## Congress of the United States

Washington, DC 20510

March 28, 2014

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

Dear Mr. Jones:

The family of Border Patrol Agent Brian Terry, who lost his life in the line of duty on December 15, 2010, recently contacted our staffs. The Terry family wanted to know why, more than three years after Agent Terry's murder, the Bureau of Alcohol, Tobacco, Firearms, and Explosives has not fired anyone because of Agent Terry's death. As you are no doubt aware, weapons from the reckless Operation Fast and Furious were found at the scene of his murder.

Although Operation Fast and Furious took place before you became Director of ATF, the disciplinary action against the ATF agents who designed, conducted, and managed the reckless operation has fallen squarely within your tenure at the head of the agency. To that end, your actions—or lack thereof—have been wholly inadequate. While several ATF officials chose to retire or leave ATF in the wake of Fast and Furious rather than face discipline, it is our understanding that ATF continues to employ three key players from Fast and Furious: Case Agent Hope MacAllister, Group Supervisor David Voth, and Special Agent in Charge William Newell.

In September 2012, the Department of Justice's Office of the Inspector General released its comprehensive 471-page report entitled "A Review of ATF's Operation Fast and Furious and Related Matters." The report scrutinized the roles that MacAllister, Voth, and Newell played during the operational component of Fast and Furious. Regarding Hope MacAllister, the Inspector General's report stated:

We nevertheless were troubled by the lack of urgency in [Case Agent] MacAllister's tactical approach in the circumstances of Operation Fast and Furious, and by her understanding of the evidence required for enforcement action in the case. . . . In sum, we concluded that MacAllister's early decisions in the case and her failure to reassess the investigative approach as the case progressed reflected a lack of urgency that was incompatible with the risk to public safety the Operation Fast and Furious subjects were creating.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> A Review of ATF's Operation Fast and Furious and Related Matters, U.S. Dept. of Justice, Office of the Inspector Gen., Sept. 2012, at 433-434 (emphasis added), available at: http://www.justice.gov/oig/reports/2012/s1209.pdf.

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Regarding David Voth, the Inspector General's report further stated:

We concluded that the investigative goal and approach in Operation Fast and Furious, which [Group Supervisor] Voth reaffirmed on multiple occasions during the course of the case, drove the lack of overt action against the straw purchasers, including making seizures and arrests. . . . In fact, if Voth truly felt the frustration during the case that he asserted to us with respect to seizures and arrests, his deficiencies as a supervisor were even more significant because we did not find persuasive evidence that his managers at ATF or those responsible for the case at the U.S. Attorney's Office were made aware of these misgivings. Instead, Voth's communications to these individuals reflected his full support for the case and his belief that "we are righteous in our plan to dismantle this entire organization and to rush in to arrest any one person without taking into account the entire scope of the conspiracy would be ill advised to the overall good of the mission."<sup>2</sup>

The Inspector General's report saved perhaps its most scathing conclusions for William Newell. The report stated:

[Special Agent in Charge] Newell also bore ultimate responsibility for the failures in Operation Fast and Furious, particularly in light of his close involvement with the office's highest profile and most resource-intensive case. . . . We believe that multiple flaws in the case . . . were readily apparent as the case was being conducted. Newell simply failed to take measures to address them. . . . We also found instances where Newell furnished incomplete information, and at times made statements that conveyed a misleading impression to ATF Headquarters on matters related to Operation Fast and Furious. . . . Newell's e-mails conveyed a misleading impression that agents were slowing purchases and interdicting firearms when in fact they were not. . . . Overall, we found that SAC Newell's conduct with respect to . . . Fast and Furious was irresponsible, and that he failed to provide the leadership and judgment required of a Special Agent in Charge.<sup>3</sup>

It is inexcusable that, 19 months after these findings became public, ATF has provided Congress with no information about whether, or to what extent, these employees have been held accountable. The repeated faulty judgment of MacAllister, Voth, and Newell severely jeopardized public safety during Fast and Furious, and ATF's failure to account for what disciplinary action, if any, has been taken is an affront to the family of Brian Terry. To that end,

<sup>&</sup>lt;sup>2</sup> *Id.* at 434-435 (emphasis added).

<sup>&</sup>lt;sup>3</sup> Id. at 437-440 (emphasis added).

please provide written responses to the following questions as soon as possible, but by no later than 5:00 p.m. on Tuesday, April 1, 2014:

- 1. What disciplinary measures did ATF propose for Hope MacAllister because of her role in Operation Fast and Furious?
- 2. What disciplinary measures did ATF take against MacAllister because of her role in Operation Fast and Furious?
- 3. Did MacAllister grieve her discipline for Fast and Furious? What was the result of that grievance?
- 4. What is MacAllister's current title, grade, and office location?
- 5. What disciplinary measures did ATF propose for David Voth because of his role in Operation Fast and Furious?
- 6. What disciplinary measures did ATF take against Voth because of his role in Operation Fast and Furious?
- 7. Did Voth grieve his discipline for Fast and Furious? What was the result of that grievance?
- 8. What is Voth's current title, grade, and office location?
- 9. What disciplinary measures did ATF propose for William Newell because of his role in Operation Fast and Furious?
- 10. What disciplinary measures did ATF take against Newell because of his role in Operation Fast and Furious?
- 11. Did Newell grieve his discipline for Fast and Furious? What was the result of that grievance?
- 12. What is Newell's current title, grade, and office location?
- 13. Has Newell had any formal complaints pending against ATF in the past four years? If so, what were they, and how were those resolved?
- 14. Did Newell negotiate any type of settlement agreement with ATF in connection with any proposed discipline? If so, was one of the terms of the settlement agreement that Newell drop his complaints against ATF?

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In addition, please provide copies of the disciplinary proposals for Hope MacAllister, David Voth, and William Newell as soon as possible, but by no later than 5:00 p.m. on Tuesday, April 1, 2014.

In the past, you have repeatedly claimed that the Privacy Act does not allow you to answer questions of this nature. Responding to Senate Judiciary Committee Questions for the Record submitted by Senator Grassley after your nomination hearing, you cited the Privacy Act no less than a dozen times.<sup>4</sup> As a former U.S. Attorney, however, you should be well aware that the Privacy Act authorizes such disclosures to Congress. Specifically, 5 U.S.C. § 552a(b) authorizes disclosures:

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.

In fact, ATF has implicitly acknowledged this point in previous briefings. You have not let the Privacy Act get in the way of sharing personnel information with Congress—so long as the information portrays ATF in a positive light.

For example, in August 2012, we brought to your attention the fact that former Deputy Assistant Director (DAD) for Field Operations William McMahon was double-dipping by serving as Executive Director of the Global Security and Investigations Group at J.P. Morgan in the Philippines while retaining his position at ATF Headquarters in Washington, D.C. until his eligibility date for early retirement. After repeated inquiries from us in 2012 about McMahon's dual employment status, your Deputy Director finally briefed our staffs in October 2012. This briefing included details such as the amount of sick and annual leave McMahon had available and copies of McMahon's timesheets—information that, but for 5 U.S.C. § 552a(b)(9), would ordinarily be protected under the Privacy Act. Since ATF wanted to show that it was taking corrective action, however, ATF shared such details with Congress, including Senator Grassley's staff.

Although you suggested during your confirmation process that McMahon had been terminated prior to reaching his early retirement date, it is far from clear that any personnel action in his case had anything to do with his involvement in Fast and Furious. As a result of our letter to you, the Department of Justice Office of the Inspector General initiated an investigation and recently found that McMahon took approximately one month of sick leave at the same time ATF approved his outside employment at J.P. Morgan. ATF approved both the sick leave and

<sup>&</sup>lt;sup>4</sup> Nominations, Hearing Before the S. Committee on the Judiciary, 113th Cong. (June 11, 2013) (Questions for the Record, B. Todd Jones, Acting Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives).

<sup>&</sup>lt;sup>5</sup> Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, & Hon. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, to B. Todd Jones, Acting Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (Aug. 21, 2012).

<sup>&</sup>lt;sup>6</sup> Letter from Hon. Michael E. Horowitz, Inspector General, U.S. Dept. of Justice, to Hon. Darrell E. Issa, Summary of OIG Investigative Findings at 1-2 (Mar. 21, 2014).

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the outside employment, despite the obvious conflict between the two, suggesting that the sick leave may have been fraudulent. However, narrative in the OIG report stopped short of describing any personnel action that may have been taken or explaining the basis for any such action.

The Privacy Act is not a valid legal basis for refusing to answer questions regarding Agents Voth and McAllister—or former DAD McMahon. The law specifically authorizes agencies, including ATF, to share such information with Congress in order to protect our ability to conduct our oversight function under the Constitution. Your continued citation of this law, when contrasted with your prior willingness to provide similar information, appears to be a means to keep negative information buried—information that Congress is entitled to receive.

When you became Acting Director of ATF, you promised to bring a culture of change to the agency. Your reliance on a clearly inapplicable statute to withhold information from Congress does not reflect that change.

Sincerely,

Darrell Issa, Chairman

Committee on Oversight and

Government Reform

U.S. House of Representatives

Charles E. Grassley, Ranking Member

Committee on the Judiciary

U.S. Senate

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

> The Honorable Patrick Leahy, Chairman Committee on the Judiciary

U.S. Senate