payoffs for us and the Department in addressing Mexico's concerns that we (US) aren't doing enough to address their concerns. Trust me, I'm with Gov't.⁶⁵⁵

At that time, Hoover did not rely on Newell's assurances. He sought clarification from ATF Counsel as to whether Newell was operating within the bounds of the law.⁶⁵⁶

When Hoover learned that the Mexican authorities had missed one of the loads of weapons crossing the border during a controlled delivery in the Hernandez case, he was furious. As Assistant Director for Field Operations, Hoover gave unambiguous orders. He stated:

⁶⁵³ Hoover Transcript at 74-75 (Exhibit 121).

⁶⁵⁴ E-mail from William Newell to William Hoover (Oct. 4, 2007) [HOCR 002244] (Exhibit 225).

⁶⁵⁵ E-mail from William Newell to William Hoover (Oct. 4, 2007) [HOCR 002243] (Exhibit 225).

⁶⁵⁶ E-mail from William Hoover to Anne Marie Paskalis (Oct. 5, 2007) [HOCR 002243] (Exhibit 225).

I do not want any firearms to go South until further notice. I expect a full briefing paper on my desk Tuesday morning from SAC Newell with every question answered. I will not allow this case to go forward until we have written documentation from the U.S. Attorney's Office re full and complete buy in.⁶⁵⁷

Hoover admitted to "frustration" with Bill Newell and the Phoenix Field Division, and he expressed his dissatisfaction with Newell regarding the lack of information he received about Newell's operation: "SAC Newell should understand that I will need complete answers to every question I have had to this point."⁶⁵⁸

Hoover did not ask Newell questions about Operation Fast and Furious similar to the ones he asked of him back in 2007 upon learning of the Hernandez operation. Hoover believed that Newell had learned his lesson. Hoover testified:

Q. And so, based on this experience, don't you think Newell, being the head of -- you know, the SAC, still had the obligation to alert headquarters of all the specific things that were going on here?

A. Well, again --

Q. Aren't you angry that they didn't?

A. I think what needs -- that would be a life's lesson for Bill Newell: Make sure you have these things in place as you move forward.

Q. But he had the life's lesson back in '07.

A. That's what I'm talking about.

Hoover believed issues with Newell had been resolved after the 2007 issue. Hoover stated:

I think the 2007 issue -- subsequent to that email, I had an opportunity to talk to Bill and Carson, and I think we came to a pretty clear understanding of what was expected. **I did not have any issues after that with allowing Bill to run his field division.**⁶⁵⁹

Yet when a large gun trafficking case emerged from the Phoenix Field Division in 2009, a case where senior officials in ATF headquarters, including Hoover, were concerned about the number

⁶⁵⁷ E-mail from William Hoover to Carson Carroll (Oct. 5, 2007) [HOCR 001905-001911] (Exhibit 228).

⁶⁵⁸ *Id.*

⁶⁵⁹ Hoover Transcript at 193 (Exhibit 121).

of weapons, Hoover apparently trusted that his instructions to Newell from two years earlier were sufficient. They were not.

Hoover had a responsibility to ensure that the largest gun trafficking case in ATF at the time was operating according to ATF and Justice Department guidelines. Knowing that the SAC of the field division overseeing the case had problems with investigations in the past, Hoover should have asked the tough questions of Newell and obtained the information he required—just as he did back in the 2007 Hernandez case.

As Deputy Director, Hoover was ATF's chief operating officer. He came up through the ranks as a field agent and was well respected throughout ATF. He understood the ATF, having spent the bulk of his professional career there, but fell short in his duty to protect public safety during *Fast and Furious*.

5. Acting Director Kenneth E. Melson

| | |
|-----------------|---|
| FINDING: | <u>Where the buck stops:</u> ATF Acting Director Ken Melson was concerned that <i>Fast and Furious</i> did not end sooner. He even offered to travel to Phoenix to write the indictments himself. Still, he never ordered it be shut down. Once the scandal broke in the media, despite Melson's desire to cooperate with Congress, Justice Department headquarters muzzled him. |
|-----------------|---|

Acting Director Ken Melson was a career prosecutor appointed to head ATF on an interim basis by President Obama. He often stayed above the fray with respect to individual investigations and focused more on managing the ATF and improving its efficiency. Melson delegated many of the day-to-day duties of running the ATF to Deputy Director Hoover.

A. Background and Mission

Kenneth E. Melson became Acting Director of ATF in April 2009. Melson's prior law enforcement experience consisted of two years as head of the Executive Office of United States Attorneys, and 21 years as the First Assistant U.S. Attorney for the Eastern District of Virginia.

When he became Acting Director, Melson quickly realized that ATF was a troubled agency. It had operated without a Senate-confirmed director since Congress first required Senate confirmation for the post in 2006. When Melson came in, ATF was suffering from significant internal divisions. According to Melson, ATF was "very stove-piped at the time with its various directorates. They weren't communicating with each other or among each other and decisions were being made that were contrary to decisions being made in other parts of the directorate."⁶⁶⁰

⁶⁶⁰ Melson Transcript at 17 (Exhibit 52).

Melson aimed to revamp the dysfunctional agency, in part, because he was concerned about its standing within the Department of Justice.⁶⁶¹ The changes Melson instituted were intended to establish greater efficiency within ATF. Many of the day-to-day operations, including oversight of investigations, were left to Deputy Director William Hoover, who in his 24-year tenure at ATF ascended the ranks of Field Operations.

One way Melson aimed to promote efficiency in ATF was to use outside experts to assist with cases. Melson wanted to take a new approach to large firearms trafficking cases with assistance from the Justice Department's Criminal Division. This approach was consistent with the draft Strategy for Combating the Mexican Cartels that the Deputy Attorney General distributed in October 2009, as discussed above.

On December 3, 2009, less than a month after *Fast and Furious* had officially been opened as a case, Melson e-mailed Lanny Breuer, Assistant Attorney General for the Criminal Division, regarding seizures of multiple weapons in Mexico. Melson wanted to "coordinate and monitor" seizures of multiple weapons "as if the seizure was one case."⁶⁶² In other words, if 35 weapons were recovered at the same time, but were bought by 10 different purchasers, the recovered weapons would become the subject of one large investigation instead of 10 individual ones. As Melson wrote to Breuer:

Using the traces **as intelligence**, and compiling the information from each trace investigation, we can connect the purchases, **identify the traffickers** and use more serious charges against them. The intelligence analysis and linking of trace data and investigation results will be done at HQ out of our intelligence directorate. I would like to see if you have any interest in **assigning a criminal division attorney to work with that group** to develop multi-division/district cases and perhaps to the district with the best venue to indict the case.⁶⁶³

Breuer wrote back to Melson the next morning, stating: "We think this is a terrific idea and a great way to approach the investigations of these seizures. Our Gang Unit will be assigning an attorney to help you coordinate this effort. . . . I would love to see you to discuss this further."⁶⁶⁴

B. Melson and DOJ Learn of Operation Fast and Furious

The resulting cooperation became an important initiative for both ATF and the Criminal Division. Lanny Breuer wrote a memorandum to Attorney General Holder that discussed this new initiative, and Breuer prepared notes about this new coordination with ATF in preparation

⁶⁶¹ *Id.* at 23.

⁶⁶² E-mail from Kenneth Melson to Lanny Breuer (Dec. 3, 2009) [HOCR 003403] (Exhibit 259).

⁶⁶³ *Id.* (emphasis added).

⁶⁶⁴ E-mail from Lanny Breuer to Ken Melson (Dec. 4, 2009) [HOCR 003403] (Exhibit 259).

for a personal meeting with the Attorney General.⁶⁶⁵ As a result of this initiative, the Criminal Division assigned one of its lawyers to assist with the Fast and Furious case. This attorney was briefed on Operation Fast and Furious shortly thereafter. Given the importance of the case, the attorney was forced to alter his holiday plans just to get up to speed.⁶⁶⁶

One week after his e-mail exchange with Lanny Breuer, Acting Director Melson learned of Operation Fast and Furious for the very first time. On December 9, 2009, a meeting took place in Melson's office with three top ATF officials: William Hoover, the Deputy Director; Bill McMahon, the Deputy Assistant Director for Field Operations; and Steve Martin, the Deputy Assistant Director for OSII. In the meeting, Melson learned of two large seizures of weapons purchased by Fast and Furious suspects that had occurred in Mexico. This meeting led to a detailed briefing with Criminal Division lawyers the following week.⁶⁶⁷

Over the next several months, Melson received notification of weapons recoveries tying back to Fast and Furious. For example, in January 2010, Melson was informed about one particularly large recovery connected to the case.⁶⁶⁸ Agents seized forty weapons from a stash house in El Paso, Texas, on January 13, 2010, that had been purchased by Fast and Furious straw buyers. This recovery was significant for two reasons. First, it represented a potential shift in the geographic movement of Fast and Furious weapons from the gun stores in Phoenix to the Sinaloa cartel in Mexico. Second, it was also connected to a separate case run by ATF's Dallas Field Division.

The same week that Melson received information about this El Paso seizure, he was briefed on a separate seizure of 41 weapons that occurred on the Tohono O'odham Nation, an Indian reservation that stretches from southern Arizona into Mexico. The seizure resulted from a GPS tracker which was inserted into one of the 41 weapons—one of only two known instances in which ATF used such a technique in Fast and Furious. The episode illustrates that ATF could have used trackers on a larger scale to interdict more suspicious purchases in conjunction with the contemporaneous knowledge of the purchases that ATF received from cooperating FFLs. Since this was the first time ATF employed a tracker Melson included the information about the tracker and the seizure—including the fact that the suspects intended to take the firearms to Mexico—in his weekly report to Attorney General Holder.⁶⁶⁹

After ATF senior management had received information about specific seizures and recoveries, Acting Director Melson participated in a detailed briefing on Fast and Furious on

⁶⁶⁵ Memorandum to the Attorney General from Assistant Attorney General Lanny Breuer, "Weekly Report for the Week of January 4, 2010 – January 10, 2010" [HOCR 003249-003250] (Exhibit 260); Notes from Lanny Breuer, Assistant Attorney General, DOJ [HOCR 003358-003362] (Exhibit 261).

⁶⁶⁶ E-mail from Kevin Carwile to Jason Weinstein (Mar. 16, 2010) [HOCR 002832] (Exhibit 262).

⁶⁶⁷ Melson Transcript at 76-77 (Exhibit 52).

⁶⁶⁸ Melson Transcript at 194 (Exhibit 52).

⁶⁶⁹ Memorandum to the Attorney General from Kenneth Melson, "Weekly Report for Mar. 1-5, 2010" [HOCR 003271] (Exhibit 263).

March 12, 2010.⁶⁷⁰ This briefing, given by Deputy Director Hoover, also included Gary Grindler, then the Acting Deputy Attorney General. It was one of the monthly meetings that ATF had with the Deputy Attorney General. Melson testified as to the purpose of these meetings:

[W]e have a monthly meeting with the DAG [Deputy Attorney General], which is usually a half an hour to 45 minutes, and we brief him on the issues that are coming to the top at ATF. . . so that they were not caught by surprise if an issue pops out in the press.⁶⁷¹

During the meeting, Hoover informed Melson and Grindler that 1,000 weapons had been sold in conjunction with *Fast and Furious*, and that just a handful of straw purchases had bought most of them. Hoover also showed them maps of Mexico and Arizona, pinpointing all the seizure locations—some of which occurred through interdiction in the U.S., but others merely through recovery at crime scenes in Mexico.

C. Concerns About Guns Flowing South and a Desire to Shut Down the Case

In the summer of 2010, Acting Director Melson, like those below him in the chain of command, worried that *Fast and Furious* was not being shut down fast enough. On July 14, 2010, Melson was informed of a recovery of 73 weapons, many of which traced back to *Fast and Furious*.⁶⁷² Melson asked his top two lieutenants, Deputy Director Hoover and Assistant Director for Field Operations Chait, “When will we be taking *Fast and Furious* down? An awful lot of guns seem to be flowing south.”⁶⁷³ Melson deemed this recovery important enough to alert the nation’s top law enforcement officer by including this information in a memo to Attorney General Holder. The memo stated that many of the guns were purchased by “known straw purchasers.”⁶⁷⁴

⁶⁷⁰ ATF Monthly Meeting with the Acting Deputy Attorney General, Mar. 12, 2010 [HOCR 002817-002823] (Exhibit 86).

⁶⁷¹ Melson Transcript at 24 (Exhibit 52).

⁶⁷² E-mail from Mark Chait to Kenneth Melson (Jul. 14, 2010) [HOCR 002084] (Exhibit 149).

⁶⁷³ E-mail from Kenneth Melson to Mark Chait and William Hoover (Jul. 14, 2010) [HOCR 002084] (Exhibit 149).

⁶⁷⁴ Memorandum for the Attorney General from Kenneth Melson, Weekly Report for Jul. 19-23, 2010 [HOCR 002081-002082] (Exhibit 264).

Bureau of Alcohol, Tobacco, Firearms and Explosives Recovers 73 Firearms in “Operation Fast and Furious” — Phoenix, Arizona:

On July 14, 2010, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported on the recovery of 73 firearms and 250 AK-47 drum magazines from a business in Phoenix. ATF conducted an interview at the business after receiving a tip from the Phoenix Police Department regarding an ATF gun-trafficking investigation. ATF recovered 73 firearms, including 20 AK-47 type rifles, a Barrett .50 caliber rifle, an AR-15 rifle, 50 handguns, approximately 250 75-round drum magazines, and other magazines and assorted ammunition. Firearms traces indicate that many of the items were recently purchased by known straw purchasers. This recovery adds to the total of 169 firearms recovered in the previous 25 days as part of the Southwest Border firearms trafficking investigation.

Melson was concerned about the large number of weapons that had been recovered in Mexico. Yet, the case continued. The slow progress of indictments frustrated Melson so much that he proclaimed that he would travel to Arizona and write the indictments himself. He testified:

After it got into July or so and the exit strategy had been completed, almost every Monday when we had our staff meetings, I asked Chait what’s the status of the case? Now it’s the end of August, now it’s the beginning of September, now it’s the middle of September. They told us they were going to get an indictment. Now it’s November and now it’s December. And it keeps getting pushed. **I offered to send our own lawyers out there to get this case indicted. In fact, I offered to go out and do the indictment myself.**⁶⁷⁵

Melson claims that he did everything in his power to alert his staff that Fast and Furious needed to be taken down as soon as possible. He stated, “All I know is, yes, I asked time and time again, when that case was going to be indicted.”⁶⁷⁶

Nevertheless, the case remained unindicted for many more months. In the meantime, as late as mid-November 2010, Melson was still referring to Fast and Furious as a “fantastic” case.⁶⁷⁷

⁶⁷⁵ Melson Transcript at 82 (Exhibit 52).

⁶⁷⁶ *Id.*

⁶⁷⁷ E-mail from Dennis Burke to Emory Hurley (Nov. 19, 2010) [HOG 003062] (Exhibit 265).

D. Whistleblowers and Congressional Inquiry

On January 5, 2011, ATF Chief Counsel Steve Rubenstein e-mailed Melson:

This is in response to your request regarding information posted on “Clean Up ATF.” Specifically, on December 22, 2010, “1desertrat” stated that “word is” that Phoenix FD ASAC George Gillet [sic] “[a]llegedly approved more than 500 AR-15 type rifles from Phoenix and Tucson cases to be ‘walked’ into Mexico.” The post further states that “[o]ne of those rifles is rumored to have been linked to the recent killing of a Border Patrol Officer in Nogales, AZ.”

The disclosure of this information has a potential deleterious effect on ATF’s undercover operations. . . .

If “1desertrat” is an ATF employee, then he/she is subject to our Orders and Standards of Conduct.⁶⁷⁸

Melson responded, “Thanks, Steve. I am going to forward this to [Internal Affairs].”⁶⁷⁹ It is unknown whether Melson took any actions at that point to investigate whether there was any truth to the public allegations.

The day after Senator Grassley sent him a letter on January 27, 2011, expressing concern over alleged gunwalking and its possible relationship to the death of Border Patrol Agent Brian Terry, Melson sent an e-mail to Hoover and Chait stating, “I would like to see tomorrow afternoon all the material (documents) including all reports tantamount to the case record on the defendant who sold the weapons involved in the shooting with the CBP. Also, I think we need to **call over to the higher levels of the FBI** and find out the results of the forensic testing on the guns that came from our guy.”⁶⁸⁰

According to his testimony, Melson wanted to be very proactive in responding to the congressional inquiry into Fast and Furious, and says he told the Justice Department he wanted to come to Capitol Hill to brief Senator Grassley’s office on the case personally. He stated:

And after receiving that letter, **our first instinct and intuition was to directly march over to Senator Grassley’s office and brief him on what Fast and Furious was** for purposes of explaining the concept and the role it played and how it got there, and where ATF was going in it.

⁶⁷⁸ E-mail from Steve Rubenstein to Kenneth Melson (Jan. 5, 2010) [HOCR 001571] (Exhibit 201).

⁶⁷⁹ E-mail from Kenneth Melson to Steve Rubenstein (Jan. 5, 2010) [HOCR 001572] (Exhibit 201).

⁶⁸⁰ E-mail from Kenneth Melson to William Hoover and Mark Chait (Jan. 27, 2011) [HOCR 003709] (emphasis added) (Exhibit 266).

And we expressed that desire to the DAG's [Deputy Attorney General's] office.⁶⁸¹

Instead, the Justice Department's Office of Legislative Affairs sent an attorney who was apparently more knowledgeable about Fast and Furious than Melson to brief Senate staff—Deputy Assistant Attorney General Jason Weinstein. Weinstein was well-acquainted with the operation. In fact, he had authorized and signed wiretap applications for Fast and Furious.⁶⁸²

Though Weinstein told congressional investigators that Fast and Furious was an ongoing criminal investigation and that the Department would not be able to comment on it, Melson immediately understood why this case was unique:

The pushback from the Department was that it pertained to an ongoing criminal case, and certainly concerns about releasing information on an ongoing criminal case is a serious concern and has to be treated with sensitivity, but we thought that we could go over and brief [Senator Grassley]. . . This case is a little different, because you are actually investigating looking at an investigation, as opposed to looking at subject matters which might tangentially impact an investigation. This was about an investigation itself and you can hardly investigate or discuss that without getting into some issues that impact the case.⁶⁸³

Melson testified that Weinstein's briefing marked the beginning of a pattern of Justice Department responses centering on damage control:

I might characterize it, and I hope I'm not going too far abroad, but **I think they were doing more damage control than anything.**

My view is that the whole matter of the Department's response in this case was a disaster. That as a result, it came to fruition that the committee staff had to be more aggressive and assertive in attempting to get information from the Department, and as a result, there was more adverse publicity towards ATF than was warranted if we had cooperated from the very beginning. And a lot of what they did was damage control after a while. Their position on things changed weekly and it was hard for us to catch up on it, but it was very clear that they were running the show.⁶⁸⁴

⁶⁸¹ Melson Transcript at 29 (Exhibit 52).

⁶⁸² Weinstein Transcript at 86 (Exhibit 119).

⁶⁸³ Melson Transcript at 30-31 (Exhibit 52).

⁶⁸⁴ *Id.* at 31.

E. Discovering the Truth

Over the next several months, Melson became increasingly frustrated with the Justice Department's response to Congress. He believed the Department was not being sufficiently forthcoming with Congress, and he decided to study all facets of Fast and Furious himself. Melson testified:

I decided to have confidence that we've looked at everything, that I would read them all. So sitting on the plane, reading the wiretap affidavit and one of the wiretap affidavits – in fact, I think more than one, there was a statement in there prepared by the agents – the AUSA and **reviewed by the Criminal Division that suggested there was probable cause to believe that straw purchasers were taking guns across the border. Because they set out in the affidavit the various – the various border crossings of the straw purchasers.**⁶⁸⁵

Melson warned Justice Department headquarters that the information he had reviewed contradicted earlier claims that the Department had made to Congress. Melson testified:

But it was apparent to me that they were suggesting that there was probable cause to believe that this information – that these straw purchasers were taking guns across the border. **So while on the plane, I drafted an e-mail to our people, and said, you know, you better back off, you better back off this statement, because – the statement in this letter, this February 4th letter to Senator Grassley,** because I don't believe we can say that in light of the information that our agent was swearing to before a federal district court judge to get the wiretap.⁶⁸⁶

The Department failed to heed his warnings.

Melson acknowledged that if he had been properly informed about the case early on, he would have approached the response to Senator Grassley differently. Melson claims he was unaware of all the facts of Fast and Furious until the scandal broke in the media, but he was proactive in quickly learning them. He testified:

I think early on, if there had been an awareness of not just the number of guns, but the number of guns that a single person purchased, and that we were watching the guns being purchased by them, I think we would have taken a different approach on it, and would have approached Patino and at the risk of putting the investigation in danger at least stopped his multiple

⁶⁸⁵ *Id.* at 36.

⁶⁸⁶ *Id.* at 36-37 (emphasis added).

purchases that continued on and on and on for a significant period of time.⁶⁸⁷

The Department—particularly its Criminal Division—was aware of the startling facts of Operation Fast and Furious early on. Melson stated:

But I had e-mailed Lanny Breuer, on December 6, 2009, the day that Voth came on the job in Mexico – I mean, in Phoenix, and asked him to come over and be briefed on some of these cases, so that perhaps his people, his prosecutors could help us develop a case Then on December 17th, there was a briefing again by our intel section on the Reynoso seizure and the Phoenix Fast and Furious case. Now, **this was just December 17, so it was early in the investigation. But Kevin Car[wil]le, who is the supervisor in the Criminal Division**, I think he was in charge of gang cases, I think – I’m not 100 percent sure **and Joe Cooley who was one of the trial attorneys came over to be briefed on it as well, in anticipation of them working this whole spectrum of seizures that were across the border.**⁶⁸⁸

Put plainly, the Criminal Division failed to do what Ken Melson claims he would have done if he possessed the knowledge that officials in the Criminal Division did pertaining to Fast and Furious. Melson explained:

So we ought to be developing a multi-division, multi-U.S. Attorney district case on all this. Get the intel from all these seizures, bring it together, develop the case and take it down. So I obviously couldn’t do it, so I wanted Lanny Breuer to do it. **Lanny Breuer became very active in the Southwest border plans and implementation.** He worked on the Merida initiative, with the four pillars of the Merida initiative. We briefed him on what we were doing in Mexico. We have briefed him on Fast and Furious. So he was a partner with us in a lot of what we were doing along the Southwest border as well as in Mexico.⁶⁸⁹

As the congressional investigation into Fast and Furious progressed, the Department hindered Melson from talking about Fast and Furious. Deputy Attorney General James Cole prohibited Melson from even talking to ATF personnel about the case even though Melson wanted to inform the entire ATF what was going on. Melson set out to remedy internal ATF processes in order to prevent Fast and Furious-type cases from happening in the future. He explained:

So we have changed the way we supervise major cases from the way it

⁶⁸⁷ *Id.* at 64.

⁶⁸⁸ *Id.* at 76-77.

⁶⁸⁹ *Id.* at 75-76.

was before, where it was just if major case funds were being expended, then apparently field ops would look at it, now we are coming up with a guideline as to when a case is a case that needs to have more direct headquarters supervision, and more headquarters awareness of these cases, so that we can stop some of this stuff if there is an errant approach to investigations.⁶⁹⁰

From Melson's perspective, if other Justice Department components had been more forthcoming with information they had about Fast and Furious suspects, the operation would have ended much sooner than it did. He believed that during Fast and Furious, the Department possessed additional information that would have led to the operation's timely conclusion had it shared this information with ATF. He stated:

I think if [ATF] had been in it, and we had known and therefore had access to the information that perhaps other agencies had, we could have either shut the operation down because we know already who the end game is, or we could have dramatically facilitated reaching that goal and then stopping, and I think this case would not be what it looks like now.⁶⁹¹

Melson believed that if ATF had had access to the same information about Manuel Celis-Acosta as other Department components, such as the FBI, Fast and Furious would have ended differently:

Q. It would seem to us that at whatever point in time that deportation and reentry into the United States [of FBI's target in Operation Head Shot] happens would have been an ideal time to loop ATF into this network, and this network's relationship to the firearms trafficking folks?

A. It would have made it unnecessary to continue the case.⁶⁹²

Though Ken Melson did not have the detailed knowledge of Fast and Furious that senior political appointees in the Justice Department did, the Department has made Melson be the scapegoat for the reckless tactics used in the investigation. On August 30, 2011, the Justice Department announced that Melson would be removed as Acting Director of ATF. Melson became a senior adviser in the Office of Legal Policy in Department headquarters. Not coincidentally, this occurred after Melson provided a transcribed interview to Committee wherein in stated, **"The Department is really trying to figure out a way to push information away from its political appointees at the Department."**

⁶⁹⁰ *Id.* at 72.

⁶⁹¹ *Id.* at 110.

⁶⁹² *Id.* at 118.

VI. Conclusion

Operation Fast and Furious was the largest firearms trafficking case involving the U.S.-Mexico border in the history of the Bureau of Alcohol, Tobacco, Firearms, and Explosives. The case began in the fall of 2009 in ATF's Phoenix Field Division under the leadership of Special Agent in Charge William Newell, an agent with a history of sanctioning the dangerous investigative technique known as gunwalking. Newell had been reprimanded before by ATF management for pushing the envelope with discredited tactics. But Newell had an audacious goal. He intended to dismantle the U.S.-based gun trafficking network that supplied the formidable Mexican Sinaloa Cartel. When the Obama administration resurrected an earlier case in which his division used reckless gunwalking tactics, Newell saw his opportunity. David Voth was brought to Phoenix to assist Newell, and to serve as the first-line supervisor for Fast and Furious. Voth was a novice supervisor who lacked experience with complex firearms trafficking cases. Together, Newell with his penchant for gunwalking, and the untested Voth, embarked on a risky—and ultimately deadly—path.

From the outset, the case was marred by missteps, poor judgments, and an inherently reckless strategy. In the summer of 2009, the Deputy Attorney General at the Department of Justice in Washington, D.C. promulgated a “Strategy for Combating the Mexican Cartels.” The new aim was to zero in on the firearms trafficking networks. Agents were advised that “merely seizing firearms” purchased illegally by straw buyers should take a back seat to gathering information in hopes of dismantling entire firearms trafficking networks. To effectuate the new plan, ATF agents in Phoenix convinced local gun dealers to cooperate by supplying ATF with real-time information on the straw purchases, even though ATF knew the buyers were illegally obtaining firearms destined for the Mexican drug cartels. The gun dealers were reassured that ATF was closely monitoring the transactions, and interdicting the weapons. That was false. In total, nearly two thousand firearms got away, and fell into the hands of associates of known criminals, including those affiliated with the dangerous Mexican cartels.

Shortly after Fast and Furious began, ATF applied for and received the coveted OCDEFB designation. The task force was arranged as a Strike Force, which meant that the United States Attorney's Office for the District of Arizona would lead it. Other Justice Department components were added to the case, including the FBI and DEA, as well as DHS's investigative arm, Immigration and Customs Enforcement.

With each step in the investigation, the U.S. Attorney's Office and ATF had opportunities to inform and seek approval from senior officials in the Justice Department's Office of the Deputy Attorney General, and in the Criminal Division. A Federal statute requires designated senior officials in the Justice Department to authorize wire taps. ATF's senior leadership in Washington was updated regularly on the progress of its signature investigation. These same leaders in Newell's chain of command knew about the incredible number of guns in Fast and Furious but failed to provide proper supervision.

Shortly after the case began, in December 2009, DEA supplied ATF with extensive information on what would become ATF's prime target. At that point, ATF should have shut Fast and Furious down, but it failed to recognize the significance of the information the DEA had shared. Instead, ATF continued with its plan to identify all the players in the trafficking network rather than disrupt or deter them through confrontation and arrest. So, hundreds of guns flowed to criminals while two of the trafficking network's customers, who were its connection to the Mexican drug cartels, were already known to U.S. law enforcement. Both the FBI and DEA had key information on the network's connection drug cartels in Mexico by the time ATF's wiretaps were approved.

As the number of firearms involved in the case continued to escalate, at last, senior officials at ATF headquarters started to ask questions about when the case was going to be taken down. ATF Deputy Director William Hoover, in particular, demanded an exit strategy in March 2010. But, it took another nine months and the tragic murder of a U.S. Border Patrol Agent Brian Terry in the Arizona desert in December 2010, before the U.S. Attorney's Office and ATF finally took meaningful steps to bring the case to a close.

Operation Fast and Furious is the third major scandal in ATF history following the tragedies at Ruby Ridge and Waco in the mid-90s. It is tied to the death of a U.S. Border Patrol agent and countless Mexican citizens. Almost three years after the case began—and 18 months after it was first publicly exposed—no one from ATF has been held accountable and not one has lost even a single day's pay. Though Attorney General Holder testified that the case was “fundamentally flawed” and President Obama has stated that mistakes may have been made, all responsible ATF officials still work either at the ATF or within the Department of Justice. The two men most closely identified with the failed strategy of the case and who bear the brunt of responsibility for supervising the operation on a day-to-day basis, William Newell and David Voth, have both kept their jobs at ATF.

Strong leadership is needed at ATF to overcome the deep scars left by Operation Fast and Furious. Such leadership requires the full-time attention of individuals devoted to ensuring ATF becomes an effective organization known throughout the country for protecting communities from violent criminals and ensuring public safety. Greater accountability within ATF would underscore that ineffective supervision and recklessness both have consequences.

This report is not intended to imply in any way that the mistakes and responsibility for Operation Fast and Furious are limited to ATF and other federal officials who were based in Arizona. While mistakes by figures in Arizona were immense, the joint Congressional investigation into Operation Fast and Furious will issue a second report detailing the mistakes and culpability of Department of Justice officials based in Washington, D.C.