

Congress of the United States
Washington, DC 20515

January 31, 2013

Via Electronic Transmission

The Honorable B. Todd Jones
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Jones:

In 2004, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) launched its first Violent Crime Impact Teams under an initiative designed to target “hot spots” of criminal activity and go after the “worst of the worst” violent criminals.¹ A 2006 Department of Justice (DOJ) Office of Inspector General (OIG) report cited “ineffective oversight” of the Impact Teams and found no evidence showing firearm crimes were actually reduced in the “hot spots” where they performed.² Yet, it is our understanding that these Teams have continued to conduct operations in cities across America. Milwaukee, Wisconsin, is one city where Violent Crime Impact Teams still exist.

This week, the *Milwaukee Journal Sentinel* reported on a disturbing ATF undercover operation that, similar to Operation Fast and Furious, appears to have had many problems with limited successes.³ According to the *Journal Sentinel*, this undercover operation began under your leadership in January 2012 when an ATF Violent Crime Impact Team opened a storefront in a Milwaukee neighborhood – a neighborhood where aggravated assaults were decreasing and homicide numbers were far fewer than other sections of Milwaukee. Similar to Operation Fast and Furious, the U.S. Attorney for the Eastern District of Wisconsin was reportedly briefed on this undercover operation and allowed it to proceed.⁴

ATF created a phony storefront, named it Fearless Distributing, and staffed it with undercover ATF agents, who set up a Facebook page and attracted people to the property by selling clothes, shoes, and drug paraphernalia. According to the *Journal Sentinel*, ATF agents handed out business cards emblazoned with the movie logo from “The Expendables” and the words “Buy, sell, or trade” on them. Agents “spread the

¹ ATF Fact Sheet, “Violent Crime Impact Teams (VCIT) Initiative” (March 2010). Available at <http://www.atf.gov/publications/factsheets/factsheet-violent-crime-impact-teams.html>.

² Review of the Bureau of Alcohol, Tobacco, Firearms, and Explosives’ Violent Crime Impact Team Initiative, Dep’t of Justice Office of the Inspector General (May 2006). Available at <http://www.justice.gov/oig/reports/ATF/e0605/final.pdf>.

³ John Diedrich and Raquel Rutledge, ATF’s Milwaukee sting operation marred by mistakes, failures, MILWAUKEE JOURNAL SENTINEL (Jan. 29, 2013). Available at <http://www.jsonline.com/watchdog/watchdogreports/atfs-milwaukee-sting-operation-marred-by-mistakes-failures-mu8akpj-188952581.html>.

⁴ *Id.*

word” that Fearless Distributing was willing to buy guns and drugs, as the goal of the operation was to bust criminal operations in the city “by purchasing drugs and guns from felons.” These drugs included marijuana, cocaine, and heroin.⁵ A retired ATF agent who supervised undercover operations, however, noted that “a number of mistakes [were] made during the operation.”⁶ According to the *Journal Sentinel*, these mistakes “suggest a lack of planning and oversight.”⁷

Although local residents and the landlord from whom ATF rented the storefront property did not know the true nature of the sham company Fearless Distributing, by March 2012 undercover ATF agents at the store were buying and selling guns. Using taxpayer dollars, these ATF agents paid a premium for the guns. According to the *Journal Sentinel*, in one instance, ATF agents paid \$1,250 for a gun that usually sells for \$400 to \$700. In fact, some suspects bought guns from stores and then re-sold them to undercover ATF agents at Fearless Distributing for a quick profit.⁸

According to the *Journal Sentinel*, on September 13, 2012, three weapons were allegedly stolen from an ATF Ford Explorer parked near the storefront. The weapons included a Smith & Wesson 9mm handgun, a Sig Sauer .40-caliber pistol and an M-4 automatic rifle. The very next day, an individual sold the stolen Sig Sauer, and another unrelated weapon, back to ATF agents at Fearless Distributing – for \$1,400. ATF agents failed to arrest that individual for two months. The M-4 machine gun and Smith & Wesson 9mm have yet to be recovered. Retired ATF agent Gerald Nunziato lamented, “[T]hat bothers me the most. The last thing you want to have is a gun stolen. If that gun is used to shoot someone, that is so personal.”⁹

The Fearless Distributing storefront operation was plagued with other fundamental problems. For example, according to the *Journal Sentinel*, ATF failed to hook up an alarm to the property and, in October 2012, Fearless Distributing was burglarized. Merchandise worth \$35,000 was stolen from the property, including jewelry, clothing, auto parts, shoes and other undisclosed items. One resident who lives near the storefront commented after this series of events that it “does not help to have your own government planting crime here . . . It’s like, ‘Thanks.’”¹⁰ ATF closed the storefront shortly after the burglary.

ATF’s mistakes, however, did not end with the closing of the storefront. During a roundup of suspects in a November 2012 sting, ATF agents charged the wrong person on at least three occasions. ATF charged one individual for selling drugs to agents even though he was in prison during the time of the operation. Agents participating in the sting also “left behind a sensitive document that listed names, vehicles, and phone numbers of undercover agents.”¹¹

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

In December 2012, the owner of the property where Fearless Distributing was located asked ATF to pay him \$15,000 for damage to walls, doors and carpeting, including a month of lost rent and an overuse of utilities during Fearless Distributing's operation. According to the *Journal Sentinel*, despite the property owner having met with an ATF supervisor about the burglary and the supervisor assuring the landlord that "they would take care of everything," an ATF attorney reportedly used bully tactics, threatening the landlord with harassment of a federal official.¹²

In light of these reports, we remain extremely concerned about your ability to manage ATF. ATF needs strong leadership from its Director and senior management. If these reports are accurate, your ability to provide this leadership is in serious doubt. You promised to "hit the reset button" when you became Acting Director.¹³ Instead, it appears as though you have hit the "repeat" button, as the Fearless Distributing sting was created and conducted entirely under your stewardship.

More than six years have passed since a DOJ OIG report indicated there was "ineffective oversight" of the Violent Crime Impact Teams. You have had seventeen months to right the ship at ATF, yet reports about the Fearless Distributing operation indicate that this "ineffective oversight" has continued during your tenure.

The Fearless Distributing sting is exactly the type of operation where strong management controls must be in place. Given its history over the past 20 years, ATF is not an agency that Congress can trust regarding out-of-the-box or novel investigative techniques. Consequently, ATF must have rigorous oversight plans to ensure that these operations are conducted carefully. Such management controls and rigorous oversight plans appear to have been absent during the botched Fearless Distributing case. Although not surprising, it is unacceptable.

Please provide responses to the following questions:

- 1) When was the undercover operation involving Fearless Distributing initiated and terminated?
- 2) What were the names of the case agent and supervisory agent over the undercover operation involving Fearless Distributing?
- 3) Did you authorize the undercover operation involving Fearless Distributing? If not, why not, and who in the ATF chain of command did authorize the operation? Please identify by name and position each individual involved in the authorization above the first-line supervisor.

¹² *Id.*

¹³ MJ Lee, Embattled ATF shakes up staff, POLITICO (Oct. 6, 2011). Available at <http://www.politico.com/news/stories/1011/65299.html>.

- 4) When did you first become aware of the undercover operation involving Fearless Distributing? How did you become aware of the operation?
- 5) Were you ever briefed on the operation involving Fearless Distributing? If so, how many times were you briefed? Did you ever call any aspects of this case into question? If so, please provide documentation.
- 6) What law enforcement partners, if any, did the ATF work with in the undercover operation involving Fearless Distributing? Please list them and the number of personnel assigned from each.
- 7) What methodology was used to determine the placement of the undercover business, Fearless Distributing?
- 8) What United States government property, including law enforcement sensitive paperwork, was left on the premises of Fearless Distributing once the undercover operation ended?
- 9) What methodology was used to determine the price to be paid for weapons or drugs bought in the undercover operation involving Fearless Distributing?
- 10) What were the sources of cash for the undercover operation involving Fearless Distributing, including the breakdown between (a) funds provided by the ATF, (b) project generated income (PGI), and (c) interest income?
- 11) What were the operational costs for the undercover operation involving Fearless Distributing, including the breakdown between (a) total operational costs, (b) unused PGI remitted back to the Treasury, if any, and (c) interest income remitted?
- 12) What was the total cost of the undercover operation involving Fearless Distributing?
- 13) How many indictments, leads and arrests were garnered through the undercover operation involving Fearless Distributing?
- 14) What information, including reports of investigation, was used in obtaining probable cause for the arrest of Adrienne Jones, who was allegedly falsely accused?

- 15) How many civil claims were filed against ATF or employees of ATF relative to this undercover operation involving Fearless Distributing?
- 16) How many weapons were sold by the ATF during the undercover operation involving Fearless Distributing and what are the locations of those weapons now?
- 17) If weapons were sold, who approved the plan to conduct these sales?
- 18) What steps, if any, were taken to retrieve the weapons and prevent their use in illegal activity or transmittal to prohibited purchasers, and how successful were those precautions?
- 19) List all property stolen from the unattended ATF vehicle and Fearless Distributing store during their respective burglaries.
- 20) Was the agent whose car was broken into (and from which weapons were reportedly stolen) working on the undercover operation involving Fearless Distributing? What personnel action(s), if any, have been taken regarding this incident?
- 21) Were the weapons reportedly stolen from the unattended vehicle secured with any type of safety device/trigger lock?
- 22) What is the status of the reportedly stolen weapons/ammunition, including the M-4 automatic rifle?

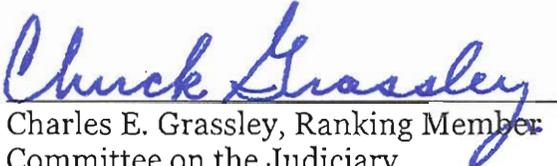
Please also provide the following documents:

- 1) All ATF Operational Plans (including ATF Form 3210.7) for the undercover operation involving Fearless Distributing.
- 2) All reports of investigation (ROIs) relative to the undercover operation involving Fearless Distributing.
- 3) Any documentation authorizing ATF to sell weapons as part of the undercover operation involving Fearless Distributing.
- 4) The ATF policy for storage of firearms in unattended vehicles.
- 5) The ATF policy for conducting undercover operations out of store fronts.

The Honorable B. Todd Jones
January 31, 2013
Page 6

Thank you in advance for ensuring your response arrives by no later than February 14, 2013. Please also contact Brian Downey or James Donahue of Ranking Member Grassley's staff at (202) 224-5225, Carlton Davis of Chairman Issa's staff at (202) 225-5074, or Jason Cervenak of the House Judiciary staff at (202) 225-3951 by February 5, 2013, to schedule a briefing on this matter.

Sincerely,


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


Robert W. Goodlatte, Chairman
Committee on the Judiciary
U.S. House of Representatives


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


F. James Sensenbrenner, Jr., Chairman
Subcommittee on Crime, Terrorism,
Homeland Security, and Investigations
Committee on the Judiciary
U.S. House of Representatives

cc: The Honorable Eric H. Holder, Jr., Attorney General
U.S. Department of Justice

The Honorable Michael E. Horowitz, Inspector General
U.S. Department of Justice

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

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

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

The Honorable Robert C. Scott, Ranking Member
U.S. House of Representatives, Committee on the Judiciary, Subcommittee on
Crime, Terrorism, Homeland Security, and Investigations