

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

May 10, 2013

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

Dear Mr. Jones:

On April 15, 2013, staff from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) briefed our offices on Operation Fearless, an undercover operation run out of Milwaukee, Wisconsin. The Department of Justice sent a letter on April 30, 2013, to follow up on the ATF briefing.<sup>1</sup> Both the briefing and the letter came as a result of letters we wrote to you on January 31, 2013 and April 3, 2013. The April 15, 2013 briefing substantiated allegations first raised by the *Milwaukee Journal Sentinel*: Operation Fearless was a spectacular failure. ATF's April 15 briefing also revealed a variety of other previously unknown problems.

First, we were surprised to learn that, after its initial involvement for approximately two months, the Federal Bureau of Investigation (FBI) withdrew from the case in March 2012 due to concerns about the operation's proposed uses of intelligence, operational security and staffing. Although the FBI apparently did not communicate all of those concerns to ATF at the time they withdrew from the case, the problems the FBI identified underscore ATF's inadequate policies and procedures for undercover storefront operations. Indeed, as your staff mentioned in the briefing, ATF does not have a written manual with agency-wide procedures for undercover storefront operations.

Second, it is difficult to understand how the failures of Operation Fearless took place even after the basic facts about the failures of Operation Fast and Furious had been widely publicized. Operation Fearless was part of the Monitored Case Program, which was created in the wake of Fast and Furious and "designed to ensure close investigative, operational and strategic coordination between the field and relevant

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<sup>1</sup> Letter from Peter J. Kadzik, Principal Deputy Asst. Att'y Gen., U.S. Dep't of Justice, to Hon. Bob Goodlatte, Chairman, H. Comm. on Judiciary, et al. (Apr. 30, 2013) [Attachment].

headquarters personnel” for the purpose of “enhanced oversight.”<sup>2</sup> Yet, somehow, oversight of Operation Fearless slipped through the cracks.

ATF’s Undercover Review Committee evaluated Operation Fearless. The Deputy Assistant Director for Field Operations, who was briefed a total of nine times about the investigation, approved it. Still, ATF’s plan for Operation Fearless apparently called for only two or three undercover law enforcement officers in the storefront, supported by four or five officers on a cover team located within a back room of the store. A subsequent investigation by ATF’s Office of Professional Responsibility and Security Operations (OPRSO) found that this was an insufficient commitment of human resources—something that should have been obvious in the planning stages of the operation.

Operation Fearless did not have a counter-surveillance team assigned to conduct additional surveillance after individuals left the storefront. Further, apparently no one in ATF considered what might happen if local law enforcement mistook ATF’s storefront for an actual illegal operation. OPRSΟ’s investigation found that this officer safety issue could have led to a “blue-on-blue” scenario. The problems OPRSΟ characterized as the result of poor judgment and planning should have been flagged before the Undercover Review Committee and the Deputy Assistant Director for Field Operations signed off on the operation.

Third, ATF’s briefers noted that the problems with Operation Fearless began almost immediately after its inception. The proposed location of the storefront briefed to and authorized by the Undercover Review Committee *was not* the location used when the storefront was opened on February 8, 2012. The actual location had a faulty alarm system, which the case agent never checked. On one occasion in July 2012, ATF agents failed to take immediate action to interdict or even surveil an armed target who told ATF undercover agents that he was going to use a firearm in his possession to take retaliatory action against another individual. An additional failure to interdict occurred when an individual sold one of the three stolen ATF firearms back to the store. Again, this individual was not immediately apprehended or surveiled. As arrests were finally being made in the case, not three but four individuals were mistakenly identified as targets in the case, resulting in the mistaken arrest of the fourth individual on November 28, 2012. ATF briefers stated that overall, the case was characterized by a lack of consistent, permanent supervision.

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<sup>2</sup> Letter from Hon. James M. Cole, Deputy Att’y Gen., U.S. Dep’t of Justice, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, et al. (Jan. 27, 2012), at 3.



Fourth, it appears as though information from the briefing contradicted various pieces of information that ATF's Office of Public and Governmental Affairs had provided both Congress and the public. For instance, on January 31, 2013, the *Dallas Morning News* reported on information provided by Richard Marianos, now ATF's Assistant Director for Public and Governmental Affairs:

Marianos didn't call to . . . dismiss every detail of the *Milwaukee Journal Sentinel* investigative piece on Fearless Distributing, although he did take issue with many characterizations in that report. **For instance, the ATF agent whose vehicle was burglarized, causing the loss of a fully automatic rifle, wasn't even part of the sting** and was only helping some fellow agents.<sup>3</sup>

According to ATF's briefing, however, the ATF agent who lost three ATF firearms when his vehicle was burglarized was the **primary undercover agent** in the sting. This basic fact about the case should have been easy for ATF headquarters to ascertain. Similarly, at a Congressional briefing on February 8, 2013, ATF staff told Congressional staff that Operation Fearless was not part of ATF's Monitored Case Program. At the most recent briefing, staff learned that the case was in fact a part of the program.

It is troubling that ATF staff would make representations without first checking on the accuracy of the information provided. This was one of the chief problems with the initial response from ATF and the Justice Department to Operation Fast and Furious. Perhaps more troubling is the fact that ATF did not even begin its internal review of Operation Fearless until *after receiving our first letter on January 31, 2013*. In other words, after a comprehensive news article in the *Milwaukee Journal-Sentinel*, it appears as though ATF attempted to downplay the problems with Operation Fearless. Not until Congress conducted oversight of the matter did ATF take the problem seriously. Such a pattern has become all too familiar with ATF's response to scandal. It reflects poorly on the thousands of ATF agents who risk their lives in the line of duty each day to protect our citizens.

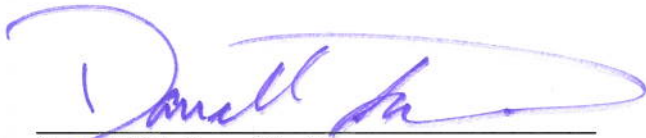
Therefore, in order to ensure accountability, we request that you provide a complete, unredacted copy of the report on Operation Fearless prepared by the Office of Professional Responsibility and Security Operations as soon as possible, but by no later than May 23, 2013.

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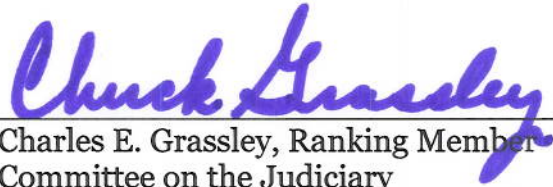
<sup>3</sup> Mike Hashimoto, *D.C. official says ATF changed from Fast and Furious era*, DALLAS MORNING NEWS, Jan. 31, 2013, available at <http://dallasmorningviewsblog.dallasnews.com/2013/01/d-c-official-says-atf-changed-from-fast-and-furious-era.html> (emphasis added).

Should you have any questions regarding this letter, 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 the House Judiciary staff at (202) 225-3951.

Sincerely,



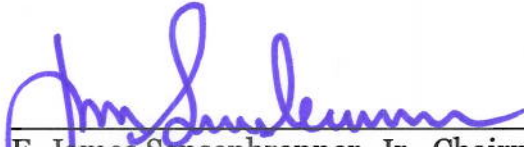
Darrell E. Issa, Chairman  
Committee on Oversight and  
Government Reform  
U.S. House of Representatives



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



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



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

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

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

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