



Office of the Deputy Attorney General
Washington, D.C. 20530

December 2, 2011

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

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman and Ranking Member Grassley:

This supplements the Department's November 16, 2011 response to Chairman Issa's November 9, 2011 letter to Assistant Attorney General Ronald Weich seeking highly deliberative internal communications relating to the drafting of our February 4, 2011 letter to Ranking Member Grassley regarding Operation Fast and Furious.

The Department has a long-held view, shared by Administrations of both political parties, that congressional requests seeking information about the Executive Branch's deliberations in responding to congressional requests implicate significant confidentiality interests grounded in the separation of powers under the U.S. Constitution. As indicated in congressional testimony by senior Department officials on several occasions, however, facts have come to light during the course of this investigation that indicate that the February 4 letter contains inaccuracies. Because of this, the Department now formally withdraws the February 4 letter.

Under these unique circumstances, we have concluded that we will make a rare exception to the Department's recognized protocols and provide you with information related to how the inaccurate information came to be included in the letter. As a result, we are delivering today to your respective offices 1364 pages of material related to that topic.¹ We want to emphasize that our decision in this instance to provide highly deliberative materials is *sui generis*.

The Attorney General has made clear, both in testimony before the Senate Judiciary Committee last month and in a letter dated October 7, 2011, that Operation Fast and Furious was

¹ These documents bear limited redactions, typically information relating to Department employees, such as their cell phone numbers. In addition, we have redacted text from documents that does not relate to how the inaccurate information came to be included in the February 4 letter. The nature of specific redactions is indicated by a redaction code ("RC") set forth in the enclosed list. In response to requests from Chairman Smith and Chairman Leahy, the documents we deliver to you will also be delivered to the House and Senate Committees on the Judiciary.

fundamentally flawed and that its tactics must never be repeated. We have already provided Congress with extensive information about the strategy and tactics underlying that investigation.

We believe that the documents provided today highlight two points regarding the drafting of the February 4 response. First, to respond to the allegations contained in Ranking Member Grassley's letters, Department personnel, primarily in the Office of Legislative Affairs, the Criminal Division and the Office of the Deputy Attorney General, relied on information provided by supervisors from the components in the best position to know the relevant facts: ATF and the U.S. Attorney's Office in Arizona, both of which had responsibility for Operation Fast and Furious. Information provided by those supervisors was inaccurate. We understand that, in transcribed interviews with congressional investigators, the supervisors have said that they did not know at the time the letter was drafted that information they provided was inaccurate. Second, there was significant concern about how much information properly should be shared with Congress regarding the open Fast and Furious investigation and open investigation of the murder of Customs and Border Protection Agent Brian Terry. The documents reflect this concern in the drafting of the February 4 letter.

Ranking Member Grassley's January 27, 2011 letter said, in its first paragraph, that "I am specifically writing you concerning an ATF operation called 'Project Gunrunner.'" His January 31, 2011 letter also cited "serious allegations associated with Project Gunrunner and the death of Customs and Border Protection Agent Brian Terry." While these letters referred to Project Gunrunner – the name of the broad, overall ATF effort to stem the illegal cross-border flow of weapons – the allegations actually related to Operation Fast and Furious, which was a particular ATF operation in Arizona. Following the receipt of the incoming letters, the Department convened a series of calls in an effort to learn the facts about Operation Fast and Furious. Participants in these calls included the then-Acting Director of ATF and the Agency's then-Deputy Director. Notes of these conversations reflect that then-ATF leadership indicated to the staff of the Department that:

- "we didn't let [] guns walk[;]"
- "we . . . didn't know they were straw purchasers at the time[;]"
- "ATF had no probable cause to arrest the purchaser or prevent action[;]"
- "ATF doesn't let guns walk[;]"
- "we always try to interdict weapons purchased illegally[;] and
- "we try to interdict all that we being [sic] transported to Mexico[.]"

HOCR DOJ 003744; HOCR DOJ 003745; HOCR DOJ 003935. In particular, the portion of the notes that indicate that "we always try to interdict weapons purchased illegally" and "we try to interdict all that we being [sic] transported to Mexico" track almost verbatim the inaccurate information included in the letter that the Department sent to Ranking Member Grassley. Our final letter read as follows:

ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.

[Letter from Assistant Attorney General Ronald Weich to The Honorable Charles E. Grassley dated February 4, 2011, at 1.] That language was in an early draft of the response prepared by the Department and remained virtually unchanged throughout the drafting process. HOCR DOJ 004049-004050.

The leadership of the U.S. Attorney's Office in Arizona communicated that the allegations in Ranking Member Grassley's letters regarding the Arizona investigation and the guns recovered at the scene of Agent Terry's murder were untrue. One of the central allegations in the January 27 incoming letter was that ATF had "sanctioned" the sale of two weapons that were recovered at the Terry murder scene. In response, on January 31, 2011, the then-U.S. Attorney wrote to others in the Department that:

Grassley's assertions regarding the Arizona investigation and the weapons recovered at the BP Agent Terry murder scene are based on categorical falsehoods.

HOCR DOJ 003938-003939. He asked that the following language be included in the response to Ranking Member Grassley:

'Regarding the allegations repeated in your letter that ATF in any way "sanctioned", had knowledge of, or permitted weapons purchased on January 16, 2010 in Arizona to reach the Republic of Mexico is categorically false.'

HOCR DOJ 004166-004167.

The documents produced today also reflect that the drafters of the February 4 letter were focused on how much should be said about the open Fast and Furious investigation and the investigation into the murder of Agent Terry. One view was that the "[g]oal would [be] to put on the record whatever we can say about the pending matter, without opening the door re info we're not prepared to publicly disclose; . . ." HOCR DOJ 004100. The other view was ". . . I fully appreciate the concerns about commenting on ongoing cases – both present and future – but I think the Department should consider making a more forceful rebuttal to the allegations here, which are terribly damaging to ATF." *Id.* Over a period of days, drafts of the letter were sent to the leadership of ATF and the U.S. Attorney's Office in Arizona for review and comment, and thereafter circulated within those offices for review and comment by others. *See, e.g.,* HOCR DOJ 004100-004102; HOCR DOJ 004122-004124; HOCR DOJ 004132-004134; HOCR DOJ 004144-004146. After a series of edits on February 4 and the re-circulation of drafts to the leadership of ATF and the U.S. Attorney's Office, the final letter provided, in part, that:

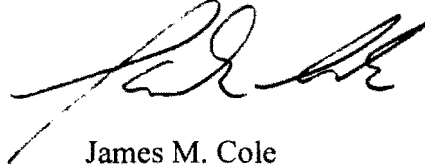
The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
December 2, 2011
Page 4

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.

HOCR DOJ 004868-004870

We trust that you will find this information useful and we look forward to continuing to work with you on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. M. Cole', with a long horizontal stroke extending to the left.

James M. Cole
Deputy Attorney General

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

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

The Honorable Lamar Smith, Chairman
U.S. House Committee on the Judiciary

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