

**Congress of the United States**  
Washington, DC 20510

January 9, 2014

**Via Electronic Transmission**

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

Dear Director Jones:

Almost one year ago, we first wrote to you about a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) undercover storefront operation in Milwaukee, Wisconsin. The case, known as Operation Fearless, was rife with blunders, including theft of an assault rifle and two handguns from the primary undercover agent's government vehicle, the burglary of the undercover storefront, and the recruitment by ATF agents of an allegedly brain-damaged man to coordinate gun deals.<sup>1</sup> Operation Fearless also suffered from an utter lack of management. In response to our letters on January 31, 2013 and April 3, 2013, ATF officials briefed congressional staff on April 15, 2013 and the Department of Justice provided a written response on April 30, 2013. The information we received from ATF and the Department conveyed the impression that the problems plaguing Operation Fearless were isolated to Milwaukee. Unfortunately, a report released last month by the *Milwaukee Journal Sentinel* indicates that this may not have been the case.<sup>2</sup>

While it appears that the majority of cases listed in the *Journal Sentinel* report happened contemporaneously with Operation Fearless, it troubles us that during our oversight into Operation Fearless, ATF did not bring any of these other operations to our attention. According to the *Journal Sentinel*, around the approximate time of Operation Fearless, there were at least five other problematic storefront undercover operations being conducted in Portland, Oregon; Wichita, Kansas; Albuquerque, New

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<sup>1</sup> John Diedrich & Raquel Rutledge, *More ATF sting cases dismissed as top agent cannot testify*, MILWAUKEE JOURNAL SENTINEL, Sept. 24, 2013, available at <http://www.jsonline.com/watchdog/watchdogreports/loss-of-agents-testimony-cited-in-atf-case-dismissals-b99104877z1-225111342.html>.

<sup>2</sup> John Diedrich & Raquel Rutledge, *ATF uses rogue tactics in storefront stings across nation*, MILWAUKEE JOURNAL SENTINEL, Dec. 7, 2013, available at <http://www.jsonline.com/watchdog/watchdogreports/atf-uses-rogue-tactics-in-storefront-stings-across-the-nation-b99146765z1-234916641.html>.

Mexico; Atlanta, Georgia; and Pensacola, Florida.<sup>3</sup> Like Operation Fearless, each of these cases apparently suffered from a lack of sufficient supervision and adequate training in the principles of ethical federal law enforcement.

In all of these cases, ATF apparently wasted taxpayer dollars on purchases. According to the *Journal Sentinel*, in Milwaukee, ATF agents paid \$1,250 for a gun that usually sells for \$400 to \$700 and \$2,000 for a rifle that a suspect purchased hours before at Gander Mountain, a firearms retailer, for \$700.<sup>4</sup> In other cities where ATF storefronts posed as pawnshops, it seems that in an effort to maintain appearances, ATF would purchase almost anything brought through the doors, effectively boosting the market for stolen goods.<sup>5</sup> In Phoenix, federal prosecutors charged James Arthur Lewis with selling 11 firearms to undercover agents and officers.<sup>6</sup> The investigation found that Lewis obtained most of the firearms through residential burglaries he committed in 2010.<sup>7</sup> In Pensacola, Roderick Jones committed seven burglaries in six weeks, stealing, among other things, generators, air compressors and oxygen tanks that he sold to undercover ATF agents.<sup>8</sup> Alarming, an agent in one instance allegedly used his training to give instruction to a suspect on “field test[ing]” automatic weapons.<sup>9</sup> In another, an agent allegedly instructed an individual on the best practice to modify a weapon.<sup>10</sup> As we pointed out with Operation Fearless, operations like this raise questions as to whether ATF was manufacturing crime that would not have otherwise occurred, effectively increasing the overall crime rates in the neighborhoods where the storefronts were located.

Although the *Journal Sentinel* article focused on a small, select sample of those ATF ultimately charged, it is extremely disconcerting to see that across field divisions, agents apparently actively recruited assistance from individuals who allegedly had a diminished intellectual capacity. Appallingly, it appears that ATF frequently filed charges against such individuals at the conclusion of the case. In addition to reports that this practice was an element of Operation Fearless, it also allegedly occurred in Wichita, Pensacola, and Albuquerque. In Florida, a state prosecutor apparently

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<sup>3</sup> *Id* at 2.

<sup>4</sup> John Diedrich & Raquel Rutledge, *Last man convicted in Milwaukee ATF sting gets probation*, MILWAUKEE JOURNAL SENTINEL, Dec. 10, 2013, available at <http://www.jsonline.com/watchdog/watchdogreports/last-man-convicted-in-milwaukee-atf-sting-gets-probation-b99160675z1-235320951.html>.

<sup>5</sup> Diedrich & Rutledge, *supra* note 2.

<sup>6</sup> U.S. Dep’t of Justice, Press Release, *Surprise [sic] Felon Sentenced To Over 7 Years In Federal Prison For Possessing Firearms* (May 16, 2012), available at <http://www.atf.gov/press/releases/2012/05/051612-pho-surprise-felon-sentenced-to-over-7-years-in-federal-prison-for-possessing-firearms.html>.

<sup>7</sup> *Id.*

<sup>8</sup> Diedrich & Rutledge, *supra* note 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

declined to pursue cases against a number of such defendants.<sup>11</sup> ATF's policies on storefront operations state as follows:

ATF should be willing to participate in these types of operations only if the potential defendants are active criminals worthy of Federal interest. ATF's concern in these operations is in targeting illegal traffickers of firearms, tobacco, alcohol, or explosives who operate outside the scope of local authorities . . . .<sup>12</sup>

We are appalled by ATF agents' lack of judgment in recruiting juveniles and developmentally disabled individuals.

Much as in Operation Fast and Furious and Operation Fearless, it appears that poor management was the norm in these other storefront operations. In Portland, the *Journal Sentinel* reports that ATF management approved putting an undercover storefront right across the street from a local middle school.<sup>13</sup> It is almost unimaginable that any law enforcement agency would recklessly endanger children in this way—particularly an agency that is tasked with responding to school shootings. Further, it raises questions as to whether this case, like Operation Fearless, was part of ATF's Monitored Case Program, which was created in the wake of Operation Fast and Furious and which was touted to Congress as having enhanced oversight by ATF headquarters.

In our May 10, 2013 letter, we pointed out that ATF's failure to be forthcoming with information was a serious source of concern. In addition to creating significant image problems for an agency charged with upholding public trust, it is detrimental to the efforts of the vast majority of ATF agents and managers who are acting ethically and responsibly. ATF failed to properly supervise Operation Fearless. In light of the questions raised long ago about that case, ATF should already have addressed the problems with these other cases detailed in the *Journal Sentinel* rather than waiting for a letter from Congress.

The continued lack of accountability at ATF is disturbing. Around the conclusion of Operation Fearless in the fall of 2012, ATF management promoted Bernard Zapor, the Special Agent in Charge during the pendency of Operation Fearless, to ATF headquarters as Deputy Assistant Director of the Office of Field Operations – Central Region. In its April 2013 briefing, ATF informed congressional staff that a disciplinary action was pending against Mr. Zapor. And yet, ATF management later transferred Special Agent Zapor in the summer of 2013 to become the new Special Agent in Charge of the Phoenix Field Division—the very office which suffered from such poor management during Operation Fast and Furious. And of course, ATF failed to terminate any employees for their role in Operation Fast and Furious.

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<sup>11</sup> *Id.*

<sup>12</sup> ATF Policies for Undercover Operations, ATF Manual, Page A-24, Section 2.11.a.(2).

<sup>13</sup> *Id.* at 2.

Please make arrangements by no later than January 16, 2014 to brief our staffs on these issues. In addition, please provide written responses to the questions below.

With regard to the five undercover operations detailed by the *Journal Sentinel* (Portland, Wichita, Albuquerque, Atlanta, and Pensacola):

- 1) When did each of these storefront operations begin and end?
- 2) Why didn't ATF inform Congress of the problems with these storefront operations at the time it provided a briefing on Operation Fearless?
- 3) Please identify by name and position each individual involved in the authorization and supervision of each operation.
- 4) When and how did ATF headquarters become aware of the problems with each of these five cases?
- 5) When and how did you personally first become aware of each of these five undercover operations?
- 6) How did ATF determine the placement of each undercover storefront?
- 7) How did ATF determine the price to be paid for weapons or drugs bought in the undercover operation involving each operation?
- 8) What were the sources of cash for each undercover operation? Please include the breakdown between (a) funds appropriated to ATF, (b) any non-appropriated funds, such as project generated income (PGI), and (c) interest income.
- 9) What were the costs for each undercover operation? Please include the breakdown between (a) funds appropriated to ATF, (b) any non-appropriated funds, such as project generated income (PGI), and (c) interest income.
- 10) How many arrests, indictments, convictions, and plea agreements did ATF garner through each undercover operation?
- 11) Please describe any civil claims that may have been filed against ATF or employees of ATF in conjunction with any of these undercover operations and the status of those claims.

- 12) Which of these operations, if any, were part of the Monitored Case Program?
- 13) Which individuals, if any, from each of these operations are currently under disciplinary review or have been disciplined in connection with these operations? Please provide a detailed description of the status and results of any disciplinary proceedings.

Regarding storefront operations in general:

- 14) How many storefront operations has ATF conducted each year from 2009 to 2013?
  - a. How many arrests, indictments, convictions, and plea agreements have those operations generated?
  - b. How many have suffered burglaries of either the location of the store or government vehicles associated with the operation? Please list the dollar amount of items stolen from each store.
- 15) How many storefront operations were ongoing at the time of your appointment as Acting Director?
- 16) How many storefront operations has ATF initiated since you were named Acting Director?

In addition, please provide the following documents:

- 17) Complete, unredacted copies of all reports prepared by the Office of Professional Responsibility and Security Operations pertaining to any storefront operation conducted at any time between January 2009 and present.
- 18) All ATF Operational Plans (including ATF Form 3210.7) for the operations referenced by the *Journal Sentinel*.
- 19) All reports of investigation (ROIs) for the operations referenced by the *Journal Sentinel*.
- 20) The new ATF policy for undercover storefront operations.

Thank you in advance for ensuring your response arrives by no later than January 23, 2014. Please contact Tristan Leavitt 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 Chairman Goodlatte's staff at (202) 225-3951 with any questions about this request.

Sincerely,



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



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



Robert W. Goodlatte, Chairman  
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