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Ranking Member Grassley Presentation Material at House Oversight Hearing on Operation Fast and Furious

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Prepared Statement of Senator Chuck Grassley
Before the United States House of Representatives
Committee on Oversight and Government Reform
“Operation Fast and Furious: Reckless Decisions, Tragic Outcomes”
Wednesday, June 15, 2011

Thank you, Chairman Issa, for calling these important hearings and for the great work you and your staff have done. I am grateful to Agent Brian Terry’s family for being here today and wish to express my sympathies for their loss. I hope we can get them the answers they deserve. I also want to thank the federal agents who will be testifying from the Bureau of Alcohol, Tobacco, and Firearms. I know they are here to tell the unvarnished truth. I also know that can be tough, since they still work for ATF. These agents already risk their lives to keep us safe. They shouldn’t have to risk their jobs too. Any attempt to retaliate against them for their testimony today would be unfair, unwise, and unlawful.

When I became Ranking Member of the Judiciary Committee in January, this was the first oversight issue to land on my desk. Several other Senators’ offices contacted my office to pass along these allegations about an ATF case called “Operation Fast and Furious.” At first, the allegations sounded too shocking to believe. But sadly, they turned out to be true.

ATF is supposed to stop criminals from trafficking guns to Mexican drug cartels. Instead, ATF made it easier for alleged cartel middlemen to get weapons from U.S. gun dealers. Agents were ordered to stand by and watch these middlemen — these straw purchasers — buy hundreds upon hundreds of weapons. Agents warned that inaction could lead to tragedy, but management didn’t want to listen. We will hear from some of those agents today.

Inaction would be bad enough, but ATF went even further.

ATF encouraged gun dealers to sell to straw buyers. Emails prove that at least one dealer worried prophetically about the risk.^[1] He wrote to ATF about his concern that a border patrol agent might end up facing the wrong end of one of these guns.^[2] ATF supervisors told the dealer not to worry. So, the agents said it was a bad idea. And, the gun dealers said it was a bad idea.

Who thought it was a good idea? Why did this happen?

The President said he didn’t authorize it and that the Attorney General didn’t authorize it. They have both admitted that a “serious mistake” may have been made. There are a lot of questions, and a lot of investigating to do. But one thing has become clear already — this was no mistake.

It was a conscious decision by senior officials. It was written down. It was briefed up to Washington, D.C. According to an internal briefing paper, Operation Fast and Furious was intentionally designed to “allow the transfer of firearms to continue to take place.”^[3]

Why would the ATF do such a thing?

Well, the next line in the brief paper tells us. It was, “to further the investigation and allow for the identification of additional co-conspirators[.]”^[4] So, that was the goal. The purpose of allowing straw buyers to keep buying was to find out who else might be working with them — who else might be in their network of gun traffickers. Of course, that assumes that they are part of a big, sophisticated network. That kind of assumption can cause you to start with a conclusion and work backwards, looking for facts that fit. Until you figure out that you’ve got the cart before the horse, you’re probably not going to get anywhere.

Professor of Criminology Gary Kleck recently published an article in the Wall Street Journal called “The Myth of Big-Time Gun Trafficking.”^[5] Professor Kleck said that according to his study of national crime data, ATF handles only about 15 operations each year that involve more than 250 guns.^[6] According to his study, a typical trafficking operation involves fewer than 12 guns.^[7]

So why would the ATF make it a priority to identify large networks of traffickers? Why would senior leadership decide to explicitly elevate that goal above ATF’s traditional work of seizing weapons that were illegally purchased?

On October 26, 2009, emails indicate that there was a meeting of senior law enforcement officials at the Justice Department.^[8] It appears to have included the heads every law enforcement component of the Department, including directors of the FBI, the DEA and the ATF.^[9] It also included the U.S. Attorneys for all the Southwest border states, the Director of the Organized Crime Drug Enforcement Task Force, and the Chair of the Attorney General’s Advisory Committee.^[10]

Sounds like a pretty big, important meeting, doesn’t it?

On the agenda at that meeting was a document describing the Department’s strategy for combatting the Mexican cartels. In a section called “Attacking the Southbound Flow of Firearms,” it says:

Thus, given the national scope of this issue, merely seizing firearms through interdiction will not stop firearms trafficking to Mexico. We must identify, investigate, and eliminate the sources of illegally trafficked firearms and the networks that transport them.^[11]

The message was clear. Trying to identify networks of traffickers is more important than seizing weapons. This document was transmitted to the head of the Phoenix Field Division on October 27, 2009.^[12]

Four days later, the Phoenix Field Division began investigating Uriel Patino on suspicion of being involved in a gun trafficking ring. Ten days after that, Patino was assigned his own case number. In the first 24 days that the ATF was on to him, Patino bought 34 guns from dealers cooperating with the ATF. That's nearly three times more than the typical gun trafficking operation, according to the study in the Wall Street Journal I mentioned earlier.

But that was just the beginning.

Since the dealers were cooperating, ATF received notice of each purchase right away. Analysts entered the serial numbers into ATF's Suspect Gun Database, usually within days of the purchase. On November 20th, one of the 34 guns Patino bought turned up in Mexico — just 14 days after he bought it in Phoenix. ATF learned of the recovery through a hit in the suspect gun database on November 24th.^[13] That same day, Patino brought Jaime Avila into a cooperating gun dealer and they bought five more guns.^[14] ATF had real-time notice from the dealers and agents rushed to the store to follow them, but arrived too late.

Over the next six weeks, Avila bought 13 guns at dealers cooperating with the ATF.^[15] The dealers notified the ATF of each purchase right away. Analysts entered the serial numbers into the ATF database, usually within about 2 days of the purchase.

Yet ATF did nothing to deter or interrupt the straw purchasers. Avila went back to the cooperating dealer and purchased three more AK-47-type weapons on January 16, 2010.^[16] ATF simply put the serial numbers in its database. Still, ATF did nothing to stop Avila and Patino.

11 months later, two of those three rifles were recovered at the scene of Agent Terry's murder.^[17] During those 11 months, Avila purchased another 34 firearms. Patino purchased 539.

Again, cooperating gun dealers notified ATF of each purchase. It usually took about 5 days to enter the serial numbers into ATF's database. But ATF often had real-time or even advanced notice of the purchases from the dealers.

ATF even specifically approved particular transactions.

For example, in August of 2010, a gun dealer cooperating with the ATF asked for guidance. Patino wanted 20 more weapons, but the dealer only had 4 in stock.^[18] The dealer told ATF that if he were to sell the guns, he would have to “obtain the additional 16 specifically for this purpose.”^[19] An ATF supervisor wrote back, “our guidance is that we would like you to go through with Mr Patino's request and order the additional firearms[.]”^[20] At this point, ATF already knew that he bought 673 guns from cooperating dealers and that many had already been recovered at crime scenes. I want to be clear that we don't know whether this particular order was actually filled.^[21]

However, these new emails support what agents and dealers have been telling us for months. According to them, dealers notified ATF when any of the straw purchasers bought guns — either before, during, or shortly after the sale.

We don't know what the exact totals are. But, we know the Suspect Gun Database had at least 1,880 guns related to this case.^[22] At least 30 of them were high-power, .50 caliber rifles.^[23] The straw purchasers bought 212 guns in just six days in December 2009.^[24] 70% of all the guns in the database were bought by just 5 straw purchasers.^[25] If ATF agents had been allowed to stop just those five buyers, most of the guns in this case would not have fallen into the wrong hands.

Finally, I want to say something about the politics of gun control. This investigation is not about politics. It is about getting the facts. No matter what side of that issue you are on, the facts here should be disturbing. There will be plenty of time for both sides to argue about policy implications of all this at some point. But I hope we can do that another day.

Today is about these agents not being allowed to do their job. Today is about the Terry family and their search for the truth. Too often, we want to make everything about politics. We pick sides and only listen to what we want to hear. At least for today, let's just listen to what these agents and this family has to say. Let's hear their stories. Then let's work together to get answers for this family and the other families who may have suffered. It's time to get to the truth and hold our government accountable.

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[1] Email from Cooperating FFL to ATF Group VII Supervisor David Voth, Jun. 17, 2010 (Attachment 1).

2 Id.

3 Bureau of Alcohol, Tobacco, Firearms and Explosives, "Briefing Paper, Phoenix Field Division – Phoenix Group VII (SWB Group)" (Attachment 2).

4 Id.

5 See Gary Kleck, *The Myth of Big-Time Gun Trafficking*, WALL ST. J., C2, May 21, 2011 (Attachment 3).

6 Id.

7 Id.

8 Email from Winnie Brinkley to Lanny Breuer, et. al, Oct. 26, 2009 (Attachment 4).

9 Id.

¹⁰ Id.

11 Department of Justice Strategy for Combating the Mexican Cartels, p.6 (Attachment 4).

12 Email from Raymond Rowley to William Newell, Oct. 27, 2009 (Attachment 4).

13 Bureau of Alcohol, Tobacco, Firearms and Explosives, "Firearms Trace Summary," Nov. 24, 2009 (Attachment 5).

14 See Bureau of Alcohol, Tobacco, Firearms and Explosives, "Multiple Sale Summary," Nov. 24, 2009; see also Bureau of Alcohol, Tobacco, Firearms and Explosives, "Suspect Gun Summary," Nov. 25, 2009 (Attachment 6).

15 See Bureau of Alcohol, Tobacco, Firearms and Explosives, "Suspect Gun Summary," Nov.

24, 2009 (Attachment 6); see also Bureau of Alcohol, Tobacco, Firearms and Explosives,

"Suspect Gun Summary," Dec. 12, 2009 (Attachment 7); see also Bureau of Alcohol, Tobacco,

Firearms and Explosives, "Suspect Gun Summary," Jan. 09, 2010 (Attachment 8).

16 See Bureau of Alcohol, Tobacco, Firearms and Explosives, "Suspect Gun Summary," Jan. 19, 2010 (Attachment 9).

17 See Email from REDACTED to ATF Group VII Supervisor David Voth, Dec. 15, 2010 (Stating "[t]he NTC further advised that on 01/16/10 Jaime Avila purchased three Romarm 7.62 rifles..., two of these firearms are the recovered firearms cited above") (emphasis added) (Attachment 10); see also Bureau of Alcohol, Tobacco, Firearms and Explosives, "Significant Information Report, Arrest of Jaime Avila" (declaring two of the AK-47 rifles purchased by Jaime Avila on January 16, 2010 were recovered at the scene of the shooting death of Brian Terry on December 15, 2010) (Attachment 11).

18 Email from Cooperating FFL to ATF Group VII Supervisor David Voth, Aug. 25, 2010 (Attachment 12).

19 Id.

20 Email from ATF Group VII Supervisor David Voth to Cooperating FFL, Aug. 25, 2010 (Attachment 12).

21 Email from Cooperating FFL to ATF Group VII Supervisor David Voth, Aug. 26, 2010 (Attachment 12).
22 Senator Charles E. Grassley, "The Department of Justice's Operation Fast and Furious," Before the U.S. House of Representatives Committee on Oversight and Government Reform, Jun. 15, 2011, slide 8 (Attachment 13).
23 *Id.* at slide 9.
24 *Id.* at slide 10.
25 *Id.* at slide 11.