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ONE HUNDRED FIFTEENTH CONGRESS

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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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April 10, 2017

Mr. Ronald B. Turk
Associate Deputy Director and Chief Operating Officer
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE
Washington, D.C. 20226

Dear Mr. Turk:

On March 1, 2017, the Department of Justice Office of Inspector General released a report titled *A Review of the Osorio and Barba Firearms and Trafficking Rings*.[1] The report concerned the circumstances under which two straw-purchased firearms were trafficked from the U.S. and ultimately used in a fatal attack on Immigration and Customs Enforcement Special Agents Jaime Zapata and Victor Avila. This Committee and Senator Chuck Grassley had requested the Inspector General report after developing concerns about the role of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.[2]

The day after the release of the Inspector General's report - March 2 - the Committee announced a hearing related to the report to occur March 9, 2017. The Committee sent you a letter requesting that you appear to testify at that hearing alongside ATF Acting Director Thomas E. Brandon and Dallas Field Division Special Agent in Charge (SAC) William A. Temple.[3] As the ATF official with management responsibility for the field operations function, your appearance would have allowed our Members to better understand the breakdowns that ultimately led to Agent Zapata's death. Without explanation, however, you and SAC Temple failed to appear. You did not notify the committee of your intentions until 5 p.m. the day prior to the hearing.

At the beginning of the March 9 hearing, I asked Brandon why you and SAC Temple were not in attendance. Brandon testified:

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[1] OFFICE OF INSPECTOR GEN., DEP'T OF JUSTICE, OVERSIGHT & REVIEW DIV. 17-01, A REVIEW OF INVESTIGATIONS OF THE OSORIO AND BARBA FIREARMS TRAFFICKING RINGS (2017).

[2] Letter from Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, and Hon. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, to Hon. Michael E. Horowitz, Inspector Gen., Dep't of Justice (Sept. 25, 2012).

[3] Letter from Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform, to Ronald B. Turk, Assoc. Deputy Dir. & Chief Operating Officer, Bureau of Alcohol, Tobacco, Firearms & Explosives (Mar. 2, 2017).

Chairman Chaffetz. Who decided that Mr. Turk and Mr. Temple were not going to be here?

Brandon. Well, the decision is theirs voluntarily. To let you know, Mr. Chairman, I did not order them not be here, and no one that I know of from the Department ordered them not to be here.

Chairman Chaffetz. So, they personally chose not to be here.

Brandon. That is their free decision, but also I agreed with it. . . .[4]

Earlier this week the Committee held another hearing at which your testimony was requested. When asked in that hearing about your previous failure to appear, you disputed Brandon's account, stating it was not accurate. You testified:

Chairman Chaffetz. So who made the [decision for you] not to be here?

Turk. I would say that was a collective decision. Ultimately, we were following guidance by [the Department of Justice or] DOJ, and I believe that the SAC and I -- our lack of attendance here was in good faith, that we were operating from guidance from above.

Chairman Chaffetz. No, wait. The chairman of the committee invites you to come to the hearing, you just unilaterally decided not to show up? . . .

* * *

Turk. Sir, I was following guidance. I'm a good soldier. I was following orders.

Chairman Chaffetz. Who told you not to come?

* * *

Turk. There are so many names. I could probably list off eight names between the agency and the Department.[5]

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[4] *Reviewing ATF's Failures in the Death of ICE Agent Jaime Zapata: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 115th Cong. (Mar. 9, 2017) (testimony of Thomas E. Brandon, Acting Dir., Bureau of Alcohol, Tobacco, Firearms and Explosives).

[5] *Use of Confidential Informants at ATF and DEA: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 115th Cong. (Apr. 4, 2017) [April 4, 2017 Hearing] (statement of Ronald B. Turk, Associate Dep. Dir. and Chief Operating Officer, Bureau of Alcohol, Tobacco, Firearms and Explosives).

* * *

Chairman Chaffetz. Is [Mr. Brandon's testimony] accurate?

Turk. It is not completely accurate, no.[6]

You stated that you would have happily appeared, but you were following agency orders not to cooperate.[7] Your testimony coupled with Brandon's conflicting testimony raises additional questions about your non-appearance. You promised to follow up with the Committee and provide the names of the officials involved in this. But, you have not.

If you intended to cooperate with the Committee, but were prevented from appearing, the agency officials involved in procuring your absence may have violated federal law. Congress has always safeguarded direct communications with federal employees. The right of federal employees to communicate directly with Congress arises from the First Amendment and has been further established in statute since the Lloyd-LaFollette Act of 1912,[8] which stated:

> The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.[9]

To further enhance enforcement of the provision, during the Clinton Administration, Republicans in Congress passed a similar restriction for Fiscal Year 1998 government-wide appropriations which has remained in every annual appropriations bill since.[10] This so-called

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[6] *Id.*

[7] *Id.* ("I would have happily [,] I would have happily gone against Department of Justice guidelines and been here that day.")

[8] 37 Stat. 539, 555 (1912) (codified as amended at 5 U.S.C. § 7211).

[9] *Id.*

[10] Treasury and General Government Appropriations Act, 1998, Pub. L. No. 105-61, § 640, 111 Stat. 1272, 1318 (1997); *see also, e.g.*, Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. E, § 713, 129 Stat. 2241, 2475 (2015). The rider states:

> No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who—
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> (1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or
>
> (2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, stats, pay, or performance of efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other

"Lloyd-LaFollette anti-gag rider" has been an important provision in protecting federal employee communications with Congress. For instance, as the result of an opinion our Committee requested with Senate Judiciary Committee Chairman Chuck Grassley and House Judiciary Committee Chairman Bob Goodlatte, the Government Accountability Office last year found that two officials at the Department of Housing and Urban Development had violated the provision. They found "HUD's appropriation was not available to pay the salaries of [the two officials] while they prevented or attempted to prevent" an interview sought by the three committees.[11]

A separate appropriations restriction, known as the "Grassley anti-gag rider," was introduced by Senator Grassley in the 1980s to ensure no money was used to enforce any nondisclosure policy, form, or agreement that does not include a specific provision regarding whistleblower protections and employees' rights to communicate with Congress and inspectors general.[12]

These provisions are significant because they ensure that Congress has an unfettered ability to speak directly with Executive Branch officials with first-hand information relating to government operations.

To assist the Committee, please provide the following information as soon as possible, but no later than April 21, 2017. In supplying the information, please state the item number and request immediately prior to your written submission. In addition to providing the requested information, please also supply a signed certification that the information is true and complete to the best of your knowledge, and that you have taken reasonably diligent efforts to seek the documents and information requested. I request the following:

1. Identify all Justice Department officials you communicated with about the March 9, 2017, hearing.

2. Provide a complete description and account, including a timeline, of the reason why you determined not to appear at the March 9, 2017, hearing.

3. Produce all documents and communications referring or relating to March 9, 2017, hearing.

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officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).

[11] GOV'T ACCOUNTABILITY OFFICE, B-325124.2, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—APPLICATION OF SECTION 713 OF THE FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2012 (RECONSIDERATION) 2 (Apr. 5, 2016).

[12] *See, e.g.*, 129 Stat. at 2485.

On a different matter, during the hearing you testified about a "White Paper" you prepared concerning opportunities to roll back regulations relating to firearms.[13]

4. Provide a complete description and account of the reason you prepared the "White Paper." Include with this description who requested the document, who you sent the document to and whether you prepared the materials on official government time.

5. Produce all documents and communications referring or relating to the "White Paper."

During the April 4, 2017, hearing, you testified about the Jay Dobyns matter. Dobyns, a former ATF Special Agent (SA), had been the double victim of an arson at his house, and an ATF cover-up concerning the arson investigation. An ATF Office of Professional Responsibility report dated October 11, 2012, found three ATF officials were involved with serious wrongdoing, including improperly attempting to frame SA Dobyns for the arson. During the hearing, you did not recall with specificity whether and to what extent you reviewed the OPR report concerning the arson investigation.[14]

6. Provide a complete description and account of the materials you did review relating to the Dobyns arson matter.

7. Produce all documents and communications referring or relating to item six.

8. Describe what role, if any, you had in the disciplinary process of former ATF SAs Higman and Gillett, and current SA Newell relating to the Dobyns matter, including whether you proposed any discipline.

9. Produce all documents and communications referring or relating to item eight above.

On May 10, 2012, you sent SA Dobyns a Notice of Proposal to Suspend for a communication alleging mismanagement SA Dobyns sent superiors regarding the promotion of an ATF official involved in a series of wrongdoing. Ultimately, your effort to discipline SA Dobyns was not sustained.

10. Provide a complete description and account of the actions you undertook to implement discipline in this matter.

11. Produce all documents and communications referring or relating to item 10.

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[13] Apr. 4, 2017 Hearing, *supra* note 5 (testimony of Ronald B. Turk, Associate Dep. Dir. and Chief Operating Officer, Bureau of Alcohol, Tobacco, Firearms and Explosives).
[14] *Id.*

At the hearing, in response to questions about the October 11, 2012, OPR report, you stated you were new to the position of Director of Field Operations. You testified, "In this particular instance, I was not in the position to review all of the records or be in a position to take action."[15]

12. In light of this testimony, provide a complete description and account of how you were not sufficiently tenured to tend to discipline any ATF official stemming from an October 11, 2012, report; but earlier that same year, in May 2012, when you were less tenured, you felt obliged to mete out discipline to SA Dobyns for his communication about the promotion in question.

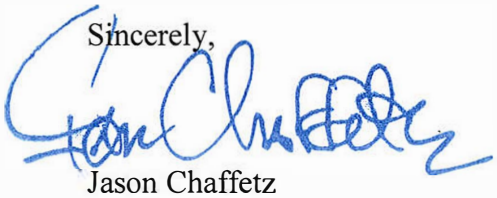
13. Identify all ATF or DOJ officials involved in preparing this response, whether drafting, proofing, or reviewing.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request. Please note that Committee Rule 16(b) requires counsel representing an individual or entity before the Committee or any of its subcommittees, whether in connection with a request, subpoena or testimony, promptly submit the attached notice of appearance to the Committee.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Please contact Steve Castor of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

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[15] *Id.*

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

   (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

   BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT,CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
115TH CONGRESS

NOTICE OF APPEARANCE OF COUNSEL

Counsel submitting: _____

Bar number: _____ **State/District of admission:** _____

Attorney for: _____

Address: _____

Telephone: (_____) _____ - _____

Pursuant to Rule 16 of the Committee Rules, notice is hereby given of the entry of the undersigned as counsel for _____ in (select one):

- ◉ **All matters before the Committee**
- ○ **The following matters (describe the scope of representation):**

_____

_____

All further notice and copies of papers and other material relevant to this action should be directed to and served upon:

Attorney's name: _____

Attorney's email address: _____

Firm name (where applicable): _____

Complete Mailing Address: _____

_____

I agree to notify the Committee within 1 business day of any change in representation.

_____ _____

Signature of Attorney **Date**