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Appendix II

January 2011

January 2011

United States Senate

WASHINGTON, DC 20510

January 27, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

It is my understanding that the ATF is continually conducting operations along the southwestern United States border to thwart illegal firearm trafficking. I am specifically writing you concerning an ATF operation called "Project Gunrunner." There are serious concerns that the ATF may have become careless, if not negligent, in implementing the Gunrunner strategy.

Members of the Judiciary Committee have received numerous allegations that the ATF sanctioned the sale of hundreds of assault weapons to suspected straw purchasers, who then allegedly transported these weapons throughout the southwestern border area and into Mexico. According to the allegations, one of these individuals purchased three assault rifles with cash in Glendale, Arizona on January 16, 2010. Two of the weapons were then allegedly used in a firefight on December 14, 2010 against Customs and Border Protection (CBP) agents, killing CBP Agent Brian Terry. These extremely serious allegations were accompanied by detailed documentation which appears to lend credibility to the claims and partially corroborates them.

On Tuesday, according to press reports, the ATF arrested 17 suspects in a Project Gunrunner bust. William Newell, the Special Agent in Charge of the ATF's Phoenix Field Office was quoted as saying, "We strongly believe we took down the entire organization from top to bottom that operated out of the Phoenix area." However, if the 17 individuals were merely straw purchasers of whom the ATF had been previously aware before Agent Terry's death, then that raises a host of serious questions that the ATF needs to address immediately.

As you know, the Department of Justice Office of Inspector General (OIG) released a review of ATF's Project Gunrunner in November of 2010, in which the OIG concluded that Project Gunrunner has been unsuccessful, in large part because:

Project Gunrunner's investigative focus has largely remained on gun dealer inspections and straw purchaser investigations, rather than targeting higher-level traffickers and smugglers. As a result, ATF has not made full use of the

intelligence, technological, and prosecutorial resources that can help ATF's investigations reach into the higher levels of trafficking rings.¹

Therefore, in order to gain a more complete understanding of ATF activities in Project Gunrunner, I request that you arrange for my staff to be briefed by knowledgeable ATF supervisors no later than February 3, 2011. Please contact Jason Foster or Brian Downey at (202) 224-5225 to schedule the briefing. All formal correspondence should be sent electronically in PDF format to Brian_Downey@judiciary-rep.senate.gov or via facsimile to (202) 224-3799.

Sincerely,



Charles E. Grassley
Ranking Member

¹ *Review of ATF's Project Gunrunner, Evaluation and Inspections Report I-2011-001*, November 2010, available at <http://www.justice.gov/oig/reports/ATF/e1101.pdf>

United States Senate

WASHINGTON, DC 20510

January 31, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

As you know, I wrote to you on Thursday, January 27, regarding serious allegations associated with Project Gunrunner and the death of Customs and Border Protection Agent Brian Terry. Although the staff briefing I requested has not yet been scheduled, it appears that the ATF is reacting in less productive ways to my request. I understand that Assistant Special Agent in Charge (ASAC) George Gillette of the ATF's Phoenix office questioned one of the individual agents who answered my staff's questions about Project Gunrunner. ASAC Gillette allegedly accused the agent of misconduct related to his contacts with the Senate Judiciary Committee. This is exactly the wrong sort of reaction for the ATF. Rather than focusing on retaliating against whistleblowers, the ATF's sole focus should be on finding and disclosing the truth as soon as possible.

Whistleblowers are some of the most patriotic people I know—men and women who labor, often anonymously, to let Congress and the American people know when the Government isn't working so we can fix it. As such, it would be prudent for you to remind ATF management about the value of protected disclosures to Congress and/or Inspectors General in accordance with the whistleblower protection laws. Absent such a clear communication from you, ATF management might be able to intimidate whistleblowers to prevent them from providing information to Congress.

As you may be aware, obstructing a Congressional investigation is a crime.¹ Additionally, denying or interfering with employees' rights to furnish information to

¹ 18 U.S.C. § 1505 states, in pertinent part:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress--

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

Congress is also against the law.² Federal officials who deny or interfere with employees' rights to furnish information to Congress are not entitled to have their salaries paid by taxpayers' dollars.³ Finally, ATF personnel have Constitutional rights to express their concerns to Congress under the First Amendment.

ATF employees have the right to talk to Congress and to provide Congress with information free and clear of agency interference. Further, these employees have the right to be free from fear of retaliation or reprisal for doing so. Please ensure that ATF employees are aware of their rights and whistleblower protections and that ATF managers are accountable for respecting any protected disclosures.

If you have any questions please contact my Committee staff, Jason Foster at (202) 224-5225. Any formal correspondence should be sent electronically in PDF searchable format to Brian_Downey@judiciary-rep.senate.gov.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Eric H. Holder, Jr.
Attorney General of the United States

² 5 U.S.C. § 7211 states:

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.

³ P.L. 111 -117 § 714 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 -

(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 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).

February 2011

February 2011



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D. C. 20530

February 4, 2011

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This responds to your letters, dated January 27, 2011 and January 31, 2011, to Acting Director Kenneth Melson of the Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), regarding Project Gunrunner. We appreciate your strong support for the Department's law enforcement mission.

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. Indeed, an important goal of Project Gunrunner is to stop the flow of weapons from the United States to drug cartels in Mexico. Since its inception in 2006, Project Gunrunner investigations have seized in excess of 10,000 firearms and 1.1 million rounds of ammunition destined for Mexico. Hundreds of individuals have been convicted of criminal offenses arising from these investigations and many others are on-going. ATF remains committed to investigating and dismantling firearms trafficking organizations, and will continue to pursue those cases vigorously with all available investigative resources.

In this vein, the suggestion that Project Gunrunner focuses simply on straw purchasers is incorrect. The defendants named in the indictments referenced in your January 27 letter include leaders of a sophisticated gun trafficking organization. One of the goals of the investigation that led to those indictments is to dismantle the entire trafficking organization, not merely to arrest straw purchasers.

I also want to assure you that ATF has made no attempt to retaliate against any of its agents regarding this matter. We recognize the importance of protecting employees from retaliation relating to their disclosures of waste, fraud, and abuse. ATF employees receive annual training on their rights under the Whistleblower Protection Act, and those with knowledge of waste, fraud, or abuse are encouraged to communicate directly with the

The Honorable Charles E. Grassley
Page Two

Department's Office of Inspector General. These protections do not negate the Department's legitimate interest in protecting confidential information about pending criminal investigations.

We also want to protect investigations and the law enforcement personnel who directly conduct them from inappropriate political influence. For this reason, we respectfully request that Committee staff not contact law enforcement personnel seeking information about pending criminal investigations, including the investigation into the death of Customs and Border Patrol Agent Brian Terry. Like you, we are deeply concerned by his murder, and we are actively investigating the matter. Please direct any inquiry into his killing to this office.

The Department would be pleased to provide a briefing to Committee staff about Project Gunrunner and ATF's efforts to work with its law enforcement partners to build cases that will disrupt and dismantle criminal organizations. That briefing would not address the on-going criminal investigation referenced in your letter. As you know, the Department has a long-standing policy against the disclosure of non-public information about pending criminal investigations, which protects the independence and effectiveness of our law enforcement efforts as well as the privacy and due process interests of individuals who may or may not ever be charged with criminal offenses.

We hope that this information is helpful and look forward to briefing Committee staff about Project Gunrunner. Please do not hesitate to contact this office if we may provide additional assistance about this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

United States Senate

WASHINGTON, DC 20510

February 9, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Holder:

During our meeting on January 31, I provided you with copies of my recent letters to Acting ATF Director Kenneth E. Melson. I had received serious allegations from ATF whistleblowers. ATF agents told my staff that the agency allowed the sale of assault rifles to known and suspected straw purchasers for an illegal trafficking ring near the southwest border. Authorities allegedly recovered two of those weapons at the scene of a fire near the southwest border on December 14, 2010. Customs and Border Protection Agent Brian Terry lost his life in that fire and may have been killed with one of those two rifles. That is why I requested nearly two weeks ago that the ATF brief my staff as soon as possible.

Unfortunately, the reaction to my request has, so far, been little more than delay and denial. I finally received a letter at close of business on Friday, February 4, in response to my request. It came not from the ATF, but from the Justice Department. In that letter, the Department categorically denied that the ATF “knowingly allowed the sale of assault weapons to a straw purchaser....” The Department said the ATF makes “every effort to interdict weapons that have been purchased illegally and prevent their transportation into Mexico.”

However, as I explained in my initial letter to Acting Director Melson, the allegations I received are supported by documentation. It is already public record that federal agents arrested Jaime Avila on December 15, 2010—the very same day that CBP Agent Terry died. The ATF had been tracking Avila’s firearms purchases because Avila was a suspected trafficker since at least November 2009.¹ According to the whistleblowers, at least one gun dealer wanted to stop participating in sales like those to Avila sometime around October 2009. However, the ATF allegedly encouraged the dealer to continue selling to suspected traffickers and asked the dealer to forward information about the sales to the Bureau.

¹ Bureau of Alcohol, Tobacco, and Firearms, “Multiple Sale Summary,” Nov 25, 2009 (Attachment 1).

The dealer who sold the weapons allegedly recovered at the scene of Agent Terry's death met with both ATF representatives and Assistant U.S. Attorneys as early as December 17, 2009 to "discuss his role as [a Federal Firearms Licensee] FFL during this investigation."² On January 9, 2010, Jaime Avila bought three more firearms at the same Glendale, Arizona gun dealer and his purchase was entered into an ATF database two days later.³ By January 13, ATF added Avila to a suspect person database for the investigation.⁴ On January 14, ATF entered the firearms Avila purchased five days earlier into the National Tracing Center's Suspect Gun Database.⁵

On January 16, 2010, Avila bought three AK-47 variant, Romanian WASR-10 assault rifles from the same dealer with the serial numbers 1983AH3977, 1979IS1530, and 1971CZ3775.⁶ ATF entered these weapons into the National Tracing Center's Suspect Gun Database three days later.⁷ Over the next several months, ATF continued to track Avila's multiple firearms purchases in near real-time, including two purchases of .50 caliber rifles in June 2010.⁸

After the shooting of CBP Agent Terry, law enforcement officials recovered from the scene two assault rifles.⁹ On December 16, 2010, ATF's trace results confirmed that serial numbers 1983AH3977 and 1971CZ3755 match two of the three rifles purchased by Avila and tracked by the ATF nearly a year earlier.¹⁰ In addition to these specific weapons, the indictment of Avila and others references approximately 769 firearms. Of those, the indictment refers to the recovery of only about 103 weapons. So, where are the other approximately 666 weapons referenced in the indictment? Why did the ATF not seize them?

The Justice Department's reply asked that Committee staff stop speaking to law enforcement personnel about these matters. However, if not for the bravery and patriotism of law enforcement personnel who were willing to put their careers on the line, this Committee would have been forced to rely on nothing more than rumors in the blogosphere and a Justice Department denial to resolve these allegations. We need more than that. To be an effective check on Executive Branch power, we need cold, hard facts. We will seek them from whatever source is necessary.

Unfortunately, the Justice Department's letter suggested that my attempts to seek information about these matters might be politically motivated. I understand the Department needs to "protect ... law enforcement personnel ... from inappropriate

² Bureau of Alcohol, Tobacco, and Firearms, "Management Log for Case: 785115-10-[redacted]," Dec 17, 2009 (Attachment 2).

³ Bureau of Alcohol, Tobacco, and Firearms, "Multiple Sale Summary," Jan 11, 2010 (Attachment 3).

⁴ E-mail from ATF Program Analyst to ATF Agents, Jan 13, 2010 (Attachment 4).

⁵ Bureau of Alcohol, Tobacco, and Firearms, "Suspect Gun Summary," Jan 14, 2010 (Attachment 5).

⁶ Bureau of Alcohol, Tobacco, and Firearms, "Suspect Gun Summary," Jan 19, 2010 (Attachment 6).

⁷ *Id.*

⁸ Bureau of Alcohol, Tobacco, and Firearms, "Suspect Gun Summary," Jun 8 and Jun 16, 2010 (Attachment 7).

⁹ Bureau of Alcohol, Tobacco, and Firearms, "Significant Information Report," Dec 16, 2010 (Attachment 8).

¹⁰ Bureau of Alcohol, Tobacco, and Firearms, "Firearms Trace Summaries," Dec 16, 2010 (Attachment 9).

political influence.”¹¹ However, there is a difference between inappropriate political influence and appropriately holding officials accountable to the American people. I try to conduct non-partisan oversight of the Executive Branch. Regardless of which party controls the White House or the Congress, I do my best to ask tough questions. If you have any evidence that there is anything “inappropriate” about my motives in this matter, please let me know. Otherwise, I respectfully request that the Department avoid such implications in the future.

Finally, I want to share with you a portion of an e-mail from Carolyn Terry, Agent Terry’s stepmother. She wrote yesterday:

It’s hard to accept that our son was shot and murdered with a gun that was bought in the U.S. We have not had any contact from the Border Patrol or any other agents since returning home on the 22nd of [January]. Our calls are not returned. I truly feel that our son’s death is a cover-up and they hope that we will go away. That will not happen. We want to know who allowed the sale of that gun that murdered our son. Any help will [be] appreciated. We are the victims of this case and we want some answers.¹²

The Terry family deserves answers. The whistleblowers have expressed a desire to honor Agent Terry’s memory by disclosing this information. The Justice Department should work to do the same. The best way to honor his memory is to come clean.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives

The Honorable Alan D. Bersin
Commissioner
United States Customs and Border Protection

¹¹ Letter from the Justice Department to Senator Charles E. Grassley, Jan 31, 2011.

¹² E-mail from Carolyn Terry, Feb 8, 2011.

United States Senate

WASHINGTON, DC 20510

February 16, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Holder:

I appreciate the staff briefing that Department of Justice (DOJ) and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) officials provided on February 10, 2011. However, the briefers focused on general issues related to challenges in successfully prosecuting gun trafficking cases. They refused to answer specific questions about the facts and circumstances that led me to request the briefing.

Specifically, they refused to say whether the approximately 103 weapons seized according to the Jaime Avila indictment were the only seizures related to the nearly 770 weapons mentioned in the indictment. They refused to say whether the third assault rifle purchased by Avila in January 2010—the one not found at the scene of CBP Agent Brian Terry's shooting—has been recovered elsewhere. When asked whether ATF had encouraged any gun dealer to proceed with sales to known or suspected traffickers such as Avila, the briefers said only that they did not have any “personal knowledge” of that.

Therefore, please provide the following documents to the Committee:

- 1) All records relating to communications between the ATF and the Federal Firearms Licensee (FFL) who sold the weapons to Avila, including any Report of Investigation (ROI) or other records relating to the December 17, 2009 meeting “to discuss his role as an FFL during this investigation.”
- 2) All records relating to communications between ATF headquarters and Phoenix Special Agent in Charge (SAC) William Newell from December 1, 2010 to the present, including a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of CBP Agent Brian Terry.
- 3) A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF Headquarters in the Spring of 2010.

- 4) Copies of all e-mails related to Operation Fast and Furious, the Jaime Avila case, or the death of CBP Agent Brian Terry sent to or from SAC Newell, Assistant Special Agent in Charge (ASAC) George Gillette, Group 7 Supervisor, or the Case Agent between November 1, 2009 and January 31, 2011.

Please provide documents in batches on a rolling basis as they are identified and located. Also, please prioritize your search for documents and produce them in the following order: (1) documents in response to requests one through three, (2) documents in response to request four dated between December 13, 2010 and January 31, 2011, and (3) documents in response to request four dated between November 1, 2009 and December 13, 2010.

I look forward to receiving your response. Please provide the first set of requested documentation by no later than February 23, 2011. If you have any questions please contact Jason Foster or Brian Downey at (202) 224-5225. All formal correspondence should be sent electronically in PDF format to Brian_Downey@judiciary-rep.senate.gov or via facsimile to (202) 224-3799.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives

The Honorable Alan D. Bersin
Commissioner
United States Customs and Border Protection

March 2011

March 2011

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D. C. 20530

March 2, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This responds to your letters, dated February 9, 2011 and February 16, 2011, which reiterated your concerns about gun trafficking along the Southwest border and requested documents that apparently relate to a particular ongoing investigation in Arizona.

We appreciated the opportunity to brief Committee staff on February 10, 2011, regarding the efforts by Department prosecutors and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to interdict weapons sold illegally along the Southwest border and to hold accountable the leadership of criminal organizations that support this trafficking.

As you know, we are not in a position to disclose documents relating to any ongoing investigation, nor can we confirm or deny the existence of records in our ongoing investigative files, based upon the Department's longstanding policy regarding pending matters. We would appreciate the opportunity to confer with your staff if we can respond to your interests in another way, consistent with that policy.

The Attorney General has asked the Acting Inspector General to evaluate the concerns that have been raised about ATF investigative actions in light of its recent review of Project Gunrunner to determine whether additional examination by her Office is appropriate. We appreciate your interest in our law enforcement efforts and again ask that you direct to the Inspector General individuals who believe they have knowledge of misconduct by Department employees.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance in this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Weich", is located below the word "Sincerely,".

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

United States Senate
WASHINGTON, DC 20510

March 3, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Attorney General Holder and Acting Director Melson:

It has been over a month since I first contacted Acting Director Melson about serious whistleblower allegations related to a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner” initiative. Several agents alleged that ATF leadership encouraged cooperating gun dealers to engage in sales of multiple assault weapons to individuals suspected of illegally purchasing for resale to Mexican cartels. These agents were motivated to come forward after federal authorities recovered two of the Operation Fast and Furious guns at the scene where a Customs and Border Patrol Agent named Brian Terry was killed.

In response to my letter, the Department of Justice (DOJ) denied that ATF would ever knowingly allow weapons to fall into the hands of criminals, or let firearms “walk” in an operation. On February 9, I wrote to DOJ and attached documents that supported the whistleblower allegations about the guns found at the scene of Agent Terry’s death.¹

My office continues to receive mounting evidence in support of the whistleblower allegations. For example, attached are detailed accounts of three specific instances where ATF allowed firearms to “walk.”² In all three instances, the suspect asks a cooperating

¹ Letter from Senator Grassley to Attorney General Holder. February 9, 2011. Accessed at <http://judiciary.senate.gov/resources/documents/upload/020911GrassleyToHolder-ATF.pdf>.

² ATF Reports of Investigation (ROIs) detailing ATF Phoenix Field Operations from May 8-June 1, 2010. (Attachment 1)

defendant to purchase firearms at a gun dealer who was also cooperating with the ATF. So, two of the three participants in the transactions were acting in concert with the ATF. Yet, the ATF allowed the suspect to take possession of the firearms in each instance. In one case the suspect said that he “assumed the only real risk in their trafficking arrangement when he [REDACTED] ‘erase(d) the (serial) numbers’ from the firearms and ‘take (transports) them...’”³

The whistleblowers did not wait until a federal agent was killed before voicing their concerns internally. Several agents in the Phoenix Gun Trafficking Group (Group VII) voiced their opposition to the ATF’s handling of the case internally first. Group Supervisor David Voth sent an email on March 12, 2010 about the “schism developing amongst our group.”⁴ His response to dissent within the group was to invite those who disagreed with the strategy to find another job:

Whether you care or not people of rank and authority at HQ are paying close attention to this case and they also believe we (Phoenix Group VII) are doing what they envisioned the Southwest Border Groups doing. It may sound cheesy, but we are “The tip of the ATF spear” [sic] when it comes to the Southwest Border Firearms Trafficking.

We need to resolve our issues at this meeting. I will be damned if this case is going to suffer due to petty arguing, rumors, or other adolescent behavior.

... If you don’t think this is fun, you’re in the wrong line of work—period! This is the pinnacle of domestic U.S. law enforcement techniques. After this the toolbox is empty. Maybe the Maricopa County Jail is hiring detention officers and you can get paid \$30,000 (instead of \$100,000) to serve lunch to inmates all day.⁵

Two weeks later, on April 2, 2010, Voth sent an email to Assistant U.S. Attorney Emory Hurley and Assistant Special Agent in Charge (ASAC) George Gillett with the subject, “No pressure but perhaps an increased sense of urgency.”⁶ In the email, he reiterated support for the strategy, but cited increasing levels of violence as a reason to move more quickly. Voth wrote:

Our subjects purchased 359 firearms during the month of March alone, to include numerous Barrett .50 caliber rifles. I believe we are righteous in our plan to dismantle this entire organization and to rush in to arrest any one person without taking in to [sic] account the entire scope of the conspiracy would be ill advised to the overall good of the mission. I

³ *Id.*

⁴ Email from Group Supervisor David Voth to Group VII. March 12, 2010. (Attachment 2)

⁵ *Id.* (Emphasis in original.)

⁶ Email from Group Supervisor David Voth to Group VII, Emory Hurley (USAAZ), and George Gillett. April 2, 2010. (Attachment 3)

acknowledge that we are all in agreement that to do so properly requires patience and planning. In the event, however, that there is anything we can do to facilitate a timely response or turnaround by others, we should communicate our sense of urgency with regard to this matter.⁷

Voth also acknowledged in a May 3, 2010 email to his group that “April was the second most violent month during the Calderon administration with 1,231 executions.”⁸ ATF personnel in Mexico reportedly noted the increased violence and contacted ATF Headquarters to express concern over the Operation Fast and Furious strategy of allowing the weapons sales to proceed.

ATF Headquarters was fully aware of the strategy. A copy the Operation Fast and Furious case summary sent to ATF Headquarters states:

This OCDETF [Organized Crime Drug Enforcement Task Force] case is a large scale firearms trafficking case with the firearms being recovered in the Republic of Mexico or on/near the US/Mexico border (El Paso, TX, Nogales, AZ, Douglas, AZ, etc.) To date over 1,500 firearms have been purchased since October 2009 for over one million (\$1,000,000.00) cash in over-the-counter transactions at various Phoenix area FFLs. [REDACTION] There are many facets to this investigation but ATF is attempting to not only secure a straw purchase/dealing in firearms without a license case against various individuals but more specifically to make the bigger connection to the Mexican Cartel/Drug Trafficking Organization (DTO) obtaining these firearms for the best possible case and the most severe charges when it is time to Indict [sic] this case.⁹

Dismantling the Mexican drug cartels is a worthy goal. However, asking cooperating gun dealers to arm cartels and bandits without control of the weapons or knowledge of their whereabouts is an extremely risky strategy. ATF leadership did not allow agents to interdict the weapons in this case. Instead, agents simply monitored the purchases of “suspect guns” and entered them into a database of firearms “suspected to eventually be used in criminal activity.”¹⁰ Over the course of this investigation, weapons allowed to walk were ending up in Mexico and along the Southwestern border. The ATF was well aware that this was happening. For example, in November 2009, four 7.62 caliber weapons were recovered in Naco, Mexico just two weeks after being purchased by one of the ATF’s suspects in Glendale, Arizona.¹¹ Also, in July 2010 a Romanian AK-47

⁷ *Id.*

⁸ Email from Group Supervisor David Voth to Group VII. May 3, 2010. (Attachment 4)

⁹ Phoenix Group VII, Operation Fast and Furious. (Attachment 5)

¹⁰ Email from Senior Firearms Program Specialist to Group VII Agent. June 17, 2010. (Attachment 6)

¹¹ Email: Suspect Person Activity Report. March 18, 2010. (Attachment 7)

variant—the same model found at the scene of Agent Terry’s death—was recovered in Navojoa, Mexico.¹²

In light of this evidence, the Justice Department’s denials simply don’t hold water. On February 4, 2011, the Department claimed that the ATF did not “knowingly” allow the sale of assault weapons to straw purchasers and that “ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation into Mexico.”¹³ Clearly those statements are not accurate. These documents establish that ATF allowed illegal firearm purchases by suspected traffickers in hopes of making a larger case against the cartels. ATF was not alone. The U.S. Attorney’s office appears to have been fully aware and engaged in endorsing the same strategy.

Congress needs to get to the bottom of this.

After close of business last night, I received a one-page response to my letters of February 9 and 16.¹⁴ The response asks that I direct to the Inspector General any individuals who believe they have knowledge of misconduct by Department employees. You should know that just after Agent Terry died in December, at least one whistleblower contacted the Office of Inspector General before contacting my office. Despite reporting the allegations multiple times by phone, Internet, and fax, no one contacted the whistleblower until after my staff contacted the Acting Inspector General directly on February 1.

I have received no documents in response to my February 16, 2011, request. Last night’s DOJ reply cites the Justice Department’s “longstanding policy regarding pending matters” as a reason for withholding documents “relating to any ongoing investigation.”¹⁵ However, as you know, that policy is merely a policy. It is not mandated by any binding legal authority.

There are many instances where the Justice Department and its components choose to provide information about pending investigations to Congress. These examples are not always officially documented, but often occur when there are particularly egregious allegations of government misconduct or there is an extremely high level of public interest in an investigation. Getting to the truth of the ATF whistleblower allegations in this case is extremely important to the family of Brian Terry and should be important to all Americans. There is no reason to wait the unknown number of years it might take for all of the trials and all of the appeals to be exhausted. The time for truth is now.

¹² Email from ATF Violent Crime Analysis Branch and Group VII Agents, detailing a weapon recovery in Mexico. August 6, 2010. (Attachment 8)

¹³ Letter from the Department of Justice to Senator Grassley. February 4, 2011. (Attachment 9)

¹⁴ Letter from the Department of Justice to Senator Grassley. March 2, 2011. (Attachment 10)

¹⁵ *Id.*

In addition to providing the documents I previously requested, please explain how the denials in the Justice Department's February 4, 2011 letter to me can be squared with the evidence.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

cc:

The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation

The Honorable Alan D. Bersin
Commissioner
United States Customs and Border Protection

United States Senate

WASHINGTON, DC 20510

March 4, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

Due to my inquiry into the ATF's Operation Fast and Furious, I am concerned that the ATF may have employed the same risky strategy of encouraging weapons trafficking that was employed elsewhere by the ATF, beyond the Phoenix Field Office and its Operation "Fast and Furious."

As you know, U.S. Immigration and Customs Enforcement (ICE) Agent Jaime Zapata was murdered in Mexico on February 15. According to a press report based on an unnamed source, the weapon used to kill Zapata "was shipped through Laredo with the possible knowledge of the ATF," and "the feds were already investigating the suspects when the gun was sent to Mexico."¹ According to another report in the Dallas Morning News:

In North Texas . . . ATF agents were conducting another Project Gunrunner surveillance operation involving brothers Otilio and Ranferi Osorio. ATF and Drug Enforcement Administration officials organized the November undercover transfer of about 40 weapons believed to be destined for a Mexican drug cartel. When Immigration and Customs Enforcement Agent Jaime Zapata was gunned down Feb. 15 in Mexico, ballistics tests and a partial serial number linked one weapon used in the shooting to Otilio Osorio.²

In its March 1 press release announcing the arrest of the Osorio brothers as well as their next-door neighbor Kelvin Morrison, the Department of Justice (DOJ) confirmed that all three men were being investigated by the ATF as early as last November. Prior to the 40 weapons referenced above being confiscated in Laredo, the Osorio brothers and Morrison provided the guns to an ATF confidential informant in Dallas in a meeting set up by the ATF. After the delivery of the illegal weapons, the three men were stopped by local police. Why were these traffickers not thereafter arrested in November?

¹ Terry Wallace, "ATF: Gun in US agent's death traced to Texas man," *Associated Press*, February 28, 2011.

² "Federal gun-smuggling surveillance program backfires," *Dallas Morning News*, March 3, 2011.

Naturally, this raises questions about whether the ATF strategy of allowing straw purchasers to continue to operate in hopes of making bigger cases may have contributed to the shooting of ICE Agent Jaime Zapata. Please provide written answers to the following questions:

- (1) Although the gun used in the assault on Agent Zapata that has been traced back to the U.S. was purchased on October 10, 2010, how can we know that it did not make its way down to Mexico after the November investigation, when the arrest of these three criminals might have prevented the gun from being trafficked and later used to murder Agent Zapata?
- (2) When did law enforcement first become aware that Morrison purchased the gun?
- (3) Given that the likely recipients of any trafficked guns were so close to the border, did any ATF personnel raise concerns about the possibility of those guns being used against U.S. law enforcement? If so, how did the ATF address those concerns?
- (4) Did any ATF personnel raise concerns about the wisdom of allowing individuals like the Osorio brothers or Morrison to continue their activities after the November weapons transfer? If so, how did the ATF address those concerns?

In addition to answering those questions, please provide all records relating to:

- (5) When law enforcement officials first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison;
- (6) Surveillance that may have been conducted on the Osorio brothers or Morrison prior to the November transfer of weapons between the ATF's confidential informant and the Osorio brothers and Morrison;
- (7) The November transfer; and
- (8) Any surveillance that law enforcement continued to conduct on the Osorio brothers or Morrison after the November transfer.

Please contact my staff no later than March 7, 2011 to schedule a briefing on this matter. Should you have any questions regarding this letter, please contact Tristan Leavitt at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

United States Senate
WASHINGTON, DC 20510

March 4, 2011

Via Electronic Transmission

Alan D. Bersin
Commissioner
United States Customs and Border Protection
1300 Pennsylvania Avenue, N.W.
Washington, DC 20528

Dear Commissioner Bersin:

As you know, I am investigating the connection between the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation “Fast and Furious” and the firefight on December 14, 2010 that claimed the life of Customs and Border Protection (CBP) Border Patrol Tactical Unit (BORTAC) Agent Brian Terry. Terry’s attackers were apparently armed with assault rifles originally purchased as part of ATF’s Operation Fast and Furious. The BORTAC unit used thermal binoculars to identify the rifles and demanded that the suspected aliens drop their weapons. Yet, according to an affidavit filed by the FBI, even after the aliens refused to disarm themselves, the BORTAC unit was under standing orders to first use non-lethal bean bag rounds.¹ The aliens responded with gunfire, and Agent Terry was killed in the ensuing exchange.

It’s difficult to understand why CBP would require its agents to use less-than-lethal force against people who are clearly armed and dangerous. Further, Agent Brian Terry’s brother, Kent Terry, has said that of the four individuals in the BORTAC unit, only two were armed with standard firearms at all. Two carried *only* bean bag guns. These agents did not even have the means to defend themselves.

Please provide copies of all records relating to:

- (1) CBP’s policy on the use of force in circumstances such as those Brian Terry reportedly faced, and
- (2) Any change to that policy in the last two years.

¹ Affidavit of FBI Agent Scott Hunter, December 29, 1020, Case No. 10-10251M. (Attachment 1)

In addition, please contact my staff no later than March 7, 2011 to schedule a briefing on this matter. Should you have any questions regarding this letter, please contact Tristan Leavitt at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

cc: The Honorable Janet Napolitano
Secretary
United States Department of Homeland Security
301 7th Street, N.W.
Washington, DC 20528

United States Senate
WASHINGTON, DC 20510

March 4, 2011

Via Electronic Transmission

The Honorable Hillary Rodham Clinton
Secretary
U.S. Department of State
Harry S. Truman Building
2201 C Street, NW
Washington, DC 20520

Dear Secretary Clinton:

Over the past month I have been investigating the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner” initiative. According to several agents, ATF leadership encouraged gun dealers to engage in sales of multiple assault weapons to individuals suspected of illegally purchasing for resale to Mexican cartels. I am looking into the connection between Operation Fast and Furious and the firefight on December 14, 2010 that claimed the life of CBP Agent Brian Terry.

I understand that Assistant Attorney General Lanny Breuer, his deputy, and other officials met in Mexico City in the summer of 2010 to discuss “on-going investigations” related to Project Gunrunner with the U.S. Ambassador to Mexico. Accordingly, please provide all records relating to any such meeting that may have occurred from June through September 2010, to include meeting minutes, briefing notes, emails, or cables.

I would appreciate a response no later than March 11, 2011. If you have any questions about this request, please contact Jason Foster at (202) 224-5225. Thank you for your prompt attention to this important matter.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

United States Senate
WASHINGTON, DC 20510

March 8, 2011

VIA ELECTRONIC TRANSMISSION

Kevin L. Perkins, Chair
Integrity Committee
Council of Inspectors General on Integrity and Efficiency
935 Pennsylvania Ave., NW, Room 3973
Washington, DC 20535-0001

**Re: Whistleblower allegations involving Operation Fast and Furious, a
Project Gunrunner case at the Bureau of Alcohol, Tobacco,
Firearms, and Explosives (ATF)**

Dear Mr. Perkins:

Agent John Dodson and other whistleblowers have alleged that the ATF intentionally allowed thousands of weapons to be illegally trafficked to Mexico.¹ ATF appears to have acted with the full knowledge and approval of the Justice Department. Hundreds of these firearms later turned up at crime scenes on both sides of the border, including at the murder scene of Customs and Border Protection Agent Brian Terry.

At first, ATF and the Justice Department repeatedly denied the allegations, asserting that they were "false." However, now that I have presented extensive documentary evidence supporting the claims, Attorney General Holder has asked the Justice Department's Office of Inspector General (DOJ-OIG) to conduct a review. Unfortunately, there are three reasons that the public may be unable to trust that the DOJ-OIG is completely disinterested and independent.

First, the position of Justice Department Inspector General is currently vacant. The Acting Inspector General just recently took over for Glenn Fine. Thus, the office is without a Presidentially-appointed and Senate-confirmed leader. In my experience, acting inspectors general tend to function as caretakers of the office. They are not necessarily equipped to take on an entrenched bureaucracy and challenge senior officials with the tough questions necessary to get to the bottom of a controversy as

¹ John Solomon, David Heath, and Gordon Whitkin, "ATF Let Hundreds of U.S. Weapons Fall into Hands of Suspected Mexican Gunrunner," *The Center for Public Integrity* (Mar 3, 2011), <http://www.publicintegrity.org/articles/entry/2976>.

Kevin L. Perkins
March 8, 2011
Page 2 of 3

serious and far-reaching as this one. That would be especially true if the acting inspector general is seeking the nomination to fill the position on a long-term basis.

Second, the DOJ-OIG was aware of the allegations long before the Attorney General's request and did nothing. Agent Dodson had already contacted the DOJ-OIG in December, just after Agent Terry's death. He received no reply. After contacting my office, Agent Dodson contacted DOJ-OIG again, and still received no reply. No one from the office contacted him to gather information about his allegations until after my staff contacted the Acting Inspector General directly on February 1, 2011. Given that the DOJ-OIG initially failed to follow-up, it might have an incentive to minimize the significance of the allegations in order to avoid the appearance that its own inaction contributed to the problem in the last few months.

Third, I understand that ATF officials have cited a DOJ-OIG report critical of Project Gunrunner² as one of the factors that prompted the shift to a riskier strategy of letting guns be trafficked rather than arresting straw buyers. DOJ-OIG may be sensitive to the appearance that its previous criticism created the conditions under which ATF and DOJ felt pressured to take risks in order to make a "big case" against the cartels. Again, that could create an incentive to minimize the significance of the allegations.

For these reasons, the DOJ-OIG does not appear to be completely disinterested in the outcome of its review. Without a greater level of independence, it will be difficult for the public to have faith in the impartiality and integrity of the result. Therefore, I request that the Acting Inspector General recuse her office and that a disinterested inspector general's office be selected to conduct the review.

In addition, I request that the scope of the inquiry be expanded beyond the underlying decision to allow guns to "walk." The investigation should also carefully examine the circumstances surrounding false and misleading statements to Senate Judiciary Committee staff and to me in response to questions about these allegations over the past several weeks.

² Department of Justice Office of Inspector General, *Review of ATF's Project Gunrunner, Evaluation and Inspections Report I-2011-001* (November 2010), <http://www.justice.gov/oig/reports/ATF/e1101.pdf>. ("ATF's focus remains largely on inspections of gun dealers and investigations of straw purchasers, rather than on higher-level traffickers, smugglers, and the ultimate recipients of the trafficked guns.")

Kevin L. Perkins
March 8, 2011
Page 3 of 3

Attached for your reference are copies of my correspondence with the ATF and the Justice Department, beginning on January 27, 2011. Please provide a written reply no later than March 15, 2011. Thank you for your prompt attention to this extremely important matter.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

cc: Attorney General Eric Holder
U.S. Department of Justice

Acting Inspector General Cynthia A. Schnedar
U.S. Department of Justice

Acting Director Kenneth Melson
Bureau of Alcohol, Tobacco, Firearms, and Explosives

Attachments



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 8, 2011

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This responds to your letters, dated March 3, 2011, and March 4, 2011, which reiterated your concerns about investigations into weapons trafficking along the Southwest border.

We appreciate your continuing concern about this matter. We have referred your letters and the attached documents to the Department's Office of the Inspector General (OIG). As you know, the Attorney General has asked the Acting Inspector General to evaluate concerns raised about Project Gunrunner, the effort by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to interdict weapons purchased illegally for transport to Mexican cartels. We urge you to provide the OIG with any additional information that you think would be helpful to its review.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance in this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

LAMAR S. SMITH, Texas
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
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STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM REED, New York
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Alabama
BEN QUAYLE, Arizona

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

JOHN CONYERS, JR., Michigan
RANKING MEMBER

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TED DEUTCH, Florida
LINDA T. SANCHEZ, California
DEBBIE WASSERMAN SCHULTZ, Florida

March 9, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Holder,

We write to express our concerns about allegations that the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Operation Gunrunner may have been complicit in the illegal transfer of firearms into Mexico. According to media reports, the Phoenix-based program known as "Fast and Furious" intentionally allowed straw buyers for criminal organizations to purchase thousands of guns so that ATF could track them across the border.

We find it ironic that the government allowed guns to be trafficked into Mexico as part of a program designed to stop guns from being trafficked into Mexico. We are also troubled that ATF engaged in activities that may have facilitated the transfer of guns to violent drug cartels while simultaneously attempting to restrict lawful firearms sales by border-area firearms dealers. In December, ATF sought to impose additional reporting requirements on semi-automatic rifles, a proposal that we strongly oppose.

The program resulted in a large flow of weapons across the border to Mexico. According to the Center for Public Integrity, ATF allowed nearly 2,000 guns—valued at over one million dollars—to cross the border to known criminal organizations.¹ As would be expected, many of the guns were used in violent crimes. Worse, two guns from the program were found at the murder scene of Customs and Border Protection Agent Brian Terry in December.

¹ John Solomon, David Heath, and Gordon Witkin, *ATF Let Hundreds of U.S. Weapons Fall into Hands of Suspected Mexican Gunrunners*, The Center for Public Integrity (March 3, 2011), available at <http://www.publicintegrity.org/articles/entry/2976/>.

The Hon. Eric H. Holder, Jr.
 March 9, 2011
 Page 2

ATF's strategy to allow weapons to flow into the hands of criminals carried serious and obvious risks. More disturbing, however, is that ATF appears to have accepted these risks without due regard for the consequences

ATF initiated Operation Gunrunner after the Department of Justice Inspector General (IG) criticized the ATF's gun tracing ability. In a 2010 report, the IG wrote:

Despite the increased activity related to Project Gunrunner, ATF is not using intelligence effectively to identify and target firearms trafficking organizations operating along the Southwest border and in Mexico. Moreover, ATF's expansion of its automated system (eTrace) to trace guns seized in Mexico has yielded very limited information of intelligence value.²

In addition, there seems to have been little effective coordination between ATF and the Department as a whole. While guns continued to cross the border, the Department was apparently slow to approve wiretaps and to bring prosecutions. Internal ATF documents show that ATF's supervisors became increasingly concerned about the pace of the investigations. It was only this January, 15 months after ATF initiated the program and a month after agent Terry's murder, that the Department finally issued its first indictment based on evidence from the program.

We commend your request that the Department's Inspector General investigate these allegations. In the meantime, we ask that the Department respond to the following questions:

1. How many weapons have been allowed to pass to Mexico under the program known as "Fast and Furious"? Is the program still active?
2. Who at ATF Headquarters approved the program?
3. Who in the U.S. Attorney's Office for the District of Arizona approved the program? On what authority did the Office approve the program?
4. Did ATF or the U.S. Attorney's Office in Phoenix coordinate the "Fast and Furious" program with the Department? Did the Department approve the strategy?
5. What changes or improvements has ATF made to its eTrace program and its ability to use intelligence to target gun trafficking organizations in general?
6. Does ATF view the "Fast and Furious" program as a success?

Thank you for your attention to this matter. We respectfully request that the Department respond to these questions by Friday, March 18, 2011.

Sincerely,

² Review of ATF's Project Gunrunner, U.S. Dept. of Justice Office of the Inspector General, p. vi (2010), *available at* <http://www.justice.gov/oig/reports/ATF/e1101.pdf>.

The Hon. Eric H. Holder, Jr.
 March 9, 2011
 Page 3

James Smith

Lehmert

Tom Marino

Rey Cordy

Judy Forke

Elton Gallegly

~~Attn~~

Jim Lusk

Quil E. Jones

Tim Griffin

Kent Starks

Bob Goodlatte

Howie Coble

Steve King

cc: The Honorable John Conyers, Jr.

NATIONAL RIFLE ASSOCIATION OF AMERICA
11250 WAPLES MILL ROAD
FAIRFAX, VIRGINIA 22030



March 9, 2011

The Hon. Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Building
Washington, DC 20510

The Hon. Charles E. Grassley
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

I am writing to ask you to conduct expedited hearings on firearms trafficking enforcement tactics used by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

As the nation's oldest and largest group dedicated to the civil rights of firearms owners, we have felt firsthand the effects of recent violence along the Mexican border. Among the victims of the bloodshed was NRA Life member Robert Krentz, murdered on his Arizona ranch by border-crossing criminals. We've also seen the violence exploited as an excuse for promoting many gun control proposals, most of which had been suggested earlier as "solutions" to other problems.

Law enforcement agencies have sufficient laws at their disposal to address this crisis. Among the relevant laws are those outlawing transfers to prohibited persons such as illegal aliens and nonimmigrant aliens, transfers for use in violent and drug trafficking crimes, and illegal exportation of firearms and ammunition. Current and proposed laws that simply affect honest Americans shouldn't be any part of that plan.

To be clear, the National Rifle Association strongly supports the efforts of federal, state and local law enforcement officials to disrupt criminal enterprises, and thousands of our members proudly serve in those agencies. However, the Department of Justice's Inspector General has criticized the BATFE for focusing on investigations of straw purchasers "rather than on higher-level traffickers, smugglers, and the ultimate recipients of the trafficked guns." And more recent national media reports have raised very serious allegations that even while the Inspector General's review was going on, BATFE leaders were undertaking a new approach to the issue—an approach that can only be called wrongheaded, foolish and reportedly deadly.

Their project—known as “Fast and Furious” and apparently conducted over the strong objections of rank and file agents—reportedly allowed over 2,000 firearms to be sold to individuals already linked to Mexican drug cartels. Many of those transactions were reported as suspicious by the licensed firearms dealers themselves, but BATFE reportedly encouraged them to proceed with these sales, which the dealers would otherwise have turned down. Hundreds of those guns have reportedly been traced to criminal activity so far, including two that were discovered at the scene of a shootout that claimed the life of a U.S. Border Patrol agent.

It’s tragically ironic that while this plan was apparently unraveling, the BATFE was also seeking White House approval to demand reporting of certain multiple rifle sales. That reporting requirement would flood the agency with even more reports of legal transactions, while likely driving criminal traffickers further underground.

We are clearly at a critical point on this issue. Without aggressive enforcement of existing laws, the situation on the border will continue to deteriorate, claiming the lives of innocent citizens and law enforcement personnel alike. Yet reckless enforcement tactics may already have cost lives, while ineffective regulatory requirements would waste scarce resources and undermine Americans’ Second Amendment rights.

Oversight of these serious problems should not be conducted by the very agencies that reportedly created them. Therefore, we respectfully urge you to use every power at your disposal to review the BATFE’s investigative tactics and regulatory proposals with respect to southwest border issues.

The investigation should consider the effectiveness of past BATFE enforcement tactics, as well as the conduct of the “Fast and Furious” operation and the bureau’s response to internal criticism of that initiative. Any investigation should also examine the responses by the BATFE and the Department of Justice to earlier congressional inquiries about the “Fast and Furious” program. (In particular, there seems to be good reason to question the Justice Department’s statement on February 4 that the BATFE never sanctioned the sale of guns “to a straw purchaser who then transported them into Mexico.”)

We greatly appreciate your attention to this issue. If you have any questions, please don’t hesitate to contact me personally.

Sincerely,



Chris W. Cox
Executive Director
NRA Institute for Legislative Action

AVERY DOOLEY POST & AVERY, LLP

Attorneys at Law
90 Concord Avenue
Belmont, MA 02478

Telephone: (617) [REDACTED]

Fax: (617) [REDACTED]

March 10, 2011

Transmitted Electronically and via Overnight Delivery

Brian_Downey@judiciary-rep.senate.gov

Senator Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: George T. Gillett, Jr.
Assistant Special Agent in Charge, Phoenix Field Division

Dear Senator Grassley;

By way of introduction, this office represents George T. Gillett, Jr., Assistant Special Agent in Charge of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Phoenix Field Division. Recently, you sent several correspondences to Kenneth E. Melson, Acting Director of ATF, addressing multiple issues emanating from an ATF operation known as “Fast and Furious.”¹ These letters allege that ATF knowingly permitted the sale of hundreds of weapons to known gunrunners and/or the Mexican cartel, that ATF’s actions resulted in the death of U.S. Border Patrol Agent, Brian Terry and that the “whistleblowing” agents who brought ATF’s purported wrongdoing to light have been subjected to unlawful retaliation at the hands ATF Management. You reference ASAC George Gillett, by name, in at least three of these letters. Moreover, you allege that ASAC Gillett engaged in some level of misconduct and/or illegal activity in connection with the “Fast and Furious”/“Project Gunrunner” initiative.

¹ Operation “Fast and Furious” was a component of the overarching, national ATF initiative known as “Project Gunrunner.”

At the outset of this correspondence, we wish to express our sincere respect and appreciation for your work as an advocate of federal whistleblowers. Our office has also long fought for the implementation of increased protections for federal whistleblowers. We have defended federal employees who have been subjected to retaliation based on their protected whistleblowing in a number of cases. Some of the more noteworthy cases in which we have served as counsel, at some point, have been: *Chambers v. Dept. of the Interior*, *Parikh v. Dept. of Veterans Affairs* and *MacLean v. Dept. of Homeland Security*. On far too many occasions, we have witnessed, firsthand, the unlawful, retaliatory treatment of federal employees who have had the courage to report agency corruption and threats to the public safety. In this matter, however, we are concerned that you have inaccurately and prematurely judged ASAC Gillett's actions without giving proper review and consideration to all of the relevant facts.

At all times relevant to this matter, ASAC Gillett's actions were consistent with and in furtherance of the "Fast and Furious"/"Project Gunrunner" initiatives; operations that were explicitly approved and consistently overseen by DOJ, ATF, and the U.S. Attorney's Office. Moreover, with respect to the whistleblower on whose behalf you wrote, ASAC Gillett's actions were not motivated by retaliation, but rather out of legitimate concern about the release of sensitive grand jury information and were effected at the explicit direction of his superiors. These facts notwithstanding, our primary purpose in writing is not to address your recently communicated inquiries. Rather, our overarching concern relates primarily to ASAC Gillett's safety and protection.

As you are aware, your letters to ATF are a matter of public record and are easily procured by any private citizen with Internet access. In addressing your concerns about Project Gunrunner, your letters attributed the alleged impropriety to individually named ATF employees. With regard to our client, you pointedly accuse ASAC Gillett of engaging in whistleblower retaliation and acting with negligent disregard with respect to Project Gunrunner's implementation and operations. The serious allegations you have levied against ASAC Gillett in the court of public opinion have hindered his right to fully and properly defend against these allegations and have effectively prematurely indicted a federal law enforcement officer with more than 20 years of faithful service.

Your inquiries to ATF concerning Project Gunrunner have garnered significant public attention. In effect, the media has taken your salacious accusation as a definitive finding that ASAC Gillett has committed some level of misconduct resulting in the death of a brother federal agent. As you know, a cursory Internet search allows private citizens to locate and contact virtually anyone (including federal employees) with unnerving ease. In the wake of this national media coverage, ASAC Gillett has received various written threats from unidentified members of the public. We are concerned that continued airing of your concerns that prematurely attribute blame to certain named individuals will result in further harm to ASAC Gillett.

We are absolutely convinced that the allegations against ASAC Gillett will be dispelled once all relevant information is aired in the proper forum. However, until that time, we respectfully request that you refrain from publicly attributing allegations of purported malfeasance to ASAC Gillett in any forthcoming correspondence or in communications with the media. This will preserve ASAC Gillett's right to fully and properly defend against any such allegations and simultaneously safeguard his personal safety and the safety of his family.

We thank you, in advance, for your anticipated cooperation and ask that you contact us with any questions or concerns regarding this matter.

Very truly yours,

AVERY DOOLEY POST & AVERY, LLP

A handwritten signature in black ink, appearing to read 'Peter H. Noone', with a stylized, cursive script.

Peter H. Noone

PHN/caf

*Secretary***U.S. Department of Homeland Security**
Washington, DC 20528**Homeland
Security**

March 11, 2011

The Honorable Charles Grassley
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

Thank you for the opportunity to testify Wednesday in front of the Senate Judiciary Committee on the Department of Homeland Security's (DHS) work to keep our Nation safe from terrorism and other threats, as well as our historic border security and immigration enforcement efforts.

I wanted to follow up with you regarding the tragic murder of Border Patrol Agent Brian Terry while attempting to apprehend armed subjects in Peck Canyon south of Tucson, Arizona, on December 14, 2010. While the Federal Bureau of Investigation's (FBI) investigation of Agent Terry's murder continues, I wanted to share with you important details regarding U.S. Customs and Border Protection's (CBP) use of force policy, as well as the weapons that our CBP Agents and Officers carry when in the line of duty.

Like law enforcement agencies across the United States, CBP Officers and Agents, including the U.S. Border Patrol, are equipped with a variety of lethal and less-lethal weapons. At no point, however, are our law enforcement personnel ever performing their duties equipped with only a less-lethal device. Standard equipment for all CBP Officers and Agents include HK P2000 handguns. Members of Border Patrol Tactical Units (BORTAC), like Agent Terry and his team, carry these sidearms along with additional weaponry, often including M4 rifles. On the night of his murder, all members of Agent Terry's team were armed with lethal weapons, and Agent Terry himself carried a HK P2000 handgun and a M4 long rifle. As was noted in FBI Special Agent Scott Hunter's December 29, 2010 affidavit, Agent Terry's BORTAC team used their weapons to return fire on the suspects.

More broadly, CBP's use of force policy, similar to use of force policies for all law enforcement agencies, authorizes Officers and Agents to use deadly force when they have a reasonable belief that a subject poses an immediate danger of death or serious physical injury to the Officer or Agent or to another person. The decision on whether to use deadly force rests with the Officers and Agents in the field. CBP law enforcement personnel have never been

www.dhs.gov

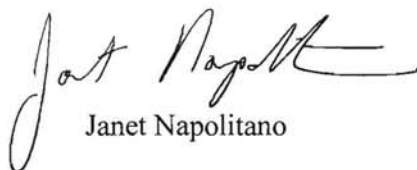
The Honorable Charles Grassley
Page 2

ordered—now or in the past—to use less-lethal devices before using deadly force. Our Officers and Agents are empowered to determine the appropriate level of force in defense of themselves, their fellow Officers and Agents, or innocent third parties. We would like to provide you with an in-person briefing on the specifics of the use of force policy. I will have my staff be in touch with yours to arrange this briefing.

CBP will continue to be relentless in its commitment to securing our Nation's borders, while remembering all of the men and women who have made the ultimate sacrifice. We will not tolerate these acts against our Agents or any other law enforcement organization and will continue to do everything possible to bring those responsible to justice.

Should you wish to discuss this further, please do not hesitate to contact me at (202) 282-8203.

Yours very truly,



Janet Napolitano

cc: The Honorable Jon Kyl, Senate Committee on the Judiciary

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

March 15, 2011

Via Electronic Transmission

The Honorable Michele M. Leonhart
Administrator
U.S. Drug Enforcement Administration
U.S. Department of Justice
700 Army Navy Drive
Arlington, VA 22202

Dear Administrator Leonhart:

Since January, I have been investigating the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner” initiative. According to several agents, ATF leadership encouraged gun dealers to engage in sales of multiple weapons to individuals suspected of illegally purchasing for resale to Mexican cartels.

I understand from documents and other information provided that Drug Enforcement Administration (DEA) Agents were aware of Operation Fast and Furious and possibly deeply involved in the operation. Reportedly, DEA funds were used to facilitate operations in ATF’s Operation Fast and Furious.

Accordingly, in order to get a better understanding of DEA’s involvement with Operation Fast and Furious please provide all records relating to communications between supervisors and DEA headquarters regarding DEA’s involvement. Additionally, I request that you arrange for knowledgeable DEA supervisors to brief members of my staff no later than March 25, 2011.

I would appreciate a response to this letter no later than March 18, 2011. If you have any questions about this request, please contact Brian Downey at (202) 224-5225. Thank you for your prompt attention to this important matter.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Eric H. Holder, Jr.
Attorney General, United States Department of Justice

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN
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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

March 15, 2011

Via Electronic Transmission

The Honorable John T. Morton
Director
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536

Dear Director Morton:

Since January, I have been investigating the Bureau of Alcohol, Tobacco Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner” initiative. According to several agents, ATF leadership encouraged gun dealers to engage in sales of multiple assault weapons to individuals suspected of illegally purchasing for resale to Mexican cartels.

I understand from documents in my possession that Immigration and Customs Enforcement (ICE) Agents were aware of Operation Fast and Furious and possibly deeply involved in the operation. On March 9, at an oversight hearing of the Department of Homeland Security, I questioned Secretary Napolitano regarding possible ICE participation in Operation Fast and Furious. Secretary Napolitano indicated that she was unaware of a specific ICE Agent being part of ATF’s operation.

Accordingly, to get a better understanding of ICE’s involvement with Operation Fast and Furious please provide all records relating communications between ICE supervisors and ICE headquarters regarding ICE’s involvement. Additionally, I request that you arrange for knowledgeable ICE supervisors to brief members of my staff no later than March 25, 2011.

I would appreciate a response by no later than March 18, 2011. If you have any questions about this request, please contact Brian Downey at (202) 224-5225. Thank you for your prompt attention to this important matter.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Janet Napolitano
Secretary, United States Department of Homeland Security

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN
 DIANNE FEINSTEIN, CALIFORNIA
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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

March 16, 2011

Via Electronic Transmission

The Honorable Alan D. Bersin
 Commissioner
 U.S. Customs and Border Protection
 U.S. Department of Homeland Security
 1300 Pennsylvania Avenue, NW
 Washington, DC 20229

Dear Commissioner Bersin:

Since January, I have been investigating the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner” initiative. According to several agents, ATF leadership encouraged gun dealers to engage in sales of multiple weapons to individuals suspected of illegally purchasing them for resale to Mexican cartels. Specifically, I am seeking information on whether CBP officials had an opportunity to seize weapons from straw purchasers on two specific occasions.

First, on March 8, 2011, federal authorities indicted 11 defendants, including the Mayor and the Police Chief of a small town in New Mexico, for conspiring to smuggle weapons from the United States into Mexico.¹ According to the indictment, on January 14, 2010, Blas Gutierrez and Miguel Carrillo were pulled over near the border and were found in possession of eight weapons, including three AK-47-type pistols.² Also according to the indictment, two of the weapons were later smuggled to Mexico, where they were found this month, March 2011.³ I understand that CBP may have been the agency that conducted the vehicle stop referenced in the indictment and that some of the weapons may have been connected to Operation Fast and Furious. However, CBP allegedly let the individuals go, perhaps because it failed to determine that the weapons or individuals were connected to ATF operation at the time of the vehicle stop.

Second, CBP officials allegedly stopped Jaime Avila near the border in the spring or summer of 2010. He allegedly had the two WASR-10 rifles in his possession that were later found at the scene of Agent Brian Terry’s murder, along with over thirty additional weapons. CBP officials contacted ATF or an Assistant United States Attorney who allegedly instructed CBP to allow Avila proceed without seizing the weapons.

¹ Indictment, filed March 8, 2011, *United States v. Villalobos*, Case 2:11-cr-00487. (Attachment 1)

² *Id.* at 3.

³ *Id.*

In order to ascertain the extent to which these accounts are accurate, please ensure that CBP officials are prepared to answer questions about these two incidents in addition to questions about the use of force policy at the staff briefing scheduled for this Friday. If you have any questions about this request, please contact Brian Downey at (202) 224-5225. Thank you for your prompt attention to this important matter.

Sincerely,



Charles E. Grassley
Ranking Member

Attachment

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

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TODD RUSSELL PLATTS, PENNSYLVANIA
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BLAKE FARENTHOLD, TEXAS
MIKE KELLY, PENNSYLVANIA

LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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JACKIE SPEIER, CALIFORNIA

March 16, 2011

Mr. Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

Recent media reports have raised grave questions about your department's handling of operations involving gun trafficking into Mexico. In the aftermath of the tragic killings of Border Patrol Agent Brian Terry and Immigration and Customs Enforcement Agent Jaime Zapata, it is imperative that you act decisively to assuage the public's deep suspicions that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has a policy of permitting – and even encouraging – the movement of guns into Mexico by straw purchasers. The presence of these guns may have subsequently led to the deaths of hundreds of people on both sides of the border, including Agents Terry and Zapata.¹

It has been brought to my attention that you are not cooperating with congressional inquiries about Project Gunrunner and Operation Fast and Furious. Last week, Senator Charles Grassley expressed frustration at ATF's responsiveness in a letter to the Department of Justice (DOJ): "I'm still asking questions and we're getting the runaround from the Justice Department, [t]hey're stonewalling. And the longer the wait, the more they fight, the more egg that they're going to have on their face."²

Operation Fast and Furious is part of ATF's Project Gunrunner program designed to prevent illegal guns from crossing the border into Mexico. ATF implemented the plan in June 2007 and outlined four key areas of Gunrunner: expansion of gun tracing in Mexico, international coordination, domestic activities, and intelligence.

¹ Kim Murphy and Ken Ellingwood, *Mexico Lawmakers Demand Answers about Guns Smuggled under ATF's Watch*, L.A. TIMES, Mar. 11, 2011, <http://www.latimes.com/news/nationworld/nation/la-naw-mexico-guns-20110311,0,6476764,full.story>.

² William Lajeunesse, *ATF, DOJ Launch Damage Control Effort over Growing Project Gunrunner Scandal*, FOXNEWS, Mar. 9, 2011, [http://www.foxnews.com/us/2011/03/09/project-gun-runner-scandal-border/?test=latestnewsrunner Scandal](http://www.foxnews.com/us/2011/03/09/project-gun-runner-scandal-border/?test=latestnewsrunner%20scandal).

Mr. Kenneth E. Melson
 March 16, 2011
 Page 2

A November 2010 DOJ Office of the Inspector General (OIG) report detailed many shortcomings with the program, especially its inability to find and arrest higher-level traffickers.³ With direct approval from ATF headquarters in Washington, a special ATF strike force let federally licensed gun shops sell about 1765 firearms to straw buyers for the drug cartels over a 15 month span beginning in October 2009.⁴ Some 797 of the guns were recovered as a result of criminal activity on both sides of the border, including two at the site of the killing of Agent Terry.

At the same time of the release of the OIG report – and perhaps influenced by it – ATF formalized its policy of letting American guns reach the drug cartels.⁵ Field agents vociferously objected, aghast at the prospect of high-caliber weapons being allowed to enter Mexico.⁶ Senior Agent John Dodson was one of those agents who came forward to complain that the ATF had allowed the guns to be “walked” into Mexico.⁷ ATF even videotaped suspected drug cartel suppliers as they loaded AK-47 type assault rifles into their cars and permitted them to transport those firearms across the border.⁸ ATF officials failed to report this to Mexican authorities⁹ and eventually lost track of hundreds of these guns.¹⁰ Unsurprisingly, these weapons began showing up at crime scenes both in Mexico and the U.S. Notably on December 14, 2010, two “walked” rifles turned up at Agent Terry’s murder site.

Senator Grassley requested specific documents about this policy but, thus far, has received nothing from ATF or DOJ. In fact, Special Agent In Charge (SAC) William D. Newell has steadfastly denied that this policy even exists, as has DOJ.¹¹ When confronted by documentary evidence from Senator Grassley’s office, however, Attorney General Holder asked the Justice Department’s Office of Inspector General (DOJ-OIG) to conduct a review. Such a review by the Acting Inspector General, however, is inadequate. As Senator Grassley wrote to Kevin Perkins, Chair of the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency, “the DOJ-OIG does not appear to be completely disinterested in the outcome of its review. Without a greater level of independence, it will be difficult for the public to have faith in the impartiality and integrity of the result.”¹²

³ Department of Justice Office of Inspector General, Review of ATF’s Project Gunrunner, Evaluation and Inspection Report I-2011-001(Nov. 2010), <http://www.justice.gov/oig/reports/ATF/e1101.pdf>.

⁴ John Solomon, David Heath, and Gordon Whitkin, *ATF Let Hundreds of U.S. Weapons Fall into Hands of Suspected Mexican Gunrunners*, CENTER FOR PUBLIC INTEGRITY, Mar 3, 2011, <http://www.publicintegrity.org/articles/entry/2976/>.

⁵ *Id.*

⁶ *Id.*

⁷ Sharyl Atkisson, *Agent: I Was Ordered To Let U.S. Guns into Mexico*, CBS NEWS, Mar. 3, 2011, <http://www.cbsnews.com/stories/2011/03/03/eveningnews/main20039031.shtml>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Murphy & Ellingwood, *supra* note 1.

¹¹ Solomon, *et al.*, *supra* note 4.

¹² Letter from Sen. Charles Grassley, Ranking Member, S. Jud. Comm., to Kevin L. Perkins, Chair, Integrity Comm., Council of Inspectors General on Integrity and Efficiency (Mar. 8, 2011).

Mr. Kenneth E. Melson
 March 16, 2011
 Page 3

I wholeheartedly agree with this sentiment. Given the entanglement of the DOJ-OIG report with the policy change, it has become clear that the Acting Inspector General cannot conduct an objective and independent inquiry sufficient to foster public confidence. Only a full congressional investigation can achieve this result and restore the public's faith in the workings of the ATF. Therefore, I am requesting that you provide the following documents and information:

1. Documents and communications relating to the genesis of Project Gunner and Operation Fast and Furious, and any memoranda or reports involving any changes to either program at or near the time of the release of the DOJ-OIG report about Project Gunrunner in November 2010.
2. A list of individuals responsible for authorizing the decision to "walk" guns to Mexico in order to follow them and capture a "bigger fish."
3. Following the fatal shooting of Agent Brian Terry, did ATF conduct an investigation of the circumstances of his killing? Did you determine whether the two guns found at the crime scene were permitted to cross into Mexico?
4. Is ATF aware what weapon was responsible for the death of Agent Brian Terry?
5. All documents, including e-mails, relating to communications between the ATF and the Federal Firearms Licensee (FFL) who sold weapons to Jaime Avila, including any Report of Investigation (ROI) or other records relating to a December 17, 2009 meeting "to discuss his role as an FFL during this investigation."
6. A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF headquarters in the spring of 2010.
7. All documents, including e-mails, relating to communications regarding Operation Fast and Furious between ATF headquarters and Special Agent in Charge (SAC) William D. Newell, Assistant Special Agents in Charge Jim Needles and George Gillette, Group Supervisor David Voth, or any Case Agent from November 1, 2009 to the present. The response to this request should include a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of Agent Brian Terry.
8. All documents and communications related to complaints or objections by ATF agents in Phoenix about letting straw buyers with American guns enter Mexico.

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.

Mr. Kenneth E. Melson
March 16, 2011
Page 4

We request that you provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on March 30, 2011. 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.

If you have any questions about this request, please contact Ashok Pinto or Henry Kerner of the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely



Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member



Office of the
Inspector General

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

March 16, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This is in response to your letter of March 8, 2011, to Kevin L. Perkins, in his capacity as Chair of the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE). You expressed concern that the Department of Justice's Office of Inspector General would not be able to apply a publicly acceptable level of independence and objectivity in carrying out a review that the Attorney General had requested it to perform regarding an operation of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

In accordance with the Integrity Committee's rules, because this matter involved the DOJ-OIG, Mr. Perkins, as an official of the FBI and other Justice Department staff recused themselves from any involvement in this matter. Accordingly, as the Committee's senior member, I am acting as Chairperson for this case.

At a special meeting called on March 14, 2011, to consider the issues identified in your letter, the membership concluded unanimously that neither the Committee's authorizing statute nor its internal rules and procedures apply to the matters you identified. The Committee's jurisdiction, as defined by section 7(d)(1) of the Inspector General Reform Act of 2008 (Public Law 110-409, October 14, 2008), is to "receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and staff members." In this context, the Committee has consistently interpreted its mandate to extend only to questions of improper or wrongful conduct on the part of individuals occupying positions of significant responsibility in Inspector General offices, and then, as required by the statute, make recommendations, where appropriate, to the Chair of the CIGIE. However, your statement of reasons why "the public may be unable to trust that the DOJ-OIG is completely disinterested and independent" appears to involve concerns of an institutional or organizational nature, about which the Committee is not empowered to act. Furthermore, the IC has no authority to mandate the recusal of an Office of Inspector General.

However, as the name Integrity Committee implies, scenarios may occur from time to time that cause the membership to comment in a manner that goes beyond the chartered structure. Your stated reservations about the suitability of the DOJ-OIG to properly investigate the Project Gunrunner case present one of those instances.

Honorable Charles E. Grassley

2

While that office is currently headed by an acting Inspector General, the organization, managed for many years by former Inspector General Glenn Fine, has established itself as a model of independence, objectivity, and above all, integrity in every aspect of its daily pursuits. It fully earned an unquestioned reputation for successfully addressing highly difficult and sensitive cases, and deserves the trust and confidence of the public. Further, its prior involvement in a review of a portion of the same ATF program can properly be viewed, not as an impediment to objectivity, but rather as an opportunity for the DOJ-OIG staff to have obtained familiarity with the subject-matter and working environment that would be used advantageously in the investigation requested by the Attorney General. Thus, although an Inspector General from another agency could feasibly conduct this work, it would face a learning curve that might involve some delay in completing the assignment. Finally, it appears that the belief DOJ-OIG was not responsive to disclosures made by an ATF agent may have been initially reached without obtaining information from that office.

If you have any questions or need further information, please do not hesitate to contact me on (202) 606-1200.

Sincerely,

A handwritten signature in black ink, reading "Patrick E. McFarland". The signature is written in a cursive, flowing style.

Patrick E. McFarland
Inspector General

**U.S. Department of Justice**

Office of the Inspector General

March 21, 2011

The Honorable Charles E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

The Department of Justice (DOJ or Department) Office of the Inspector General (OIG) recently initiated a review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) firearms trafficking investigation known as Operation Fast and Furious, and other investigations with similar objectives, methods, and strategies. I am writing to inform you of the scope and preliminary objectives of our review, and to respond to the request in your March 8, 2011 letter to the Integrity Committee of the Council of Inspector General on Integrity and Efficiency (CIGIE) that the DOJ OIG be recused from this review.

The preliminary objectives of our review are to examine the development and implementation of Operation Fast and Furious and other firearms trafficking investigations; the involvement of the Department (including ATF, the Criminal Division, and U.S. Attorneys' Offices) and other law enforcement or government entities in the investigations; the guidelines and other internal controls in place and compliance with those controls during the investigations; and the investigative outcomes. We believe our review will address many of the important issues you have raised about Operation Fast and Furious.

In your letter to the CIGIE Integrity Committee, you requested that the OIG be recused from conducting this review and that another Inspector General's office handle the investigation. I have carefully considered your letter, but firmly believe there is no basis for the DOJ OIG to recuse itself from this review. The DOJ OIG is the most appropriate Inspector General's office to conduct this review. Our investigative team is composed of senior attorneys, including former prosecutors, law enforcement agents, and analysts. The OIG's significant investigative experience and extensive knowledge of Department components and operations makes it uniquely capable of conducting a review of Operation Fast and Furious and similar operations.

You expressed three concerns in requesting our recusal. The first is that the OIG does not have a Presidentially-appointed and Senate-confirmed leader. However, my status as an Acting Inspector General does not in any way compromise the independence of the OIG or otherwise impede our capability to conduct this or any other review. Acting Inspectors General have often been called upon to conduct high profile reviews and investigations, and have responded with tough, independent reports containing significant findings and recommendations for the affected agencies.¹ I can assure you that under my leadership the OIG will continue to conduct hard-hitting and vigilant investigations in carrying out our important oversight responsibilities.

The second concern you raised is that the OIG was “aware of the allegations long before the Attorney General’s request and did nothing.” I first learned of the allegations about Operation Fast and Furious when a member of your staff contacted me on January 27, 2011. I immediately looked into the concerns raised by your staff member and found that the OIG had no record of receiving a complaint on this matter. I gave your staff member the contact information for an individual in the OIG front office to convey to any complainant who wanted to contact us about this matter. We subsequently were contacted by an ATF Special Agent and promptly followed up by interviewing the agent regarding the agent’s concerns about Operation Fast and Furious.²

The third concern you raised as a basis for the OIG’s recusal is your understanding that ATF officials have cited an OIG report on Project Gunrunner as one of the factors that prompted the ATF to “shift to a riskier strategy of letting guns be trafficked rather than arresting straw buyers.” The report you reference, *A Review of Project Gunrunner*, was issued by our office in November 2010. We did not recommend in that report that ATF shift its strategy to “letting guns be trafficked rather than arresting straw buyers.”

¹ For example, our previous Inspector General, Glenn Fine, served as Acting Inspector General prior to his confirmation as the Inspector General and issued several important reports during his tenure as Acting Inspector General. See, e.g., *An Investigation of the Immigration and Naturalization Service’s Citizenship USA Initiative*, July 2000; *An Investigation of Misconduct and Mismanagement at ICITAP, OPDAT, and the Criminal Divisions Office of Administration*, September 2000.

² The OIG’s public webpage at <http://www.justice.gov/oig/> provides several means of reporting allegations of waste, fraud, abuse, or misconduct, including a hotline number, an e-mail address, an on-line submission form, and a fax number. We discussed with the ATF Special Agent the efforts made to contact our office so that we could identify and correct any deficiencies in our intake process.

Rather, the OIG made a total of 15 recommendations in that report to help ATF improve its implementation of Project Gunrunner, including a recommendation that ATF focus on developing more complex conspiracy cases against higher level gun traffickers and gun trafficking conspirators. Our report also recommended that ATF send guidance to field management, agents, and intelligence staff encouraging them to participate in and exploit the resources and tools of the Organized Crime Drug Enforcement Task Force, as directed in the Deputy Attorney General's cartel strategy.

Our report, however, did not review what strategies ATF should employ in pursuing more complex cases, nor did it address what internal controls the ATF should have in place to minimize the risk associated with its investigative strategies. Thus, while our prior work gives us familiarity with Project Gunrunner that we will draw upon, it did not address the issues that we will examine in our review of Operation Fast and Furious.

In addition, ATF first became aware of our findings and recommendations in the Project Gunrunner review on September 3, 2010, when we provided a draft of the report to ATF for factual accuracy and sensitivity review prior to publication. Our understanding is that Operation Fast and Furious was initiated in late 2009 and that the investigative strategy employed in this operation was implemented shortly thereafter, well before the OIG began to formulate any recommendations relating to Project Gunrunner.

For all of these reasons, I believe the DOJ OIG is best situated to conduct a thorough, objective, and independent review of Operation Fast and Furious. I expect that we will address many of the important issues you have raised, and at the same time provide guidance to the Department about the conduct of this operation and how to address any deficiencies we identify.

If you have any questions about this letter or these issues, please contact me or Senior Counsel Jay Lerner at (202) 514-3435.

Sincerely,



Cynthia A. Schnedar
Acting Inspector General



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 23, 2012

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
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letters dated March 19, 2012 and March 22, 2012, which summarize the contents of sensitive law enforcement documents known as Reports of Investigation (ROIs) that were prepared by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The ROIs summarized in your letters relate to an active criminal investigation of a firearms trafficking ring, as well as to the prosecution of Manuel Celis-Acosta, who is under indictment in federal court in Arizona and awaiting trial on serious felony charges.

We began to receive calls from reporters about your letters soon after we received them from you, and they have since been the subject of public reports. While we do not know who provided these letters to reporters, we are deeply disturbed that the sensitive law enforcement information contained in them has now entered the public realm. This public disclosure is impeding the Department's efforts to hold individuals accountable for their illegal acts, including by discouraging cooperation with our efforts in these very cases. Since we know that you share our desire to bring dangerous arms traffickers to justice, we ask that you preserve the confidentiality of sensitive law enforcement information that may come into your possession.

We consider the airing of this information to have been quite unnecessary because we have already acknowledged on numerous occasions that Operation Fast and Furious and operations conducted during the prior Administration employed inappropriate investigative tactics. Indeed, after learning about the allegations relating to Operation Fast and Furious, the Attorney General referred the matter to the Department's Inspector General for review and instructed the Deputy Attorney General to issue a directive making clear that such tactics must not be used again.

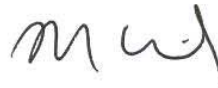
The Honorable Darrell E. Issa
 The Honorable Charles E. Grassley
 Page Two

Your letters seek briefings by the Department relating to the timing of Mr. Celis-Acosta's arrest. Consistent with longstanding Department policy, we have concluded that it would be inappropriate for us to brief Congress about the details of our investigation of this individual while the criminal proceeding against him remains pending. Among other considerations, information from his case may be relevant to other ongoing federal criminal investigations. The Department must avoid disclosures that could compromise pending investigations or prosecutions, and we must also ensure that prosecutorial decisions are free of political influence and the appearance of political influence. That is why, from the beginning of your review, we have provided documents and information about the inappropriate strategy and tactics employed in Operation Fast and Furious while, at the same time, declining to provide details about specific investigative or prosecutorial judgments made with respect to particular individuals.

Finally, your letters ask why the Department has not produced ROIs in response to the Committee's subpoena. ROIs often contain sensitive details about law enforcement matters, especially when they pertain to pending investigations or prosecutions. We have produced and will continue to produce information that relates to the Committee's legitimate oversight interest in the strategies and tactics of these operations, but only consistent with our law enforcement responsibilities. Our efforts to respond to the subpoena are continuing, and we will advise you if we have withheld ROIs and other documents responsive to your subpoena for law enforcement reasons.

We hope that this information is helpful. Please do not hesitate to contact this office if we can provide additional assistance regarding this or any other matter.

Sincerely,



Ronald Weich
 Assistant Attorney General

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

The Honorable Patrick J. Leahy
 Chairman
 Committee on the Judiciary
 United States Senate

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

March 25, 2011

Via Electronic Transmission

Cynthia A. Schnedar
 Acting Inspector General
 U.S. Department of Justice
 Office of the Inspector General
 950 Pennsylvania Avenue, NW
 Washington, DC 20530

Dear Acting Inspector General Schnedar:

In several previous letters to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and your office, I have expressed my concerns over the actions of the ATF in Operation "Fast and Furious."

On March 3, 2011, ATF Special Agent Jay Dobyns filed a Department of Justice Office of the Inspector General (OIG) online complaint, a copy of which is attached for your reference. Although the complaint is not directly related to Operation Fast and Furious, it alleges misconduct on the part of supervisors from ATF's Phoenix Field Office. Agent Dobyns reported serious allegations, which may provide important background and context for the Congressional review of Operation Fast and Furious.

In his OIG complaint, Agent Dobyns provides an email from one of the supervisors saying, "I'll go out of my way to conceal [significant details]," and "I have enough [Law Enforcement] and intelligence community experience to know how to protect myself and my subordinates. I can hide the ball with the best of them." Furthermore, Agent Dobyns advised that his allegations have been reported numerous times in the past to ATF management and the Department of Justice has been aware of them for at least eighteen months.

Due to the nature of the claims, please evaluate Agent Dobyns' claims in an expedited manner and provide an updated status of how the OIG intends to investigate the allegations.

Department of Justice Inspector General
March 25, 2011
Page 2 of 2

Thank you for your attention to this important matter. I request that your agency provide a response no later than April 8, 2011. Should you have any questions regarding this letter, please contact Jason Foster at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

Attachment

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

March 28, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

On March 4, 2011, I wrote you regarding questions surrounding the February 15 murder of U.S. Immigration and Customs Enforcement (ICE) Agent Jaime Zapata in Mexico. I have yet to receive a reply.

In my last letter, I referenced the March 1 DOJ press release regarding the Osorio brothers and their next-door neighbor Kelvin Morrison. They were arrested on charges related to trafficking firearms to a Mexican drug cartel and indicted on March 23. According to the release, all three defendants had been suspects in an ATF undercover operation in early November 2010. In that operation, the Osorio brothers and Morrison provided 40 firearms to an ATF informant. The press release indicates, "The meeting [between the informant and the suspected traffickers] was arranged related to an investigation of Los Zetas," a Mexican drug trafficking cartel.¹

The DOJ's press release appears to be the first public acknowledgement that one of the firearms used in the murder of Agent Zapata had been traced back to Otilio Osorio. Specifically, the press release stated:

[A]ccording to one affidavit filed in the case, one of the three firearms used in the Feb. 15, 2011, deadly assault of ICE Special Agent Jaime Zapata that was seized by Mexican officials has been traced by ATF to Otilio Osorio. Otilio Osorio allegedly purchased that firearm on Oct. 10, 2010, in the Dallas/Fort Worth metroplex, prior to law enforcement's awareness of the purchase. Ballistic testing

¹ Press Release, Department of Justice, March 1, 2011, available at <http://dallas.fbi.gov/dojpressrel/pressrel11/dl030111.htm>.

Acting Director Melson
 March 28, 2011
 Page 2 of 3

conducted by Mexican authorities on this firearm indicated it was one of the three firearms used during the deadly assault on Special Agent Zapata's vehicle.²

The DOJ's press release gives the impression that law enforcement officials were unaware of Osorio's activities in October 2010 when he allegedly purchased the weapon that was later used to kill Agent Zapata.

The press release leads the reader to believe that law enforcement had no reason to suspect Osorio was a straw purchaser until sometime between October 10 and early November, when he was the subject of the undercover operation. According to the release:

The investigation *now has also revealed* that on Aug. 7, 2010, a Romarm, model WASR, 7.62 caliber rifle was discovered by law enforcement officers in LaPryor, Texas, near the U.S./Mexico border. Trace results indicated that Morrison purchased this firearm on July 30, 2010, from a FFL [federal firearms licensee]. According to the affidavit, between July 10, 2010, and Nov. 4, 2010, Morrison purchased 24 firearms from FFLs.³

This portion of the DOJ's press release appears designed to give the impression that the August 7 discovery by unspecified "law enforcement officers" and subsequent trace results linking the weapon to Morrison became known only after the October 10 purchase of the murder weapon.

However, I have learned that ATF agents actually observed a cache of weapons being loaded into a suspect vehicle on July 29, 2010, but did not maintain surveillance on that vehicle.⁴ The very next day, Morrison purchased the firearm that was later "discovered," in August.⁵ In fact, it was actually seized along with 22 other AK-style firearms in the very suspect vehicle that ATF agents had witnessed being loaded with weapons on July 29.⁶ When the vehicle was stopped en route to Eagle Pass, Texas on August 7, the weapon purchased by Morrison on July 30 was recovered, *along with two weapons purchased by Ranferi Osorio*.⁷ All of these facts were apparently known to federal authorities contemporaneously, and yet none of them are included in the Justice Department's craftily-worded press release.

The March 8 letter I received from Department of Justice (DOJ) Assistant Attorney General Ronald Weich is not an adequate response to my March 4 letter, which was addressed specifically to you. Therefore, please provide your direct response to the questions in my letter, along with the documents previously requested. In particular, please prioritize any documents responsive to paragraph (5), which called for all records relating to when law enforcement first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison.

² *Id.*

³ *Id.* (Emphasis added.)

⁴ ATF Management Log, Case 785096-10-[redacted], Case Title "[redacted] Firearm Traffickers (SWB Gunrunner)." (Attachment 1)

⁵ ATF Firearms Trace Summary, Sep. 17, 2010. (Attachment 2)

⁶ *Supra* note 4.

⁷ ATF Firearms Trace Summary, Sep. 15, 2010; ATF Firearms Trace Summary, Sep. 17, 2010. (Attachment 3)

Acting Director Melson
March 28, 2011
Page 3 of 3

Should you have any questions regarding this letter, please contact Tristan Leavitt at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

Attachment

DARRELL E. ISSA, CALIFORNIA
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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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JACKIE SPEIER, CALIFORNIA

March 29, 2011

The Honorable Hillary Rodham Clinton
Secretary
U.S. Department of State
Harry S. Truman Building
2201 C Street, NW
Washington, DC 20520

Dear Secretary Clinton:

On March 4, 2011, Senator Charles E. Grassley wrote to you requesting basic information about the connection between Operation “Fast and Furious,” conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and the December 14, 2010 firefight that claimed the life of Border Patrol Agent Brian Terry.¹ I understand that you have yet to respond and are likely to refuse Senator Grassley’s request for information without a letter from the Chairman of the Senate Judiciary Committee. This refusal is mystifying in its own right, given Senator Grassley’s standing as the Ranking Member of that Committee. More inexplicably, your refusal stands in stark contradiction to the promise of transparency promoted by President Obama. During Sunshine Week last year, the President stated that he had “recommit[ed] [his] administration to be the most open and honest ever.”²

Given the gravity of this matter, this refusal is simply unacceptable. Therefore, I am joining Senator Grassley’s request for any and all records relating to a meeting involving the then-U.S. Ambassador to Mexico Carlos Pascual with Assistant Attorney General Lanny Breuer, Mr. Breuer’s deputy, and other officials in Mexico City in the summer of 2010 regarding “on-going investigations” related to Project Gunrunner and its “Fast and Furious” component. The records sought include meeting minutes, briefing notes, e-mails and cables relating to any such meeting or meetings that may have occurred from June through September 2010. Additionally, please explain in detail the reasons behind your refusal to answer the Senator directly.

¹ Letter from Sen. Charles Grassley, Ranking Member, S. Jud. Comm., to Hon. Hillary R. Clinton, Sec’y, U.S. Dep’t of State (Mar. 4, 2011).

² The White House, Office of the Press Secretary, Statement from the President on Sunshine Week (Mar. 16, 2010), <http://www.whitehouse.gov/the-press-office/statement-president-sunshine-week>.

The Honorable Hillary Rodham Clinton
March 29, 2011
Page 2

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.

We request that you provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on April 12, 2011. 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.

If you have any questions about this request, please contact Ashok Pinto or Henry Kerner of the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

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

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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WASHINGTON, DC 20515-6143

Majority (202) 225-5074
Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you should 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.

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 they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request 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, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
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 should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents 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, 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.

April 2011

April 2011



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 1, 2011

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

Dear Chairman Issa:

As you know, the Department has been working with the Committee to provide documents responsive to its March 16 request to the Bureau of Alcohol, Tobacco, Firearms and Explosives. Yesterday, we informed Committee staff that we intended to produce a number of responsive documents within the next week. As we explained, there are some documents that we would be unable to provide without compromising the Department's ongoing criminal investigation into the death of Agent Brian Terry as well as other investigations and prosecutions, but we would seek to work productively with the Committee to find other ways to be responsive to its needs.

We were therefore surprised and disappointed when shortly after we notified your staff of our intent to work with the Committee, you nevertheless issued a subpoena a few hours later. Despite this unnecessary step on your part, we will review the subpoena and work with the Committee to address your concerns.

As the Attorney General has said, it is an important mission of the Department of Justice to stop the flow of guns into Mexico. He has asked the Department's Inspector General to investigate this matter and has also reiterated to Department personnel that they are not to knowingly allow any guns to be illegally transported into Mexico. We look forward to continuing to work with you on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald Weich".

Ronald Weich
Assistant Attorney General

cc: The Honorable Elijah Cummings
Ranking Minority Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 4, 2011

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter, dated March 9, 2011, which asked a number of questions about the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigation known as Operation Fast and Furious. An identical letter has been sent to all signatories of your letter.

Mexican drug cartels are a significant organized crime threat, both to the United States and to Mexico. According to the Department's 2010 National Drug Threat Assessment, these cartels present the single greatest drug trafficking threat to the United States. Mexican cartels use violence to control drug trafficking corridors, through which drugs flow north into the United States while guns and cash flow south to Mexico. For calendar year 2009, the Mexican government reported 9,635 murders in Mexico resulting from organized crime and drug trafficking – an increase of 50% from the number of murders in 2008 and three times the 2,837 killed in 2007. In part because Mexican law severely restricts gun ownership, Mexico's drug traffickers routinely smuggle weapons purchased in the United States into Mexico.

Stopping the flow of weapons across the border into Mexico is a challenging task given the resources of the cartels and the cartels' use of sophisticated trafficking organizations to move firearms across the border. These trafficking organizations typically involve the use of straw purchasers, who purchase the weapons not for themselves, but with the purpose of transferring them to others who then facilitate their movement across the border to the cartels. Among the challenges in investigating a trafficking organization is developing sufficient evidence to prove that particular firearm purchases are, in fact, unlawful straw purchases. As you know, it is legal for a non-prohibited person to purchase an unlimited number of firearms from a licensed gun dealer and then to sell or barter those firearms to another person.

Operation Fast and Furious is an ongoing criminal investigation of an extensive gun-trafficking enterprise.¹ It was opened over a year ago and approved by the ATF Phoenix Field Office and the United States Attorney's Office for the District of Arizona (USAO) in the normal

¹ Operation Fast and Furious, which is one law enforcement investigation, should not be confused with Project Gunrunner, which is the broader initiative to deal with weapons trafficking along the Southwest Border generally. As was recently noted by the Congressional Research Service, "[a]s of March 2010, Project Gunrunner had led to the arrest of 1,397 defendants – 850 of which had been convicted – and the seizure of over 6,688 firearms." Congressional Research Service Report RL32724, *Mexico-U.S. Relations: Issues for Congress*, February 15, 2011, at 19.

The Honorable Lamar Smith
Page Two

course, consistent with established procedures for such matters. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program. The purpose of the investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico, in part by prosecuting its leadership. The investigation is led by a dedicated team of USAO prosecutors and ATF agents. With regard to your question about the results and status of the investigation, to date, these efforts have resulted in an indictment charging 20 defendants with federal firearms offenses and the investigation is continuing.

Allegations have been raised about how this investigation was structured and conducted. As you note, at the request of the Attorney General, the Acting Inspector General is now investigating those allegations. The Attorney General has also made it clear to the law enforcement agencies and prosecutors working along the Southwest Border that the Department should never knowingly permit firearms to cross the border.

You have also asked for information about eTrace, an important tool in ATF's work to dismantle gun trafficking. eTrace is an Internet-based system that allows participating law enforcement agencies to submit firearm traces to the ATF National Tracing Center. Authorized users can receive firearm trace results electronically, search a database of all firearm traces submitted by their individual agency, and perform analyses. In the last year, eTrace has gained strong new features. eTrace now accommodates data in Spanish, gives translations, and allows users to better sort and search additional data elements and images to improve weapons tracing. In the next 24 months, planned enhancements to eTrace will improve ATF's ability to monitor and map gun tracing data in real time and to share information with other federal agencies, as well as with state and local law enforcement.

Unfortunately, at this time, we are not in a position to answer your questions in greater detail. The Department has a long standing policy against the disclosure of non-public information about ongoing criminal investigations. This policy is based on our strong interest in protecting the independence and effectiveness of ongoing law enforcement efforts. We are, however, in the process of working with Chairman Issa to provide documents concerning this matter and would be willing to work with you and your staff in the same manner. Through this process we hope to find ways to be responsive to your needs that are consistent with the Department's need to maintain the confidentiality of ongoing investigations.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this, or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

JOY BERTRAND, ESQ., L.L.C.
Scottsdale, Arizona ~~ Milwaukee, Wisconsin

P.O. Box 2734
Scottsdale, AZ 85252-2734

2266 N. Prospect Ave., Suite 310
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Joy Bertrand
Owner
[REDACTED]

Shannon Peters
Attorney
[REDACTED]
Admitted in Arizona

Anjali Patel
Attorney
[REDACTED]
Admitted in Arizona

April 6, 2011

Honorable Charles Grassley
135 Hart Senate Office Building
Washington, DC 20510
fax - 202-224-6020
via facsimile and overnight mail

RE: ATF Special Agent John Dodson
Notice of Attorney Representation

Dear Senator Grassley:

Mr. Dodson has asked me to represent him as his attorney regarding your current investigation of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Nothing in this Notice should be construed as an indication of disinterest or uncooperativeness on Mr. Dodson's part. Mr. Dodson remains willing to assist you with your investigation, but he asks that you communicate with him *via* his counsel.

You are welcome to contact me with any questions or concerns you have about this matter.

Sincerely Yours,


Joy Bertrand
Attorney for ATF Special Agent John Dodson

cc: United States Senate Judiciary Committee

office - 602-374-5321 fax - 602-374-2712
www.joybertrandlaw.com



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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

April 8, 2011

VIA ELECTRONIC TRANSMISSION

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

Attached is an email released through the Freedom of Information Act (FOIA).¹ It appears to contain proposed guidance to ATF employees about how to respond to contacts from my office. The guidance instructs ATF employees that they “are in no way obligated to respond” to questions from Congress. It also attempts to prevent direct communications with my office by instructing that ATF employees “should refer congressional staff who seek information from you to the ATF’s office of congressional affairs.” The guidance further attempts to prevent direct communications with my office by claiming that ATF employees “are not authorized to disclose non-public information.”

It is unclear from the email released through FOIA whether this guidance was actually communicated to ATF employees. However, it is of grave concern because, as you know, such attempts to prevent direct communications with Congress are not a lawfully authorized activity of any officer or employee of the United States whose salary is paid with appropriated funds.² Specifically, no officer or employee may attempt to prohibit or prevent “any other officer or employee of the Federal Government from having *direct* oral or written communication or *contact* with any Member, committee, or subcommittee of the Congress” about a matter related to his employment or the

¹ Attachment 1.

² Consolidated Appropriations Act, 2010, P.L. 111-117, 123 Stat. 3034, § 714 (2010), as continued by §101 of continuing resolutions P.L. 111-242, 124 Stat. 2607 (2010) and P.L. 112-6, 125 Stat. 23 (2011)—which extends the funding levels in the 2010 appropriations bills, as well as “the authority and conditions provided in such Acts,” through April 8, 2011.

Kenneth E. Melson
 April 8, 2011
 Page 2 of 4

agency "in any way, *irrespective of whether such communication or contact is at the initiative*" of the employee or Congress (emphasis added).³

I wrote to you on January 31 to ensure you were aware of these provisions and to express concerns that without proper guidance, managers might inappropriately intimidate employees to discourage them from speaking with Congress and thus unlawfully interfere with a Congressional inquiry.⁴ In order for Congress to exercise its oversight authority and act as a check on Executive power, it is crucial that agency employees are free to communicate directly with Members and Committee staff. Direct contact means contacts that do not necessarily involve Congressional liaison or agency management. Without such direct, unfiltered communications, Congress would still be unaware of, and unable to inquire about, the serious allegations involving the death of Border Patrol Agent Brian Terry and the sales of weapons to known and suspected gun traffickers.

I have a long experience of witnessing retaliation against whistleblowers. Sometimes it is explicit and immediate. Often it is subtle and delayed until after public scrutiny has faded. Unfortunately, it is so frequent that employees fear that even truthful answers to direct factual questions from Congress will get them in trouble. That is why I am committed to maintaining the confidentiality of those employees who wish to cooperate with a Congressional inquiry or report problems anonymously. Direct contact with Congress of the sort protected by the law serves as an extra level of protection against retaliation and is obviously essential where an employee seeks confidentiality.

However, in some cases, agency employees choose to disclose their direct contacts with Congress, despite the potential consequences. As I explained in my January 31 letter, one employee chose to disclose his protected contacts with my staff and was immediately questioned about the content of those communications. I was concerned about that because forcing an employee to reveal the details of such communications would intrude on the integrity of the Congressional inquiry and offend the comity between the Branches that flows from the separation of powers under the Constitution.

Now, a second agency employee has chosen to disclose that he has had protected contacts with Congress. George Gillett, through and in conjunction with his legal counsel, is cooperating with this investigation. Mr. Gillett is the Assistant Special Agent in Charge of the ATF's Phoenix field division, and Committee staff's direct contacts with him are an essential component of our inquiry. He has participated in two preliminary meetings jointly with Senate Judiciary Committee staff and House Oversight and Government Reform Committee staff. As you know, retaliation for such communications is prohibited by law.

³ *Id.*

⁴ 18 U.S.C. § 1505 (providing criminal penalties for obstructing or impeding the power of Congressional inquiry).

Kenneth E. Melson
 April 8, 2011
 Page 3 of 4

On one previous occasion when an agency sought to compel an individual to disclose the content of his communications with Congress, I was prepared to introduce a resolution authorizing the Senate Legal Counsel to seek legal remedy in the courts. Fortunately, in light of that draft resolution, the Executive Branch withdrew its attempt to compel discovery of communications between a whistleblower and Congress.⁵

In this current inquiry, a similar attempt was also abandoned. The first ATF agent to disclose that he had direct contacts with Congress was ordered to describe the content of his communications in writing. However, shortly after my January 31 letter, I was pleased to learn that the order was withdrawn. I appreciate the agency's willingness to respect Congressional prerogatives and avoid interfering with a Congressional inquiry. Similarly, the agency should avoid intruding into our investigative process by seeking to learn the content of ASAC Gillett's communications with Congress.

In light of the attached email, I have renewed concerns that the guidance being given to employees may be inconsistent with the law.⁶ Therefore, please provide written answers to the following questions:

1. Was the attached guidance distributed, either in writing or otherwise, to ATF field offices or other ATF personnel?
2. Was any guidance on contacts with Congress distributed, either in writing or otherwise, to ATF field offices or other ATF personnel? If so, please provide a copy.
3. What steps have you taken or do you plan to take to ensure that employees are aware of their right to communicate directly with Congress if they so choose?

⁵ See S. PRT. 110-28, § VIII.D.2 "Attempt to Compel Disclosure of Confidential Communications with Congress," p. 103, 641, 652 ("Nothing in this agreement shall require [the production of] any communications with, or documents that were created for, any Senate Committees (or the staff or members thereof)"). See also S. HRG. 109-898, at 39-41, 470-471, responses to questions for the record to Dec. 5, 2006, Senate Judiciary Committee hearing at 8.

⁶ See generally, Government Accountability Office, "Department of Health and Human Services—Chief Actuary's Communications with Congress," B-302911 (Sep. 7, 2004) (discussing the history and background in support of the government-wide prohibition on attempts to prevent direct communications with Congress) (Attachment 2).

Kenneth E. Melson
April 8, 2011
Page 4 of 4

Please reply no later than April 14, 2011. If you have any questions about this request, please contact Jason Foster at (202) 225-5225. Thank you for your cooperation.

Sincerely,



Charles E. Grassley
Ranking Member

Attachments

cc: Chairman Patrick Leahy, Senate Committee on the Judiciary
Chairman Darrell Issa, House Committee on Oversight and Government Reform

DARRELL E. ISSA, CALIFORNIA
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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
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JACKIE SPEIER, CALIFORNIA

April 8, 2011

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, N.E.
Washington, DC 20226

Dear Acting Director Melson:

Recent media reports have given rise to grave concerns over Project Gunrunner and Operation Fast and Furious, conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Over the past few months, Senator Charles Grassley, the Ranking Member of the Senate Judiciary Committee, wrote you multiple letters asking for documents and information about these programs. I wrote to you on March 16, 2011, requesting substantially similar information by March 30, 2011. You failed to comply with the March 30th deadline, and on March 31, 2011, the Committee issued a subpoena for those documents.

The public deserves assurances that its government is not allowing guns bought by Mexican drug cartels to be "walked" across the border into Mexico. To determine whether this occurred, the Committee is entitled to receive all relevant materials that would aid its investigation. At present, I am not confident that ATF will produce all documents of probative value to enable the Committee to exercise its legitimate oversight responsibilities.

Therefore, I now request that all types of documents and essential communications between and among ATF employees related to the planning and implementation of Project Gunrunner and Operation Fast and Furious be preserved. So that ATF can produce a full and complete record of those documents to the Committee in response to current and future document requests, please take the following steps:

1. Preserve all documents and records, including e-mail, electronic documents, and data ("electronic records") **created since July 1, 2009** related to the planning and implementation of Project Gunrunner and Operation Fast and Furious. For the purposes of this request, "preserve" means taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of electronic records, as well as negligent or intentional handling that would make such records incomplete or inaccessible;


Mr. Kenneth E. Melson
April 8, 2011
Page 2

2. Exercise reasonable efforts to identify and notify former employees and contractors, subcontractors and consultants who may have access to such electronic records that they are to be preserved; and
3. If it is the routine practice of any agency employee or contractor to destroy or otherwise alter such electronic records, either halt such practices or arrange for the preservation of complete and accurate duplicates or copies of such records, suitable for production if requested.

I request that you respond in writing **no later than April 18, 2011**, to confirm receipt of this letter. Your response should also advise the Committee of actions ATF has taken and will take to comply with the Committee's subpoena and this document preservation request. I am skeptical about ATF's response to the subpoena because I understand that individuals who likely have documents responsive to the subpoena have not been contacted or instructed to gather and forward these documents. A copy of the schedule of documents is attached. Please note that you should take no action related to the documents of the Office of the Inspector General in responding to this request.

If you have any questions, please contact Ashok Pinto or Henry Kerner of the Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

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

SCHEDULE

In accordance with the attached schedule instructions, produce all documents in unredacted form described below:

1. Documents and communications relating to the genesis of Project Gunrunner and Operation Fast and Furious, and any memoranda or reports involving any changes to either program at or near the time of the release of the Department of Justice (DOJ) Office of the Inspector General report about Project Gunrunner in November 2010.
2. Documents and communications relating to individuals responsible for authorizing the decision to “walk” guns to Mexico in order to follow them and capture a “bigger fish.”
3. Documents and communications relating to any investigations conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) or any other DOJ component following the fatal shooting of Agent Brian Terry, including information pertaining to two guns found at the crime scene that may have been connected to Project Gunrunner.
4. Documents and communications relating to any weapons recovered at the crime scene or during the investigation into the death of Agent Brian Terry.
5. Documents and communications between ATF and the Federal Firearms Licensee (FFL) who sold weapons to Jaime Avila, including any Report of Investigation (ROI) or other records relating to a December 17, 2009 meeting “to discuss his role as an FFL during this investigation.”
6. A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF headquarters in the spring of 2010.
7. Documents and communications relating to Operation Fast and Furious between and among ATF headquarters and Special Agent in Charge William D. Newell, Assistant Special Agents in Charge Jim Needles and George Gillette, Group Supervisor David Voth, or any Case Agent from November 1, 2009 to the present. The response to this component of the subpoena shall include a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of Agent Brian Terry.
8. Documents and communications relating to complaints or objections by ATF agents about: (1) encouraging, sanctioning, or otherwise allowing FFLs to sell firearms to known or suspected straw buyers, (2) failure to maintain surveillance on known or suspected straw buyers, (3) failure to maintain operational control over weapons purchased by known or suspected straw buyers, or (4) letting known or suspected straw buyers with American guns enter Mexico.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 8, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter dated March 16, 2011, and your subpoena issued on March 31, 2011, to Kenneth Melson, Acting Director of the Department's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Your letter and subpoena requested documents and other information concerning, among other things, the pending criminal investigation undertaken by ATF known as Operation Fast and Furious and the pending criminal investigation into the shooting death of Customs and Border Protection (CBP) Agent Brian Terry.

To date, our search has located several law enforcement sensitive documents responsive to the requests in your letter and the subpoena. We have substantial confidentiality interests in these documents because they contain information about ATF strategies and procedures that could be used by individuals seeking to evade our law enforcement efforts. We are prepared to make these documents, with some redactions, available for review by Committee staff at the Department. They will bear redactions to protect information about ongoing criminal investigations, investigative targets, internal deliberations about law enforcement options, and communications with foreign government representatives. In addition, we notified Committee staff that we have identified certain publicly available documents that are responsive. Committee staff informed us that, for now, they do not want us to produce such documents. Our search for records responsive to your letter and the subpoena is continuing and we will supplement this response when additional information becomes available.

While our efforts to identify responsive documents are continuing, many of your requests seek records relating to ongoing criminal investigations. Based upon the Department's long-standing policy regarding the confidentiality of ongoing criminal investigations, we are not in a position to disclose such documents, nor can we confirm or deny the existence of records in our ongoing investigative files. This policy is based on our strong need to protect the independence and effectiveness of our law enforcement efforts. The enclosed May 17, 2000 letter from Attorney General Reno to Senator Hatch, then-Chairman of the Senate Judiciary Committee, provides a fuller statement of the rationale for this policy, as well as its lengthy and nonpartisan

The Honorable Darrell Issa
Page 2

history. Within those constraints, we would appreciate the opportunity to confer with Committee staff to explore other options to accommodate your interests and look forward to working with you regarding the information you seek.

Your letter also asks certain questions, and reflects certain assumptions, concerning Operation Fast and Furious that we are presently unable to address because they relate directly to an ongoing investigation. We can say, however, that Operation Fast and Furious is a criminal investigation of an extensive gun-trafficking enterprise.¹ The purpose of the investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico, in part by prosecuting its leadership. The investigation is led by a dedicated team of United States Attorney's Office prosecutors and ATF agents. These efforts have already resulted in an indictment charging 20 defendants with federal firearms offenses, and the investigation is continuing.

Mexican drug cartels are a significant organized crime threat, both to the United States and to Mexico. According to the Department's 2010 National Drug Threat Assessment, these cartels present the single greatest drug trafficking threat to the United States. Mexican cartels use violence to control drug trafficking corridors, through which drugs flow north into the United States, while guns and cash flow south to Mexico. Drug-related violence in Mexico was increasing at an alarming rate well before the inception of Operation Fast and Furious. For calendar year 2009, the Mexican government reported 9,635 murders in Mexico resulting from organized crime and drug trafficking – an increase of 50 percent from the number of murders in 2008 and three times the 2,837 killed in 2007. In part because Mexican law severely restricts gun ownership, Mexico's drug traffickers routinely smuggle weapons purchased in the United States into Mexico.

Stopping the flow of weapons across the border into Mexico is a challenging task given the resources of the cartels and the cartels' use of sophisticated trafficking organizations to move firearms across the border. These trafficking organizations typically involve the use of straw purchasers, who purchase the weapons not for themselves, but with the purpose of transferring them to others who then facilitate their movement across the border to the cartels. Among the challenges in investigating a trafficking organization is developing sufficient evidence to prove that particular firearm purchases are, in fact, unlawful straw purchases. As you know, it is legal for a non-prohibited person to purchase an unlimited number of firearms from a licensed gun dealer and then to sell or barter those firearms to another person.

Allegations have been raised about how Operation Fast and Furious was structured and conducted. As you note, at the request of the Attorney General, the Department of Justice's Office of the Inspector General (DOJ-OIG) is now investigating those allegations. Your letter asks about DOJ-OIG's ability to handle this inquiry in an independent and objective manner.

¹ Operation Fast and Furious, which is one law enforcement investigation, should not be confused with Project Gunrunner, which is the broader initiative to deal with weapons trafficking along the Southwest Border generally. As was recently noted by the Congressional Research Service, "[a]s of March 2010, Project Gunrunner had led to the arrest of 1,397 defendants – 850 of which had been convicted – and the seizure of over 6,688 firearms." Congressional Research Service Report RL32724, *Mexico-U.S. Relations: Issues for Congress*, February 15, 2011, at 19.

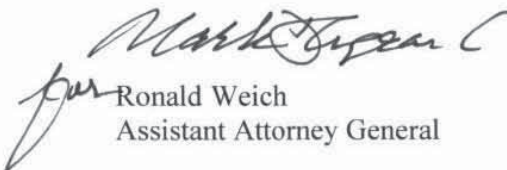
The Honorable Darrell Issa
Page 3

The enclosed letter to Senator Grassley, dated March 16, 2011, from the acting Chairperson of the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE), responds to similar questions raised by Senator Grassley. CIGIE's response to Senator Grassley describes DOJ-OIG as "a model of independence, objectivity, and above all, integrity in every aspect of its daily pursuits." The response goes on to state that DOJ-OIG has "fully earned an unquestioned reputation for successfully addressing highly difficult and sensitive cases, and deserves the trust and confidence of the public. Further, its prior involvement in a review of a portion of the same ATF program can properly be viewed, not as an impediment to objectivity, but rather as an opportunity for the DOJ-OIG staff to have obtained familiarity with the subject-matter and working environment that would be used advantageously in the investigation requested by the Attorney General."

Finally, your letter asks about the shooting death of CBP Agent Brian Terry. The Department, with the Federal Bureau of Investigation leading the effort, is investigating the shooting death of Agent Terry. ATF has assisted in that investigation and the United States Attorney's Office has assigned senior prosecutors to the case. We are dedicated to holding Agent Terry's killer or killers responsible through the criminal justice process that is currently underway, but we are not in a position to provide additional information at this time regarding this active criminal investigation for the reasons set forth above and in the enclosed Attorney General Reno letter.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional information regarding this, or any other, matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

AVERY DOOLEY POST & AVERY, LLP

Attorneys at Law
90 Concord Avenue
Belmont, MA 02478

Telephone: (617) 489-5300

Fax: (617) 489-0085
[REDACTED]

April 8, 2011

Transmitted via Electronic Mail

[REDACTED]@usdoj.gov

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Re: George T. Gillett, Jr.
Assistant Special Agent in Charge, Phoenix Field Division

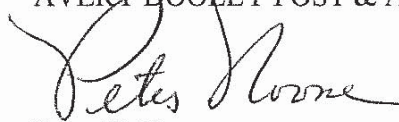
Dear Acting Director Melson:

As you are aware, this office represents George T. Gillett, Jr. in matters relevant to his federal employment. Upon request from Senator Grassley's office, our client met with members of the Senator's staff earlier this week and exercised his rights pursuant to 5 USC § 7211.¹

We ask that any and all inquiries relative to this matter be submitted to our office, directly and thank you, in advance, for your anticipated cooperation.

Very truly yours,

AVERY DOOLEY POST & AVERY, LLP



Peter H. Noone

PHN/caf

Cc. William Newell
Special Agent in Charge, Phoenix Field Division

¹ 5 U.S.C. § 7211 states:

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.

DARRELL E. ISSA, CALIFORNIA
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JACKIE SPIER, CALIFORNIA

April 11, 2011

Mr. Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, N.E.
Washington, DC 20226

Dear Acting Director Melson:

We received the Department's letter dated April 8, 2011, regarding the Committee's investigation of Project Gunrunner and Operation Fast and Furious. Absent a valid assertion of executive privilege over the materials sought, I expect you to produce the things identified in the March 31, 2011, subpoena's schedule by the return date.

Sincerely,


Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

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



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 12, 2011

The Honorable Charles E. Grassley
 Ranking Minority Member
 Committee on the Judiciary
 United States Senate
 Washington, D.C. 20510

Dear Senator Grassley:

This responds to your letter to Michele Leonhart, Administrator of the Department's Drug Enforcement Administration (DEA), dated March 15, 2011, requesting documents and a briefing about DEA's role in an ongoing law enforcement operation known as Operation Fast and Furious. The Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is the lead law enforcement agency for that investigation.

Operation Fast and Furious is an ongoing criminal investigation of an extensive gun-trafficking enterprise. The investigation was approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program. OCDETF seeks to combine the resources and expertise of member agencies, which include DEA and ATF, to disrupt and dismantle organizations responsible for illegal narcotics trafficking, weapons trafficking, and money laundering. Through the OCDETF Program, the DEA Phoenix Division has been indirectly involved in Operation Fast and Furious. Upon invitation from ATF, DEA participated in the press conference held in Phoenix on January 25, 2011, along with ATF, the Internal Revenue Service, and the United States Attorney's Office.

DEA is not in a position to provide records or a briefing about the continuing investigation at this time, consistent with the Department's long-standing policy regarding the confidentiality of on-going criminal investigations. This policy is based upon our strong interest in protecting the independence and effectiveness of our law enforcement efforts.

Generally speaking, however, when another Department component leads an OCDETF investigation, DEA works cooperatively to support drug-related aspects of the investigation. Such cooperation means that DEA may share investigative expertise, report leads, and provide manpower to assist in an investigative or enforcement operation as requested by the lead investigative agency.

The Honorable Charles E. Grassley
Page Two

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. Weich', with a stylized flourish at the end.

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick Leahy
Chairman

Ashok/Henry



United States Department of State

Washington, D.C. 20520

APR 12 2011

Dear Mr. Chairman:

We are in receipt of your letter of March 29, 2011, requesting records pertaining to Assistant Attorney General Breuer's meetings with Ambassador Carlos Pascual in Mexico on Project Gunrunner between June and September, 2010. In that letter, you requested that we provide responsive documents by no later than April 12.

Our review of documents has thus far identified only the attached cable. Although this cable falls outside your requested date range, we are providing it in its entirety. Please be assured we will continue our review of Department of State records for responsive documents.

Please note that the enclosed document is a Department cable that, although unclassified, should be treated as sensitive information, and as such, we strongly request that this document not be publicly released – in full, in part, or summarized – without providing the Department a more extensive opportunity to review and, if necessary, redact such sensitive information.

Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

Joseph E. Macmanus
Acting Assistant Secretary
Legislative Affairs

Enclosure:

As stated.

The Honorable
Darrell Issa, Chairman,
Committee on Oversight and Government Reform,
House of Representatives.

APR-15-2011 16:20 From:

To: 202 224 9102

P.2/3

1300 Pennsylvania Avenue, NW
Washington, DC 20229

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**U.S. Customs and
Border Protection**

Commissioner

APR 18 2011

The Honorable Charles E. Grassley
United States Senate
Washington, DC 20510

Dear Senator Grassley:

Thank you for your letters dated March 4 and March 16, 2011 seeking information related to the murder of Border Patrol Agent Brian A. Terry and your concerns over some individuals encountered by U.S. Customs and Border Protection (CBP) who are allegedly associated with the ongoing investigation pertaining to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' operation, "Fast and Furious."

Agent Terry, who was assigned to the Border Patrol Tactical Unit (BORTAC), was mortally wounded on December 14, 2010 while attempting to arrest armed subjects near Rio Rico south of Tucson, Arizona. He later succumbed to his injuries during the early morning hours of December 15, 2010. The Federal Bureau of Investigation (FBI), as the lead agency, is working in collaboration with CBP to bring to justice the individuals who committed this heinous act against our agent to justice.

In your March 4, 2011 letter, you made an inquiry regarding CBP's policy on the use of force and inquired about any changes made to that policy over the past two years. You also indicated in your letter, with reference to an FBI affidavit of December 29, 2010 relating to Agent Terry's case, an understanding that CBP requires its law enforcement personnel to use less-lethal force against individuals who are clearly armed and dangerous. Respectfully, that understanding is neither warranted by the affidavit itself nor by CBP's Use of Force policy. The understanding, in short, is incorrect. CBP policy clearly authorizes agents to use deadly force when they have reasonable belief that a subject poses an immediate danger (i.e., possesses the means, intent, and opportunity) of death or serious physical injury to the agent or to another person.

The U.S. Border Patrol provides less-lethal devices to its agents to assist them in responding to a wide variety of threats faced in field settings. BORTAC provides additional devices, both lethal and less lethal, to its agents to ensure they have the capability to respond to a myriad of threats when conducting tactical operations in both rural and urban settings. The decision to deploy these devices rests with the agents in the field and is dependent upon the situation present at the time of any encounter.

CBP provides policy, guidance, equipment, and training to its field personnel to ensure they are trained in the use of each of the deployed devices, as well as the specific threat necessary to employ those devices. CBP policy, guidance, and training are designed to empower agents in

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APR-15-2011 16:20 From:

To: 202 224 9102

P.3/3

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The Honorable Charles E. Grassley
Page 2

utilizing these devices. At no time are agents required to progress through less-lethal devices before utilizing deadly force. Agents are not required to employ some other type of force, if they decide that deadly force is immediately required as a matter of self defense or in the defense of others.

If deadly force is necessitated, CBP personnel, including BORTAC agents, always have the ability to carry out this measure of force in the form of a CBP-issued sidearm worn on their person. BORTAC agents are also qualified on many other long-arm capabilities. The decision about whether to carry and use these weapons is dictated by the mission and known threats of a planned deployment.

Below are five primary Use of Force policy and guidance documents in place concerning the utilization of deadly force devices and less-lethal force devices by all Border Patrol agents.

- INS Firearms Policy, February 19, 2003
- DHS Policy on Use of Deadly Force, July 1, 2004
- CBP Interim Use of Force and Firearms Guidelines, October 11, 2004
- Less Lethal Specialty Impact – Chemical Munitions Policy, September 16, 2009
- CBP Use of Force Policy Handbook, October 2010 (full implementation date of April 1, 2011)

CBP considers these policies to contain law enforcement sensitive information, the dissemination of which is restricted. On March 18, 2011, in an effort toward transparency within these limitations of law enforcement sensitivity, CBP provided your staff with a briefing on these policies that was well received.

In your March 16, 2011 correspondence, you requested any information CBP had regarding the encounter of Blas Gutierrez, Miguel Carrillo, and Jaime Avila. Our review indicates that any CBP records relating to these individuals would be covered by *The Privacy Act of 1974*, Title 5 USC § 552a, which limits CBP's ability to provide information in response to this request.

I appreciate your concern in this important matter. Should you need additional assistance, please contact Mr. Michael Yeager, Assistant Commissioner, Office of Congressional Affairs, at (202) 344-1760.

Sincerely,



Alan D. Bersin
Commissioner

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

April 13, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Holder:

At approximately 1:30 p.m. yesterday, my staff learned that the Justice Department was making four documents available at 2:00 pm for Chairman Darrell Issa's staff to review regarding the controversy over ATF's Project Gunrunner, Operation Fast and Furious, and the death of Border Patrol Agent Brian Terry. These documents are among those I requested in February of this year. Yet, the Justice Department refused to make them available for my staff to review. In fact, the Justice Department has produced not one single page of documents in response to my inquiries.

Thus far, I have not requested that Chairman Leahy join in any document requests, consider any subpoenas, or schedule any hearings into this matter in the Senate Judiciary Committee. Any such request would be unnecessary and duplicative of the process on the House side, so long as any documents provided there are also provided to the Senate Judiciary Committee at the same time.

The Department's failure to cooperate with my requests is especially troubling in light of the February 4, 2011, reply to my initial letter. In that reply, the Justice Department took the position that those allegations were "false" and specifically denied "that ATF 'sanctioned' or otherwise knowingly allowed the sale of assault weapons" to straw purchasers. The letter further claimed that "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."

I already provided evidence contradicting that denial in my February 9 and March 3 letters. In addition, attached you will find further documentation undermining the Department's assertion. Specifically, the documents are emails between ATF officials and a Federal Firearms Licensee (FFL) in Arizona. These emails demonstrate that ATF instructed gun dealers to engage in suspicious sales despite the dealers'

The Honorable Eric H. Holder, Jr.
April 13, 2011
Page 2 of 4

concerns. The emails refer to meetings between the FFL and the U.S. Attorney's office to address the concerns being raised by the FFL. ATF supervisor David Voth wrote on April 13, 2010:

I understand that the frequency with which some individuals under investigation by our office have been purchasing firearms from your business has caused concerns for you. ... However, if it helps put you at ease we (ATF) are continually monitoring these suspects using a variety of investigative techniques which I cannot go into [in] detail.¹

In response, the gun dealer expresses concern about potential future liability and sought something in writing to address the issue explicitly:

For us, we were hoping to put together something like a letter of understanding to alleviate concerns of some type of recourse against us down the road for selling these items. We just want to make sure we are cooperating with ATF and that we are not viewed as selling to bad guys.²

Following this email, the ATF arranged a meeting between the FFL and the U.S. Attorney's office. According to the FFL, the U.S. Attorney's office scheduled a follow-up meeting with the FFL, but asked that the FFL's attorney not be present.³

At the meeting on May 13, 2010, the U.S. Attorney's office declined to provide anything in writing but assured the gun dealer in even stronger terms that there were safeguards in place to prevent further distribution of the weapons after being purchased from his business.⁴ As we now know, those assurances proved to be untrue. On June 17, 2010, the gun dealer wrote to the ATF to again express concerns after seeing a report on Fox News about firearms and the border:

The segment, if the information was correct, is disturbing to me. When you, [the Assistant U.S. Attorney], and I met on May 13th, I shared my concerns with you guys that I wanted to make sure that none of the firearms that were sold per our conversation with you and various ATF agents could or would ever end up south of the border or in the hands of the bad guys. ... I want to help ATF with its investigation but not at the risk of agents' safety because I have some very close friends that are U.S. Border Patrol agents in southern AZ[.]⁵

¹ Email from ATF Group VII Supervisor David Voth to Cooperating FFL, Apr. 13, 2010 (Attached).

² Email from Cooperating FFL to ATF Group VII Supervisor David Voth, Apr. 13, 2010 (Attached).

³ Telephone interview with Cooperating FFL, Apr. 5, 2011.

⁴ *Id.*

⁵ Email from Cooperating FFL to ATF Group VII Supervisor David Voth, Jun. 17, 2010 (Attached).

The Honorable Eric H. Holder, Jr.
April 13, 2011
Page 3 of 4

Incredibly, the FFL sent this email six months before guns from the same ATF operation were found at the scene of Border Patrol Agent Brian Terry's murder. So, not only were the ATF agents who later blew the whistle predicting that this operation would end in tragedy, so were the gun dealers—even as ATF urged them to make the sales.

Furthermore, according to the FFL, there were "one or two" occasions on which his employees actually witnessed and recorded with surveillance cameras an exchange of money between the straw purchaser and another individual on the premises.⁶ Despite this actual knowledge of a straw purchase, the dealer said ATF officials wanted him to proceed with the transaction.⁷ However, his employees refused to process the sale.⁸

In light of this new evidence, the Justice Department's claim that the ATF never knowingly sanctioned or allowed the sale of assault weapons to straw purchasers is simply not credible. As you know, I have multiple document and information requests pending with various components of the Justice Department. Unfortunately, however, it appears that senior Department officials are not allowing the components to respond fully and directly.

Please provide written answers to the following questions by no later than April 20, 2011:

1. Do you stand by the assertion in the Department's reply that the ATF whistleblower allegations are "false" and specifically that ATF did not sanction or otherwise knowingly allow the sale of assault weapons to straw purchasers? If so, please explain why in light of the mounting evidence to the contrary.
2. Will you commit to providing the Senate Judiciary Committee with documents, or access to documents, simultaneously with the House Committee on Oversight and Government Reform? If not, please explain why not.

⁶ Telephone interview with Cooperating FFL, Apr. 5, 2011.

⁷ *Id.*

⁸ *Id.*

The Honorable Eric H. Holder, Jr.
April 13, 2011
Page 4 of 4

If you have any questions regarding this request, please have your staff contact Jason Foster at (202) 224-5225. Thank you for your prompt attention these important issues.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Ranking Member

Attachment

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

Chairman Darrell Issa
U.S. House Committee on Oversight and Government Reform



United States Department of State

Washington, D.C. 20520

APR 14 2011

Dear Senator Grassley:

Thank you for your letter of March 4 requesting records pertaining to meetings in Mexico on Project Gunrunner between June and September, 2010.

The document that you have requested is an internal Executive Branch communication. The State Department's longstanding practice is to consider release of internal Executive Branch communication documents when requested by the chair of a committee of jurisdiction. Under these circumstances, we respectfully ask that you channel your request through the chair of a committee of jurisdiction, at which point we would be pleased to respond to it. The Department is committed to providing Congress with the information it needs to fulfill its legislative duties. To that end, we note that the Department is currently responding to a similar request from the Chairman of the House Committee on Oversight and Government Reform.

We hope this information is useful. Please do not hesitate to contact us if you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Macmanus", with a large circular flourish on the left side.

Joseph E. Macmanus
Acting Assistant Secretary
Legislative Affairs

The Honorable
Charles E. Grassley,
United States Senate.



U.S. Department of Justice

Office of the Inspector General

April 15, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

Dear Senator Grassley:

I am writing in response to your letter dated March 25, 2011, concerning a complaint submitted to the Office of the Inspector General (OIG) on March 4, 2011, by Jay Dobyns, a Special Agent (SA) with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I address below the issues you raise in your letter.

As you state in your letter, SA Dobyns's complaint is not directly related to ATF's Operation Fast and Furious. However, SA Dobyns is among the individuals we anticipate contacting during our review of that operation to obtain any relevant information, including information about his allegations of misconduct by supervisors from ATF's Phoenix Field Office.

The OIG previously investigated complaints by SA Dobyns about ATF management that were referred to the OIG by the Office of Special Counsel (OSC) in February 2007. We issued our report of investigation on September 22, 2008, concluding that ATF needlessly and inappropriately delayed its response to two threats that had been made against SA Dobyns. The OSC concurred with our findings and subsequently posted the OIG report online at: <http://www.osc.gov/FY%202009%20A.html>.

SA Dobyns alleges in his March 4, 2011, complaint that ATF special agents engaged in misconduct while investigating an alleged arson at Dobyns's home and threats made against him. It is our understanding that the ATF referred the arson investigation to the Federal Bureau of Investigation and that the investigation of that incident remains ongoing. In addition, it is our understanding that SA Dobyns filed a lawsuit in the U.S. Court of Federal Claims against the ATF alleging breach of contract based upon a prior settlement agreement he entered into with the ATF. The alleged breach relates to the ATF's handling of his relocation, its follow-up to the alleged arson, and related matters, and this lawsuit remains pending. Given the ongoing nature

of the arson investigation and the litigation between SA Dobyns and ATF relating to the threat response, we are not opening an investigation of these matters.

SA Dobyns also alleges misconduct by Department attorneys in the context of litigation related to the arson investigation and threats against SA Dobyns. These allegations concern the exercise of the attorneys' authority to litigate or provide legal advice and therefore fall within the jurisdiction of the Department's Office of Professional Responsibility.

Thank you for bringing your concerns about these matters to our attention. If you have any questions about this letter or these issues, please contact me or Senior Counsel Jay Lerner at (202) 514-3435.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cynthia A. Schnedar".

Cynthia A. Schnedar
Acting Inspector General



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 18, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to the Attorney General, dated March 9, 2011, which asked about the Department of Justice's review of allegations about the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) program known as Project Gunrunner, which is a broad initiative to address weapons trafficking along the Southwest Border generally.

We believe that the allegations referenced in your letter pertain specifically to Operation Fast and Furious, which is an ongoing criminal investigation of an extensive gun-trafficking enterprise. Fast and Furious is being undertaken as part of the broader Project Gunrunner initiative, and the purpose of the investigation is to dismantle a transnational organization believed to be responsible for trafficking weapons into Mexico, in part by prosecuting its leadership. The investigation is led by a dedicated team of prosecutors from the United States Attorney's Office in Arizona and ATF agents. To date, these efforts have resulted in an indictment charging 20 defendants with federal firearms offenses and the investigation is continuing. As we have advised Senator Grassley in response to his requests to us, we are not in a position to provide additional information about the investigation at this time, consistent with the Department's longstanding policy of not disclosing non-public information on ongoing criminal investigations.

On February 10, 2011, Department and ATF representatives conducted a briefing for Committee staff about Project Gunrunner. We noted in the briefing that stopping the flow of weapons across the border into Mexico is a challenging task given the resources of the cartels and the cartels' use of sophisticated trafficking organizations to move firearms across the border. These trafficking organizations typically involve the use of straw purchasers, who purchase the weapons not for themselves, but with the purpose of transferring them to others who then facilitate their movement across the border to the cartels. Among the challenges in investigating a trafficking organization is developing sufficient evidence to prove that particular firearm purchases are, in fact, unlawful straw purchases. It is, of course, legal for a non-prohibited person to purchase an unlimited number of firearms from a licensed gun dealer and then to sell or barter those firearms to another person.


The Honorable Patrick Leahy
Page Two

At the request of the Attorney General, the Acting Inspector General is investigating allegations that have been raised about Operation Fast and Furious. The Attorney General has also made it clear to the law enforcement agencies and prosecutors working along the Southwest Border that the Department should never knowingly permit firearms to cross the border. We note that the National Rifle Association (NRA) letter enclosed with your letter suggested that the Committee conduct oversight, including hearings, regarding ATF's activities relating to the Southwest Border. Given the ongoing criminal investigations in Arizona and the Inspector General's ongoing review of allegations regarding those investigations, we do not believe that such oversight, or hearings, would be helpful at this time. We also note that the Cochise County Sheriff's Office is leading a separate investigation of the shooting death of Robert Krentz in Arizona, which also was mentioned in the NRA letter.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance in this or any other matter.

Sincerely,



 Ronald Weich
Assistant Attorney General

cc: The Honorable Charles Grassley
Ranking Minority Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 19, 2011

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

Dear Mr. Chairman:

We are advised that the Committee has issued a subpoena for documents and testimony at a public hearing to a cooperating witness in the trial currently scheduled for June 7, 2011, in United States v. Jaime Avila, Jr. et al., No. CR11-126 PHX JAT(LOA), an indicted federal case in Phoenix, Arizona charging twenty defendants with an array of firearms, drug, and money laundering offenses. Neither the individual's cooperation with our ongoing investigation nor his identity as a trial witness has been disclosed in the judicial proceedings to date. We were advised by his attorney that, prior to the issuance of the subpoena, your staff was informed that the individual is a cooperating witness in a pending federal criminal case and that he was concerned that his appearance at a public congressional hearing might jeopardize his physical safety. We understand that your staff indicated that he could submit to an interview rather than appear at a public hearing at this time.

Committee staff's plan to obtain testimony or information from a cooperating witness in an indicted federal criminal case awaiting trial, whether in a public hearing or a nonpublic interview, implicates the serious concerns that the Department has expressed to you in recent weeks. We have previously informed the Committee, in response to your requests for information about these ongoing criminal matters, that any disclosure of non-public information about the pending investigations at issue would present risks to specific law enforcement efforts and to cooperating witnesses. We stated in our letter dated April 13, 2011, that among those risks was the fact that the identification of cooperating witnesses "– even the knowledge that the information they provide may be disclosed – discourages cooperation by them and others whose assistance is important to the success of our law enforcement efforts."

We understand that the Committee wants to get to the bottom of the allegations that as part of the Fast and Furious investigation the ATF knowingly allowed guns to enter Mexico. The Department wants to find out what happened in this regard as well. That is why the Attorney General referred this matter to the Department's Office of the Inspector General, an independent and nonpartisan office that will examine the facts and report its findings. We are not ignoring the allegations that have been raised. Nor are we questioning the Committee's

The Honorable Darrell Issa
Page Two

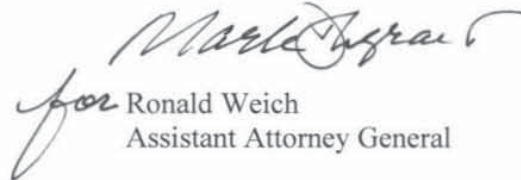
responsibility to conduct oversight of this matter. However, we are concerned about the timing of the Committee's oversight.

The Fast and Furious investigation has produced the indictment of 20 alleged gun traffickers. The Department believes that a successful prosecution is an important part of fighting the violence in Mexico and in the United States that emanates from the Mexican cartels. By conducting oversight of this matter now, rather than at the conclusion of the investigations and prosecutions, the Committee risks compromising this prosecution and ongoing investigations of other alleged firearms traffickers, drug dealers, and money launderers. In addition, congressional oversight relating to the investigation risks jeopardizing the physical safety of our witnesses and discouraging the cooperation of others whose assistance could be vital.

Therefore, we respectfully ask that the Committee refrain from contacting or subpoenaing the witnesses and cooperators involved in either the indicted criminal case or the continuing criminal investigations while these criminal matters remain pending.

The Department appreciates your interest in this matter and shares your desire to resolve these allegations. We will be happy to discuss this important matter with you or your staff further, so that we may explore ways to accomplish this goal without jeopardizing successful prosecutions and investigations in this important area.

Sincerely,


for Ronald Weich
Assistant Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

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House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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April 20, 2011

Mr. Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

The Committee on Oversight and Government Reform issued a subpoena to you on March 31, 2011. The subpoena instructed you to produce documents pertaining to Project Gunrunner and Operation Fast and Furious, conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). I wrote to you on April 11, 2011 to reiterate that, “[a]bsent a valid assertion of executive privilege over the materials sought, I expect you to produce the things identified in the March 31, 2011, subpoena’s schedule by the return date.”¹ The April 13, 2011 deadline for compliance has passed without production of any documents.

I am disappointed that you have failed to produce any documents that would meet your legal obligations by the subpoena’s April 13th deadline. Instead of documents, after the deadline passed, I received a letter from Assistant Attorney General Ronald Weich. Mr. Weich did not assert a claim of executive privilege in withholding all documents from the Committee. Instead, the Department’s response again restated its lack of production was due solely to the Department’s internal policy relating to “ongoing law enforcement investigations,” “pending criminal investigations,” “on-going criminal investigations,” and “open criminal investigative files.”² Absent a claim of executive privilege, these vague assertions are not a valid basis for your decision to withhold documents.

¹ Letter from Rep. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (OGR), to Kenneth E. Melson, Acting Director, ATF (Apr. 11, 2011).

² Letter from Ronald Weich, Assistant Attorney General, DOJ, to Rep. Darrell E. Issa, OGR Chairman (Apr. 13, 2011) (hereinafter Weich Letter).

Mr. Kenneth E. Melson
 April 20, 2011
 Page 2

Mr. Weich's April 13, 2011 letter focuses almost exclusively on a general Department policy regarding pending criminal investigations. It is unclear to which specific criminal investigations Mr. Weich is referring. Such a blanket prohibition, if accepted, would conceal the entirety of Project Gunrunner and Operation Fast and Furious from legitimate congressional scrutiny. This is unacceptable. As a co-equal branch of government, Congress has a right, even a constitutional obligation, to conduct oversight of the Executive Branch, including the Department of Justice.

Over the past 85 years, the U.S. Supreme Court has consistently ruled the investigatory power of Congress is essential to the legislative function,³ and the Court has gradually expanded that power.⁴ Pointedly, the Supreme Court has also weighed in on the Department of Justice's internal policy of withholding documents to Congress that pertain to open criminal investigations:

It may be conceded that Congress is without authority to compel disclosure for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.⁵

The Department's internal policy to withhold documents from what it labels pending criminal investigations may not deprive Congress from obtaining those same documents if they are pertinent to a congressional investigation – particularly in a matter involving allegations that reckless and inappropriate decisions by top Justice Department officials may have contributed to the deaths of U.S. and Mexican citizens.

Let me be clear. The Committee is not seeking these documents from the Department of Justice in furtherance of the prosecution of pending suits. Rather, we are seeking these documents in furtherance of the proper use of our constitutional authority. Sometimes, we may take a deferential approach to the Department when we are both investigating a third-party's wrongdoing. Here, however, we are not conducting a concurrent investigation *with* the Department of Justice, but rather an independent investigation *of* the Department of Justice – specifically, of allegations that the reckless and inappropriate decisions of Department officials have created a serious public safety hazard. We are asking for documents that relate to decisions such officials made. Congress is legally entitled to all of these documents.

There are several prominent examples of Congress investigating the conduct of the Department of Justice while the Department proceeded simultaneously with criminal or civil probes:

³ *McGrain v. Daugherty*, 273 U.S. 135 (1927).

⁴ *Watkins v. United States*, 354 U.S. 178 (1957); *Barenblatt v. United States*, 360 U.S. 109 (1959).

⁵ *Sinclair v. United States*, 279 U.S. 263 (1929).

Mr. Kenneth E. Melson
 April 20, 2011
 Page 3

- Starting in 1922, Congress investigated “charges of misfeasance and nonfeasance in the Department of Justice”⁶ at the same time that the Department of Justice failed to prosecute meritorious cases against Department of Interior employees stemming from the Teapot Dome Scandal.
- In 1992, a House subcommittee investigated a Department of Justice plea bargain regarding environmental crimes committed by the company that managed the Rocky Flats nuclear weapons facility.⁷
- In 2004, the House Committee on Government Reform investigated allegations that agents in the FBI’s Boston regional office knowingly permitted informants to commit nearly two dozen murders while they were acting as informants. At the time of the congressional investigation, cases were still pending against the Department of Justice.⁸

In each of these instances, Congress was able to obtain a substantial amount of responsive documents to aid its investigation. There is no constitutional, statutory, or case law authority that permits the Department of Justice to withhold documents from Congress due to the pendency of a criminal probe.

Assistant Attorney General Weich’s most recent letter also noted that the Department of Justice “made available documents for review prior to [the subpoena deadline].”⁹ This statement, however, is misleading. The Department made only four documents available for an *in camera* review at Department of Justice headquarters. The viewing consisted of the following materials:

1. Southwest Border Initiative Project Gunrunner, December 2007.
2. ATF’s Project Gunrunner and OCDETF (Organized Crime Drug Enforcement Task Force).
3. Memorandum to all ADs and all Field Ops Personnel, from AD Field Ops.
4. Project Gunrunner – A Cartel Focused Strategy, September 2010.

These documents were quite general and largely unhelpful as none of them directly pertain to Operation Fast and Furious. This is not surprising considering that the Department of Justice believes it is “not in a position to disclose such documents, nor can [DOJ] confirm or deny the

⁶ *McGrain*, 273 U.S. at 151.

⁷ See *Environmental Crimes at the Rocky Flats Nuclear Weapons Facility: Hearings before the Subcomm. on Investigations and Oversight of the House Committee on Science, Space, and Technology*, 102nd Cong., 2d Sess., Vols. I and II (1992).

⁸ *Everything Secret Degenerates: The FBI’s Use of Murderers as Informants*, H. Rept. 108-414, 108th Cong., 2d Sess. (2004).

⁹ Weich Letter, *supra* note 2.

Mr. Kenneth E. Melson
 April 20, 2011
 Page 4

existence of records in [its] ongoing investigative files.”¹⁰ Undeterred by the Department’s refusal to produce documents, the Committee has been able to confirm independently that such documents do in fact exist. Attached to this letter are several documents the Committee has obtained indicating not only that the Department and ATF were aware that straw purchasers were consistently and illegally buying assault rifles and other weapons, but that they also failed to prevent their disappearance. Tragically, some of these weapons ATF represented it was tracking ended up at crime scenes, including at the locations of the murders of Border Patrol Agent Brian Terry and Immigrations and Customs Enforcement Officer Jaime Zapata.

Attachment 1 is a January 13, 2010 e-mail from an ATF employee containing a list of 42 names added to the Suspect Person Database. One of these names is Jaime Avila. Attachment 2 shows a Suspect Gun Summary for three WASR-10 rifles that Jaime Avila bought just three days later, on January 16, 2010. These guns were entered into ATF’s database on January 19, 2010. Attachment 3 is a Significant Information Report regarding the murder of Brian Terry. The Report states that “[t]wo (2) of the AK-47 variant rifles purchased by AVILA on 01/16/2010 were recovered in the area during” the search after Terry’s murder. This document demonstrates that ATF knew straw purchasers were acquiring weapons and failed to track those weapons. As an apparent result, a U.S. federal agent lost his life.

Attachment 4 shows the results of three Firearms Trace Summaries for Ranferi Osorio and Kelvin Morrison, his neighbor. One of the weapons recovered at the murder scene of Jaime Zapata was traced to a purchase made by Otilio Osorio, Ranferi’s brother.¹¹ The Attachment shows that not only did Ranferi Osorio and Kelvin Morrison purchase assault rifles, but these weapons had shown up at crime scenes, as indicated by the “Time to Crime” section of the Firearms Trace Summary. Both the Department and ATF knew that weapons were turning up at crime scenes, yet did not act. This is even more egregious when read in conjunction with an e-mail from Group VII Supervisor David Voth, as shown in Attachment 5. In the e-mail, Voth says:

[W]ithout being dramatic we have a sense of urgency with regards to this investigation. Our subjects purchased 359 firearms during the month of March alone, to include numerous Barrett .50 caliber rifles. I believe we are righteous in our plan to dismantle this entire organization and to rush in to arrest any one person without taking in to account the entire scope of the conspiracy would be ill advised to the overall good of the mission.

As a result of this “plan,” another U.S. federal agent may have also lost his life.

Attachment 6 presents a summary of the number of firearms purchased with ATF’s knowledge during the pendency of Operation Fast and Furious. The amount of firearms is a staggering 1,500 (minimum) heavy-duty weapons. Attachment 7 is an e-mail exchange between a Federal Firearms Licensee (FFL) and ATF in which the FFL expresses concern over the

¹⁰ Letter from Assistant Attorney General Ronald Weich to OGR Chairman Darrell E. Issa (Apr. 8, 2011).

¹¹ See Press Release, Department of Justice, Three Dallas-Area Men Arrested on Federal Firearms Charges Related to Trafficking Firearms to a Mexican Drug Cartel (Mar. 1, 2011).

Mr. Kenneth E. Melson
 April 20, 2011
 Page 5

frequency of guns sold, and the strong possibility guns sold to straw purchasers would end up in Mexico or “in the hands of bad guys.” ATF, in conjunction with the Department of Justice, assures the FFL that there are safeguards in place to prevent this from happening. This claim is belied, however, by an e-mail (Attachment 8) showing that ATF knew that many of these 1,500 firearms would “eventually be used in criminal activity.” As clearly seen in Attachment 9, the Group VII Supervisor was fully aware that violence in Mexico was extremely high, yet failed to alter ATF’s approach. Attachment 10 is a forceful e-mail indicating that officials at ATF headquarters were “paying close attention” to Fast and Furious. Contained in Attachment 11 are detailed Reports of Investigation tracking suspected straw purchasers as part of Fast and Furious. These reports preceded the murders of Brian Terry and Jaime Zapata by several months.

It is nearly unfathomable that our government would allow straw purchasers to illegally acquire automatic weapons and transport them into Mexico, in furtherance of an ATF-led and -inspired investigation. As I understand Department of Justice operations, such programs would require the approval of top officials. The Committee’s experience in dealing with the Department is that it is a deliberate, methodical organization and is not agile. As such, officials at the highest levels of the Department more than likely made these decisions – with all due, if misguided, consideration.

Efforts by the Department of Justice and ATF to stonewall the Committee in its investigation by erroneously, but matter-of-factly, citing an internal department policy as a preventative measure for denying access to documents have only enhanced suspicions that such officials have played a role in reckless decisions that have put lives at risk. The Committee continues to pursue this matter vigorously, in part, because concerned individuals have indicated they do not have confidence in the Department’s ability to review the actions of its own top officials. The attachments to this letter represent but a small sample of myriad relevant and responsive documents.

The Committee’s request for documents has been pending since March 16, 2011. Senator Charles Grassley’s requests have been pending since January. Even if a legal basis did exist for withholding documents, the first step in evaluating this argument and the basis for a meaningful conversation between the Committee and the Department of Justice would be the production of a log of documents responsive to the subpoena with a specific explanation as to why you cannot produce each document. The Department has failed to provide any such log. Without such a log, the Committee is unable to consider the validity of any potential claim of privilege.

While I am certainly sensitive to protecting the integrity of pending criminal investigations, the Department has not provided information to substantiate its claims or produced other documents unrelated to specific cases. Therefore, I am hereby informing you that the Committee intends to enforce the subpoena issued to you on March 31, 2011. If you do not comply with the subpoena, the Committee will be forced to commence contempt proceedings.

Mr. Kenneth E. Melson
April 20, 2011
Page 6

If you have any questions about this matter, please contact Ashok Pinto or Henry Kerner of the Committee staff at (202) 225-5074.

Sincerely,

A handwritten signature in black ink, appearing to read "Darrell Issa", written over a horizontal line.

Darrell Issa
Chairman

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Member

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

DARRELL E. ISSA, CALIFORNIA
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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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April 20, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

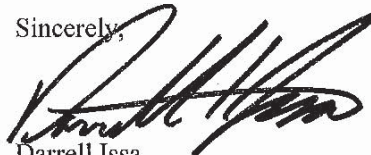
Dear Attorney General Holder:

Late on Friday April 15th, the Department of Justice (DOJ) notified the Committee of its apprehension regarding the safety and security of a witness it described as a "cooperating witness" in a pending federal criminal investigation. According to information provided by the Department, you believe the Committee may attempt to contact this witness as part of our investigation into the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner and Operation Fast and Furious.

When it comes to the safety of potential witnesses, we are as concerned as you. Please take every measure necessary to ensure the safety of any witness that the Department believes to be in danger. The Department has expertise when it comes to providing security, and we hope you will take this matter seriously. The Department owes all of its cooperating witnesses a duty of care.

Congress cannot abdicate its constitutional responsibility to engage in Executive Branch oversight based on notifications of potential threats to cooperating witnesses. Placing such obstacles to legitimate congressional inquiries could easily be interpreted as an attempt to obstruct our investigation. I trust you will do everything in your power to ensure the safety of all witnesses without interfering with our right to contact them.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

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

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

April 22, 2011

Via Electronic Transmission

Cynthia A. Schnedar
Acting Inspector General
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Acting Inspector General Schnedar:

ATF Special Agent Vincent Cefalu advised my office that he filed a claim with the U.S. Equal Employment Opportunity Commission (EEOC) 2 years ago and has yet to receive a formal finding. In May 2010, CNN reported of Cefalu:

ATF managers turned against him after he reported in 2005 what he said was an illegal wiretap plan in a racketeering case. Records show ATF disputes his claims of the planned illegal wiretap. But he said that started a series of retaliatory measures that ended up in 2007 with him in a desk job. His only negative evaluation, he said, was the year after he criticized the planned wiretap.¹

Since the CNN broadcast, Agent Cefalu claims that he has been effectively idled. He advised my staff that he has been assigned "only 89 minutes of definable work since the May allegations became public." I request that your office evaluate Agent Cefalu's claim and provide me with an updated status.

Thank you for your attention to this important matter. I request that your agency provide a response no later than May 6, 2011. Should you have any questions regarding this letter, please contact Jason Foster at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

¹ Abbie Boudreau and Scott Zamost, *ATF agents describe fear of retaliation*, CNN, May 26, 2010, available at http://articles.cnn.com/2010-05-26/politics/atf.whistleblowers_1_atf-wiretap.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 28, 2011

The Honorable Charles E. Grassley
 Ranking Member
 Committee on the Judiciary
 United States Senate
 Washington, DC 20510

Dear Senator Grassley:

This responds to your letter to Acting Director Kenneth E. Melson of the Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), dated April 8, 2011, which raises questions about guidance ATF may have distributed regarding Congressional communications, either in writing or otherwise, to ATF personnel.

In answer to your first question, the guidance in the e-mail enclosed with your letter was not distributed to ATF field offices. Your letter also asked whether ATF distributes guidance to employees regarding contacts with Congress. Enclosed is a copy of ATF Order 9000.1A Office of Public and Governmental Affairs, issued on June 5, 2008, which provides general guidance to all ATF employees regarding contacts with Congress. The guidance informs ATF employees that they may not disclose non-public information, including sensitive criminal enforcement information, without approval of the appropriate Headquarters office.¹ The guidance further explains that if a congressional office requests such restricted information, the employee should refer the matter to ATF's Legislative Affairs Division.²

ATF has a compelling interest in ensuring that its investigative files are protected from unauthorized disclosure. ATF's disclosure restrictions comport with the longstanding and nonpartisan policy of the Department of Justice not to release materials contained in open criminal investigative files. ATF works to ensure that these disclosure restrictions are made known to and observed by all employees. These policies and practices are consistent with the statutes you have cited, as they have long been interpreted by the Executive Branch. *See Authority of Agency Officials to Prohibit Employees From Providing Information to Congress*, Letter Opinion for the General Counsel, Department of Health and Human Services, from Jack L. Goldsmith, III, Assistant Attorney General, Office of Legal Counsel (May 21, 2004) *available at* www.usdoj.gov/olc/opinions.htm.

¹ See ATF Order 9000.1A at A-3.

² See ATF Order 9000.1A at D-5.

The Honorable Charles E. Grassley
Page Two

In addition, ATF recognizes the importance of protecting employees from retaliation relating to protected disclosures under the Whistleblower Protection Act and the reporting of waste, fraud, and abuse generally. On February 9, 2011, ATF's Assistant Director for Field Operations issued the enclosed guidance regarding Rights and Duties under the Whistleblower Protection Act via e-mail to all Special Agents in Charge, for subsequent dissemination to all field supervisors.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance in this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Weich', is positioned above the typed name.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Patrick J. Leahy
Chairman



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 28, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

We have recently learned that members of your staff are participating with staff from the House Committee on Oversight and Government Reform in contacting agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) as well as at least one witness involved in our pending investigation regarding gun trafficking along the Southwest Border. This investigation, known as Operation Fast and Furious, has resulted in the indictment to date of twenty individuals for drug trafficking, gun trafficking, and money laundering. Trial is scheduled to begin on June 7, 2011 and our investigation into this activity is continuing.

On several occasions in the past, we have expressed our concerns to Chairman Issa about the risks that his Committee's efforts to interview witnesses and agents pose to the successful prosecution of the pending case and other cases that may flow from our investigation. While we respect Chairman Issa's right to conduct oversight of ATF, we are confident that neither you nor he would want that oversight to jeopardize important law enforcement efforts that are directed at stemming the violence in the United States and Mexico emanating from the drug cartels in Mexico.

We are also confident that we can find a way to accommodate both Chairman Issa's oversight needs and the Department's needs in conducting successful investigations and bringing successful prosecutions. In this regard, we are working actively to assemble additional documents in response to Chairman Issa's request. And, because we want to resolve the allegations that have been raised, the Attorney General referred this matter to the Acting Inspector General.

The Attorney General looks forward to talking with you about this during your previously scheduled call on Monday, May 2, 2011. Thank you for your support of our law enforcement efforts. We hope this information is helpful. Please do not hesitate to contact this office if we may be of assistance with this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 28, 2010

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

Dear Mr. Chairman:

We have recently learned that Committee staff members are in the process of contacting agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) as well as an important witness involved in our pending investigation regarding gun trafficking along the Southwest Border. This investigation, known as Fast and Furious, has resulted in the indictment to date of twenty individuals for drug trafficking, gun trafficking, and money laundering. Trial is scheduled to begin on June 7, 2011 and our investigation into this activity is continuing.

On several occasions in the past, we have expressed our concerns about the risks posed to the successful prosecution of the pending case and others that may flow from our investigation by the Committee's current efforts to interview witnesses and agents. While we respect your right to conduct oversight of ATF, we are confident that you would not want that oversight to jeopardize important law enforcement efforts that are directed at stemming the violence both in the United States and Mexico that is emanating from the drug cartels in Mexico.

We are also confident that we can find a way to accommodate both your needs for oversight and the Department's needs in conducting successful investigations and bringing successful prosecutions. In this regard, we are working actively to assemble additional documents in response to your request. And, because we want to resolve the allegations that have been raised, the Attorney General referred this matter to the Acting Inspector General. We think it would be helpful for you and the Deputy Attorney General to meet to discuss these matters. We will contact your staff to schedule the meeting.

Thank you for your support for our law enforcement efforts. We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance with this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Member

May 2011

May 2011

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 2, 2011

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

This responds to your letter of April 13, 2011, referencing the allegations you have raised about the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF's) Project Gunrunner and Operation Fast and Furious, and requesting that the Senate Judiciary Committee receive access to the ATF documents reviewed by the House Committee on Oversight and Government Reform.

You have asked whether it remains our view that "ATF did not sanction or otherwise knowingly allow the sale of assault weapons to straw purchasers." In fact, my letter, dated February 4, 2011 said: "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." It remains our understanding that ATF's Operation Fast and Furious did not knowingly permit straw buyers to take guns into Mexico. You have provided to us documents, including internal ATF emails, which you believe support your allegation. As you know, we have referred these documents and all correspondence and materials received from you related to Operation Fast and Furious to the Acting Inspector General, so that she may conduct a thorough review and resolve your allegations. While we await her findings, the Attorney General has made clear to prosecutors and agents working along the Southwest Border that the Department should never knowingly permit firearms to cross the border.

Your letter also asks whether the Department will provide the Senate Judiciary Committee with access to the documents made available to the House Committee on Oversight and Government Reform. While we appreciate your interest in this matter, the Executive Branch over many Administrations has taken the position that only a chairman can speak for a committee in conducting oversight and we work to accommodate legitimate oversight needs of congressional committees as articulated in letter requests from chairmen. The Department's responses to such requests are sent to both the chairman and the ranking minority member, and

The Honorable Charles E. Grassley
Page Two

documents made available in response to a chairman's request may be reviewed by all members and staff on that committee. As we explained in our April 18, 2011 letter to Chairman Leahy, a copy of which was provided to you, there are ongoing criminal investigations in Arizona, as well as an indicted criminal case set for trial in June in which 20 people have been charged with gun trafficking, drug trafficking and money laundering crimes. We recognize the importance of congressional oversight and have continued to be as responsive as possible to Chairman Issa without jeopardizing important law enforcement efforts that are directed at stemming the violence in the United States and Mexico emanating from the drug cartels in Mexico. We are confident you understand the critical need of the Department to protect the pending criminal trial and ongoing investigation of alleged gun traffickers, drug traffickers, and money launderers along the Southwest Border.

We hope that this information is helpful. Please do not hesitate to contact this office if we can provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. Weich', is written above the typed name.

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 2, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to your letter, dated March 16, 2011, and your subpoena issued on March 31, 2011, to Kenneth Melson, Acting Director of the Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Your letter and subpoena requested documents and other information relating to Project Gunrunner and Operation Fast and Furious, including materials concerning pending criminal investigations and the prosecution of twenty individuals on drug trafficking, gun trafficking, and money laundering charges that is scheduled for trial on June 7, 2011.

Enclosed are 92 pages of documents responsive to your request. In addition, we have identified 466 pages of responsive documents that we are prepared to make available for review at the Department by Committee staff at any convenient time. We have substantial confidentiality interests in these materials because of their law enforcement sensitivity. They include information about federal law enforcement strategies, policies, and practices, the disclosure of which would be helpful to individuals who seek to evade our efforts to combat drug and firearms trafficking.

We have made limited redactions in these documents to protect the identities of individuals who are involved in our investigations, law enforcement techniques, and other details relating to particular investigations. These redactions are important to protect the integrity of our law enforcement efforts as well as individual privacy interests.

The Honorable Darrell E. Issa
Page Two

Our efforts to identify documents responsive to your subpoena are continuing and we will supplement this response as soon as possible. We hope this information is helpful. Please do not hesitate to contact this office if we can provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ronald Weich', with a stylized, cursive script.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

Congress of the United States
Washington, DC 20510

May 3, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Holder:

As Senator Grassley discussed on the phone with you yesterday, we are very concerned that the Department chose to send a letter containing false statements in response to his initial inquiry into the ATF whistleblower allegations related to Operation Fast and Furious. To be more specific, the Department sent a letter on February 4, 2011 claiming that the whistleblower allegations were “false” and that “ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.” When questioned in transcribed interviews last week in Phoenix, agents with first-hand knowledge of ATF operations contradicted that claim.

Specifically, in response to that exact quote, they said the Department’s letter was “false” and could not explain how such a representation could be made to Congress in light of what they witnessed on the ground in Phoenix in late 2009 and 2010, prior to the death of Border Patrol Agent Brian Terry. In fact, according to these witnesses, there was a specific strategy implemented to *not* “make every effort” but rather to avoid interdicting weapons in hopes of making a larger case against higher-ups in the trafficking organization.

Therefore, we were surprised and disappointed to see the Department repeat once again, in slightly different language, its denial in a letter received shortly after your telephone conversation with Senator Grassley. Yesterday’s letter reads, in part, “It remains our understanding that ATF’s Operation Fast and Furious did not knowingly permit straw buyers to take guns into Mexico.”

The Honorable Eric H. Holder, Jr.
May 3, 2011
Page 2 of 2

The documents and information previously provided to you demonstrate that the ATF urged gun dealers to go forward with sales to known straw buyers despite the concerns expressed by at least one dealer that the guns would be transferred to the border and possibly used against Border Patrol agents. ATF and Justice officials assured that dealer that unspecified safeguards were in place to ensure that did not happen. Yet, guns from that case were found at the scene of Border Patrol Agent Brian Terry's murder and at crime scenes in Mexico.

In its latest denial, the Department seems to focus more on whether ATF knew guns were being trafficked to Mexico than whether the ATF knew they were being purchased by straw buyers. While it might be typical in Washington for lawyers to narrowly parse statements and argue over fine distinctions to confuse the issue, those are not the kind of answers that we believe the Justice Department should give to Congress when asked straightforward questions about such a serious matter as this one.

You were asked to please explain whether you deny that the ATF allowed the sale of assault weapons to straw purchasers, and if so, why given the evidence that was attached. The reply was not signed by you, did not explain whether you stand by the denial, did not explain why, and did not meaningfully address the serious issues raised by the attached emails between a gun dealer and the ATF.

We are extremely disappointed that you do not appear to be taking this issue seriously enough to ensure that the Department's representations are accurate, forthcoming, and complete. We will continue to probe and gather the facts independently, as it has become clear that we cannot rely on the Department's self-serving statements to obtain any realistic picture of what happened.

Sincerely,



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



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United State Senate

*PS: you should check
to see if you are getting
accurate information
from your staff
you might be ill-served.*

**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Chief Counsel

Washington, DC 20226
www.atf.gov

May 5, 2011

Mr. Peter H. Noone
Avery Dooley Post & Avery, LLP
Attorneys at Law
90 Concord Avenue
Belmont, MA 02478

Dear Mr. Noone:

We understand that your client has sought guidance from the Department of Justice, through contact with a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Resident Agent in Charge, on the scope of what he is not permitted to disclose to congressional investigators concerning Operation Fast and Furious under grand jury secrecy rules and other such limitations. The following guidance is the same guidance this office has provided other ATF agents who have decided to submit to depositions or voluntary interviews in connection with this matter.

Your client is encouraged to answer fully and candidly all questions concerning matters within his personal knowledge. Your client's appearance before Committee staffers does not, of course, relieve him of any obligations of secrecy that are imposed upon him concerning certain matters arising from his official duties as an ATF Special Agent. For example, he may not reveal any information relating to matters or proceedings occurring before a grand jury, tax information, Title III information, or any other matters prohibited from disclosure by statute, regulation, or court rule. An extended, but not exhaustive, list of such matters may be found in 28 C.F.R. 16.26. These policies and regulations require that your client not reveal the existence of any ongoing investigation, the identity of individuals who were the subject of past investigations but never charged, any information that would identify or tend to identify a confidential informant or source, any information about investigative techniques, and classified information. In addition, with regard to any open or pending investigation, these policies and regulations require that your client not reveal information that would identify witnesses, subjects, or targets; evidence obtained in the course of the investigation and investigative leads; or the content of Reports of Investigation (ROIs).

We are available to assist with any questions you may have about this issue or any other aspect of your client's official duties as an ATF agent. Feel free to contact Barry Orlow at (202) 648-7043. Your cooperation in this matter is appreciated.

Sincerely,

STEPHEN R. RUBENSTEIN
Chief Counsel

By: Mary Sutting
for Barry S. Orlow
Associate Chief Counsel (Field Operations and
Information)
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE, Rm. 6E-441
Washington, DC 20226
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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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FACSIMILE (202) 225-3974
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JACKIE SPEIER, CALIFORNIA

May 5, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20520

Dear Attorney General Holder:

On the evening of May 2, 2011, your staff notified the Committee that the Department of Justice was planning to make approximately 400 pages of documents available for an *in camera* review at your headquarters. Members of my staff went to review those documents on May 4th, only to discover they were partially, or in some cases almost completely, redacted. Since these documents were only made available pursuant to our Committee's subpoena to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and only on an *in camera* basis, redactions were not necessary.

Furthermore, any documents made available pursuant to the Committee's lawfully issued subpoena to ATF are not permitted to have any redactions. To fully and properly investigate the decisions made by Department officials during ATF's wildly reckless Operation Fast and Furious, it is imperative that the Committee have access to documents in their entirety.

I ask that you produce all documents responsive to the Committee's subpoena forthwith.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member



U.S. Department of Justice

Office of the Inspector General

May 11, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

Dear Senator Grassley:

I am writing in response to your letter dated April 22, 2011, concerning your request on behalf of Vincent Cefalu, a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), that the Office of the Inspector General (OIG) provide you with a status update regarding Special Agent Cefalu's Equal Employment Opportunity (EEO) claims against the ATF. You also asked that we evaluate Special Agent Cefalu's claim that he has been "effectively idled" since May 2010 when CNN broadcasted Special Agent Cefalu's allegation that ATF retaliated against him for criticizing an ATF plan to undertake what he described as an illegal wiretap in a racketeering case.

When we asked ATF representatives about these matters, they told us that Special Agent Cefalu filed an EEO complaint with the agency on or about January 21, 2010. The complaint was based upon several issues, including age and disability discrimination. As you know, the agency's EEO staff investigates such matters before further action can be taken. The ATF officials also informed us that Special Agent Cefalu has amended his complaint on several occasions since he filed his initial EEO complaint. ATF officials stated that each amendment requires the EEO staff to conduct additional investigation, which has delayed completion of the initial stage of the EEO process for Special Agent Cefalu's complaint.

We brought Special Agent Cefalu's allegation that he has been effectively idled to ATF's attention so that ATF could address that allegation as a management issue. ATF officials informed us that after the CNN report aired in May 2010, ATF management took steps to ensure that Special Agent Cefalu's supervisors were providing him sufficient work assignments. ATF officials told us that they have been monitoring and will continue to monitor this situation to ensure that Special Agent Cefalu's supervisors give him sufficient work assignments. Because the status of Special Agent Cefalu's work assignments

relates to his pending EEO claim, we do not intend to investigate further this matter while his EEO claim is pending.

Thank you for bringing your concerns to our attention. If you have any questions about this letter or these issues, please contact me or Senior Counsel Jay Lerner at (202) 514-3435.

Sincerely,

A handwritten signature in blue ink, reading "Cynthia A. Schnedar". The signature is fluid and cursive, with the first name "Cynthia" being more prominent and the last name "Schnedar" following in a similar style.

Cynthia A. Schnedar
Acting Inspector General

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

May 16, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Holder:

Last week I submitted Questions for the Record (QFRs) following the Judiciary Committee hearing on Oversight of the Department of Justice (DOJ).

Historically, the Justice Department generally takes five to eight months to respond to QFRs. However, because of my ongoing investigation into the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), I would appreciate receiving responses to questions on this topic much sooner. Attached is a copy of those questions. Please provide responses as soon as possible.

Additionally, I would like to reiterate the requests that have remained unanswered from my previous letters on this matter.

a) In my letter of February 16, 2011, I requested that you provide:

- 1) All records relating to communications between the ATF and the Federal Firearms Licensee (FFL) who sold the weapons to Avila, including any Report of Investigation (ROI) or other records relating to the December 17, 2009 meeting "to discuss his role as an FFL during this investigation."
- 2) All records relating to communications between ATF headquarters and Phoenix Special Agent in Charge (SAC) William Newell from December 1, 2010 to the present, including a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of CBP Agent Brian Terry.
- 3) A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF Headquarters in the Spring of 2010.

The Honorable Eric H. Holder, Jr.
May 16, 2011
Page 2 of 4

4) Copies of all e-mails related to Operation Fast and Furious, the Jaime Avila case, or the death of CBP Agent Brian Terry sent to or from SAC Newell, Assistant Special Agent in Charge (ASAC) George Gillette, Group 7 Supervisor, or the Case Agent between November 1, 2009 and January 31, 2011.

I requested that these documents be provided on a rolling basis as they are identified and located. I also requested that you please prioritize your search for documents and produce them in the following order: (1) documents in response to requests one through three, (2) documents in response to request four dated between December 13, 2010 and January 31, 2011, and (3) documents in response to request four dated between November 1, 2009 and December 13, 2010.

b) After ICE Agent Jaime Zapata was brutally murdered in Mexico on February 15, I was shocked to learn that, like Border Patrol Agent Brian Terry, Agent Zapata had been killed with a weapon traced to an individual in the U.S. that the ATF had been aware was trafficking firearms. Accordingly, in my March 4, 2011 letter, I requested answers to the following questions:

(1) Although the gun used in the assault on Agent Zapata that has been traced back to the U.S. was purchased on October 10, 2010, how can we know that it did not make its way down to Mexico after the November investigation, when the arrest of these three criminals might have prevented the gun from being trafficked and later used to murder Agent Zapata?

(2) When did law enforcement first become aware that Morrison purchased the gun?

(3) Given that the likely recipients of any trafficked guns were so close to the border, did any ATF personnel raise concerns about the possibility of those guns being used against U.S. law enforcement? If so, how did the ATF address those concerns?

(4) Did any ATF personnel raise concerns about the wisdom of allowing individuals like the Osorio brothers or Morrison to continue their activities after the November weapons transfer? If so, how did the ATF address those concerns?

In addition to answering those questions, I also requested all records relating to:

The Honorable Eric H. Holder, Jr.
May 16, 2011
Page 3 of 4

(5) When law enforcement officials first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison;

(6) Surveillance that may have been conducted on the Osorio brothers or Morrison prior to the November transfer of weapons between the ATF's confidential informant and the Osorio brothers and Morrison;

(7) The November transfer; and

(8) Any surveillance that law enforcement continued to conduct on the Osorio brothers or Morrison after the November transfer.

Finally, I requested a briefing on the Zapata matter. I reiterated these requests in my letter of March 28, 2011, and am still awaiting both a response and a briefing.

c) In my letter of April 8, 2011, I requested written answers to three questions. The third read:

(3) What steps have you taken or do you plan to take to ensure that employees are aware of their right to communicate directly with Congress if they so choose?

In response, you provided me with information about the ATF providing its agents with information about the Whistleblower Protection Act in order to prevent retaliation against whistleblowers. While that is appreciated, it does not respond to my question. I asked about making employees aware of the appropriations provision that protects their right to communicate directly with Congress. As I outlined in that letter:

[A]ttempts to prevent direct communications with Congress are not a lawfully authorized activity of any officer or employee of the United States whose salary is paid with appropriated funds.¹ Specifically, no officer or employee may attempt to prohibit or prevent "any other officer or employee of the Federal Government from having *direct* oral or written communication or *contact* with any Member, committee, or subcommittee of the Congress" about a matter related to his employment or the agency "in any way, *irrespective of whether such communication or contact is at the initiative*" of the employee or Congress (emphasis added).²

I wrote to you on January 31 to ensure you were aware of these provisions and to express concerns that without proper guidance, managers might

¹ Consolidated Appropriations Act, 2010, P.L. 111-117, 123 Stat. 3034, § 714 (2010), as continued by §101 of continuing resolutions P.L. 111-242, 124 Stat. 2607 (2010) and P.L. 112-6, 125 Stat. 23 (2011)—which extends the funding levels in the 2010 appropriations bills, as well as "the authority and conditions provided in such Acts," through April 8, 2011.

² *Id.*

The Honorable Eric H. Holder, Jr.
May 16, 2011
Page 4 of 4

inappropriately intimidate employees to discourage them from speaking with Congress and thus unlawfully interfere with a Congressional inquiry.³ In order for Congress to exercise its oversight authority and act as a check on Executive power, it is crucial that agency employees are free to communicate directly with Members and Committee staff. Direct contact means contacts that do not necessarily involve Congressional liaison or agency management. Without such direct, unfiltered communications, Congress would still be unaware of, and unable to inquire about, the serious allegations involving the death of Border Patrol Agent Brian Terry and the sales of weapons to known and suspected gun traffickers.

Accordingly, please provide responses to the questions attached, as well as those outlined above, by May 30, 2011. If you have any questions regarding this letter, please have your staff contact Tristan Leavitt at (202) 224-5225. Thank you for your prompt attention these important issues.

Sincerely,



Charles E. Grassley
Ranking Member

Attachment

³ 18 U.S.C. § 1505 (providing criminal penalties for obstructing or impeding the power of Congressional inquiry).

Office of Congressional Relations

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



U.S. Immigration
and Customs
Enforcement

MAY 18 2011

The Honorable Charles E. Grassley
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

Thank you for your March 15, 2011 letter to U.S. Immigration and Customs Enforcement (ICE). You wrote regarding Operation "Fast and Furious," an ongoing Organized Crime Drug Enforcement Task Force investigation led by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

In response to your letter, representatives from ICE's Homeland Security Investigations (HSI) met with your staff on March 25, 2011. As a follow up, on April 13, 2011, your staff spoke via teleconference with the ICE Special Agent in Charge in Phoenix, Arizona. Additionally, at your staff's request, contact information for the HSI Group Supervisor responsible for overseeing the day-to-day activities for the sole ICE agent assigned to the operation was provided to your office on April 15, 2011. It is our understanding that these communications have clarified for your office ICE's limited involvement with regard to Operation "Fast and Furious."

Finally, you requested in your letter all communications between ICE supervisors and ICE headquarters related to the operation. Based on conversations with your staff, we conducted a thorough search for any communications between ICE supervisors and ICE headquarters that occurred between December 15, 2010 and January 27, 2011, and have found no communications that would be responsive to your inquiry.

We appreciate the opportunity to address these concerns and look forward to working with you and your office on other critical homeland security issues in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Elliot Williams".

Elliot Williams
Assistant Director for
Congressional Relations

www.ice.gov

June 2011

June 2011

Congress of the United States
Washington, DC 20510

June 2, 2011

Joe Yahner
Chief of Police
Phoenix Police Department
620 West Washington Street
Phoenix, Arizona 85003

Dear Chief Yahner:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
- 2) All DRs that list Assistant U.S. Attorney Emory Hurley as the point of contact.
- 3) All DRs from September 2009 to the present where firearms were recovered attendant to investigations into homicide, aggravated assault, kidnapping, or home invasion.

If possible, please fax these records to (202) 224-3799 or (202) 225-2382. If you have any questions regarding this request, please contact Henry Kerner in Chairman

¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



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



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Roberto A. Villasenor
Chief of Police
Tucson Police Department
270 S. Stone Ave.
Tucson, AZ 85701

Dear Chief Villasenor:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



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



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Tom Ryff
Chief of Police
Tempe Police Department
120 E. 5th Street
Tempe, AZ 85281

Dear Chief Ryff:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

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¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,

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

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Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Alan G. Rodbell
Chief of Police
Scottsdale Police Department
9065 E. Via Linda
Scottsdale, AZ 85258

Dear Chief Rodbell:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,

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

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Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Frank Milstead
Chief of Police
Mesa Police Department
PO Box 1466
Mesa, AZ 85211

Dear Chief Milstead:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
- 2) All DRs that list Assistant U.S. Attorney Emory Hurley as the point of contact.
- 3) All DRs from September 2009 to the present where firearms were recovered attendant to investigations into homicide, aggravated assault, kidnapping, or home invasion.

If possible, please fax these records to (202) 224-3799 or (202) 225-2382. If you have any questions regarding this request, please contact Henry Kerner in Chairman

¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,

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

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Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Steven Conrad
Chief of Police
Glendale Police Department
6835 N 57th Drive
Glendale, AZ 85301

Dear Chief Conrad:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

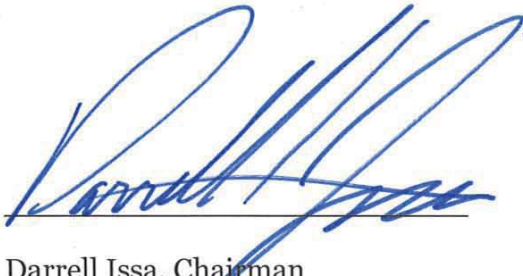
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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,

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

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Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Tom Sheahan
Sheriff
Mohave County Sheriff's Office
P.O. Box 1191
Kingman, Arizona 86402-1191

Dear Sheriff Sheahan:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
- 2) All DRs that list Assistant U.S. Attorney Emory Hurley as the point of contact.
- 3) All DRs from September 2009 to the present where firearms were recovered attendant to investigations into homicide, aggravated assault, kidnapping, or home invasion.

If possible, please fax these records to (202) 224-3799 or (202) 225-2382. If you have any questions regarding this request, please contact Henry Kerner in Chairman

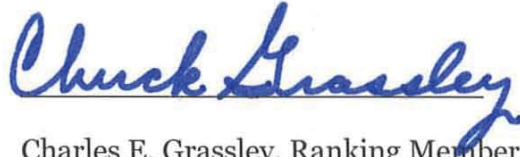
¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,

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

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Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Steve Tucker
Sheriff
Greenlee County Sheriff's Office
Highway 191
Clifton, Arizona 85533

Dear Sheriff Tucker:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
- 2) All DRs that list Assistant U.S. Attorney Emory Hurley as the point of contact.
- 3) All DRs from September 2009 to the present where firearms were recovered attendant to investigations into homicide, aggravated assault, kidnapping, or home invasion.

If possible, please fax these records to (202) 224-3799 or (202) 225-2382. If you have any questions regarding this request, please contact Henry Kerner in Chairman

¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,

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

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Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Tim Dorn
Chief of Police
Gilbert Police Department
75 E. Civic Center Drive
Gilbert, AZ 85296

Dear Chief Dorn:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
- 2) All DRs that list Assistant U.S. Attorney Emory Hurley as the point of contact.
- 3) All DRs from September 2009 to the present where firearms were recovered attendant to investigations into homicide, aggravated assault, kidnapping, or home invasion.

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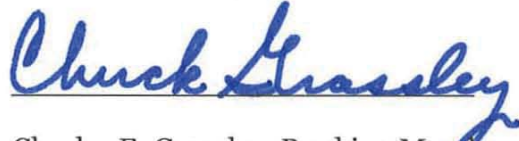
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U.S. House of Representatives, Committee on Oversight & Government Reform

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Ralph E. Ogden
Sheriff
Yuma County Sheriff's Office
141 S. 3rd Avenue
Yuma, Arizona 85364

Dear Sheriff Ogden:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



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



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Steve Waugh
Sheriff
Yavapai County Sheriff's Office
255 E. Gurley
Prescott, Arizona 86301

Dear Sheriff Waugh:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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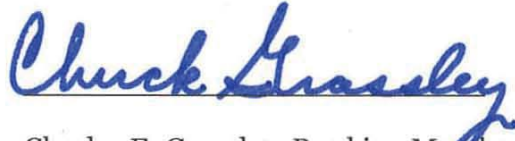
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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



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



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Tony Estrada
Sheriff
Santa Cruz County Sheriff's Office
1250 N. Hohokam Drive
Nogales, Arizona 85621

Dear Sheriff Estrada:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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Government Reform
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Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

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U.S. House of Representatives, Committee on Oversight & Government Reform

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Paul Babeu
Sheriff
Pinal County Sheriff's Office
P.O. Box 867
Florence, Arizona 85132

Dear Sheriff Babeu:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



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



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Clarence W. Dupnik
Sheriff
Pima County Sheriff's Office
1750 E. Benson Highway
Tucson, Arizona 85714

Dear Sheriff Dupnik:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

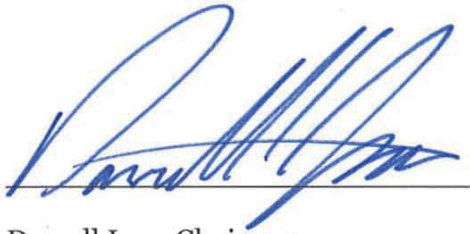
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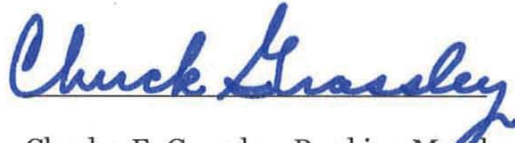
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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



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



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Kelly Clark
Sheriff
Navajo County Sheriff's Office
P.O. Box 668
Holbrook, Arizona 86025

Dear Sheriff Clark:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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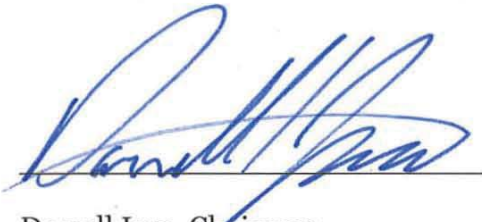
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Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



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



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Joe Arpaio
Sheriff
Maricopa County Sheriff's Office
100 W. Washington, Suite 1900
Phoenix, Arizona 85009

Dear Sheriff Arpaio:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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Committee on Oversight &
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U.S. House of Representatives, Committee on Oversight & Government Reform

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Don Lowery
Sheriff
La Paz County Sheriff's Office
1109 Arizona Avenue
Parker, Arizona 85344

Dear Sheriff Lowery:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Preston Allred
Sheriff
Graham County Sheriff's Office
523 10th Avenue
Stafford, Arizona 85546

Dear Sheriff Allred:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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U.S. House of Representatives, Committee on Oversight & Government Reform

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

Congress of the United States
Washington, DC 20510

June 2, 2011

John Armer
Sheriff
Gila County Sheriff's Office
1100 South Street
Globe, Arizona 85501

Dear Sheriff Armer:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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Darrell Issa, Chairman
Committee on Oversight &
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Committee on the Judiciary
United States Senate

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U.S. House of Representatives, Committee on Oversight & Government Reform

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Larry A. Dever
Sheriff
Cochise County Sheriff's Office
205 North Judd Drive
Mile Post 345, Highway 80
Bisbee, Arizona 85603

Dear Sheriff Dever:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

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U.S. House of Representatives, Committee on Oversight & Government Reform

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

Congress of the United States
Washington, DC 20510

June 2, 2011

David G. Murray
Sheriff
Apache County Sheriff's Office
P.O. Box 518
St. Johns, Arizona 85936

Dear Sheriff Murray:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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Committee on Oversight &
Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

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U.S. House of Representatives, Committee on Oversight & Government Reform

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Sherry Kiyler
Chief of Police
Chandler Police Department
PO Box 4008
Chandler, AZ 85244

Dear Chief Kiyler:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

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



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20510

June 2, 2011

Bill Pribil
Sheriff
Coconino County Sheriff's Office
911 E. Sawmill Road
Flagstaff, Arizona 86001

Dear Sheriff Pribil:

Pursuant to the Arizona Public Records Law,¹ we write to request certain Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's death near Rio Rico, Arizona.

Specifically, we are seeking the following records:

- 1) All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.
- 2) All DRs that list Assistant U.S. Attorney Emory Hurley as the point of contact.
- 3) All DRs from September 2009 to the present where firearms were recovered attendant to investigations into homicide, aggravated assault, kidnapping, or home invasion.

If possible, please fax these records to (202) 224-3799 or (202) 225-2382. If you have any questions regarding this request, please contact Henry Kerner in Chairman

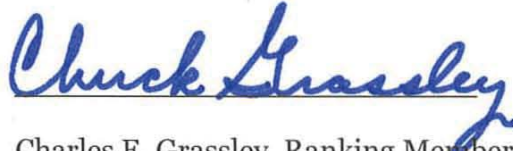
¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

Issa's office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. Thank you very much for your assistance with this matter.

Sincerely,



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



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

Congress of the United States
Washington, DC 20515

June 3, 2011

The Honorable Barack Obama
 The White House
 Washington, DC 20500

Dear Mr. President:

We are writing to express our serious concerns about the Administration's response to investigations of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) "Project Gunrunner" and its offshoot known as "Fast and Furious."

Reports of the tactics used in this operation are extremely troubling. The ATF allegedly encouraged gun store owners to sell thousands of firearms to customers whom store employees considered suspicious. Our concerns were heightened with news that one of the firearms sold may have been used in the murder of a Border Patrol agent. These allegations call into question the judgment of the agents involved. It is equally troubling that the Department of Justice has delayed action and withheld information from Congressional inquiries.

We stand firm in our support for our federal law enforcement agents, but concerned Americans—regardless of where they stand on gun control issues—deserve prompt and complete answers to the questions surrounding this operation. While the Department of Justice can and should continue its investigation, those activities should not curtail the ability of Congress to fulfill its oversight duties.

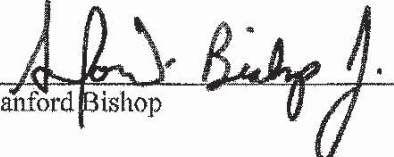
We urge you to instruct the Department of Justice to promptly provide complete answers to all Congressional inquiries on this issue. These investigations should not be used as a platform for partisan criticism of the Administration; rather, they should be an opportunity to get to the bottom of this serious allegation of federal law enforcement misconduct. We believe it is essential for you to seize this opportunity, and we stand willing to provide the Administration our support in any way we can.

Sincerely,


 Jason Altmire


 Joe Baca

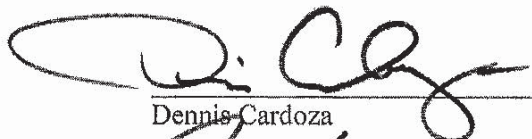

 John Barrow


 Sanford Bishop

PRINTED ON RECYCLED PAPER



Dan Boren



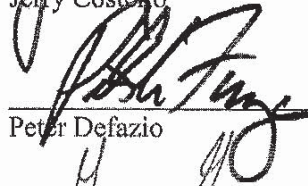
Dennis Cardoza



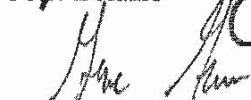
Jim Cooper



Jerry Costello



Peter Defazio



Gene Green



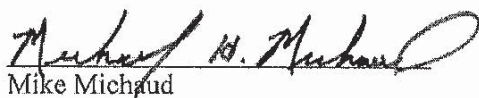
Tim Holden



Larry Kissell



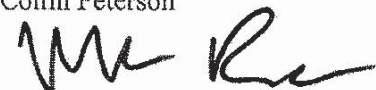
Jim Matheson



Mike Michaud



Collin Peterson



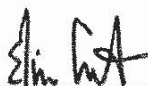
Mike Ross



Leonard Boswell



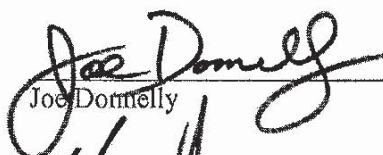
Ben Chandler



Jim Costa



Mark S. Critz



Joe Dormelly



Martin Heinrich



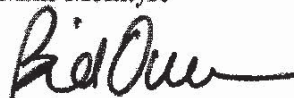
Ron Kind



Ben Ray Lujan



Mike McIntyre



Bill Owens




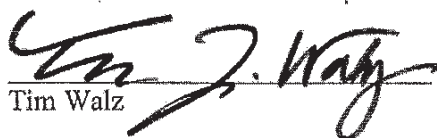
Nick Rahall



Tim Ryan


Kurt Schrader


Heath Shuler


Tim Walz



GRAHAM COUNTY SHERIFF'S OFFICE

523 10TH AVENUE • SAFFORD, ARIZONA 85546 • TELEPHONE: (928) 428-3141 • FAX: (928) 428-2487

SHERIFF
PRESTON "PJ" ALLRED

UNDERSHERIFF
C. JEFF McCORMIES

June 8, 2011

TO WHOM IT MAY CONCERN:

REF: Operation Fast and Furious

A records check has been completed on the above reference with negative results. If I can be of further assistance please contact me at (928) [REDACTED]

Respectfully,

Sheriff Preston J Allred

Maria Castro
Sheriff's Assistant/ Records

A handwritten signature in cursive script, appearing to read "Maria Castro", written over the typed name and title.

DARRELL E. ISSA, CALIFORNIA
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MIKE KELLY, PENNSYLVANIA

LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
<http://oversight.house.gov>

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JACKIE SPEIER, CALIFORNIA

June 8, 2011

Mr. Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

I write to further document your failure to comply with the Committee's March 31, 2011, subpoena. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and the Department of Justice's (DOJ) continued refusal to produce documents relevant to the Committee's investigation into Operation Fast and Furious is unacceptable and contrary to your lawful obligations. The Committee issued a subpoena to you in your capacity as the Acting Director of ATF on March 31, 2011. The Committee has also written seven letters to ATF and DOJ, dated March 16, April 8, April 11, April 20, April 20, May 3, and May 5. Further, Committee staff has had dozens of telephone calls with DOJ's Legislative Affairs office and officials in the Office of the Deputy Attorney General, with the most recent extensive conversations on May 22, 24, 25, and 26. The result of these communications, however, has been the production of no non-public documents by DOJ and ATF, and the presentation of largely unhelpful documents for *in camera* review.

At a May 5, 2011, meeting high-level officials assured Committee staff that both DOJ and ATF would cooperate with the Committee's investigation. The deliberate delay and refusal to comply with the subpoena have belied these assurances. At the meeting, an Associate Deputy Attorney General told my staff to identify any specific documents the Committee wished to obtain to ease the burden on DOJ to locate documents helpful to the Committee's investigation. Yet, after Committee staff identified two such documents to DOJ on May 11, 2011, the Department has continuously refused to produce those documents, only making them available for an *in camera* review.

This massive expenditure of Committee time and resources has resulted in neither full nor even partial compliance by DOJ – more than two months after you received the subpoena. This unacceptable result calls for further action. Ultimately, Congress must be able to obtain information from DOJ to properly exercise its constitutionally mandated duty to conduct oversight of the Executive Branch.

Mr. Kenneth E. Melson
June 8, 2011

Accordingly, I now ask that you produce all documents responsive to the March 31, 2011, subpoena by June 10, 2011, at 5:00 p.m. An *in camera* review of these documents will not suffice. I also request that you provide these additional documents to the Committee no later than Monday, June 13, 2011, at noon:

1. Reports ATF submitted to the Organized Crime Drug Enforcement Task Force (OCDETF) for the initiation of Operation Fast and Furious as an OCDETF operation, or any reports ATF provided to OCDETF with interim updates on the progress of Operation Fast and Furious.
2. Materials provided to you in preparation for all of your visits to Arizona field offices between January 2010 and November 2010, including, but not limited to, your trips to Tucson in June 2010 and Phoenix in September 2010.
3. Documents and communications between FBI personnel in Phoenix or Tucson and the FBI Laboratory relating to the firearms recovered during the course of the investigation of Agent Brian Terry's death.
4. Documents and communications relating to meetings from February to April 2011 that included David Voth, Tonya English, Jim Needles, Emory Hurley, Michael Morrissey, or Christopher Rapp.
5. Documents and communications relating to Operation Fast and Furious between ATF personnel and personnel in the United States Attorney's Office for the District of Arizona.
6. The presentation given by David Voth on or about March 5, 2010 on the southwest border, attended by DOJ official Joe Cooley and senior ATF officials.

Absent a complete production of documents pursuant to the subpoena by the dates mentioned, the Committee will be forced to evaluate whether contempt sanctions must be considered.

If you have any questions about these requests, please contact Ashok Pinto or Henry Kerner of the Committee staff at (202) 225-5074.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 10, 2011

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

Dear Mr. Chairman:

This letter provides additional information and documents responsive to the Committee's subpoena of March 31, 2011.

We fully appreciate the Committee's legitimate oversight interest in the genesis and strategy pertaining to Fast and Furious. We are committed to working with you to accommodate the Committee's information needs, consistent with our law enforcement responsibilities. Toward that end, we have delivered to your office 379 pages of documents to date and an additional 69 pages are enclosed with this letter. These documents were identified in our search of the emails of ATF Agents Newell, Gillett, and Voth. They bear limited redactions, like other documents we have previously provided, to protect specific details about the pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. We also have redacted text unrelated to the Committee's request in multi-subject documents. Many of these documents are not appropriate for public disclosure.

We understand your letter, dated June 8, 2011, requested the complete production of all documents by June 10, 2011. While this is not possible, we are continuing to work expeditiously to identify, process and provide or make available to the Committee additional information responsive to the its subpoena as quickly as possible and we intend to provide additional documents next week. We are also making available for review at the Department by Committee staff an additional 88 pages. This is in addition to the 800 pages of material that has previously been made available for review by Committee staff. We have substantial confidentiality interests in these documents because they contain information that relates to the pending criminal investigations. They bear limited redactions, similar to those set forth in the 466 pages reviewed by Committee staff on May 5.

The Honorable Darrell E. Issa
Page Two

To the extent that the Committee has already obtained many of the records covered by your subpoena, our search might be streamlined by your identification of any that you do not need from us. We welcome any suggestions about how we might accommodate your oversight needs efficiently, consistent with our own responsibilities.

We understand your interest in our completion of the document search as soon as possible and we share that goal. In light of the pending investigations, however, we ask for your understanding that we are making a substantial effort in the extraordinary context of pending criminal investigations. We will continue our efforts and ask that you continue to work with us to find accommodations that meet both the Committee's oversight needs and the Department's need to avoid harm to these pending investigations.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in dark ink, appearing to read 'm w', is positioned above the printed name of the sender.

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Elijah Cummings
Ranking Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 13, 2011

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

Dear Mr. Chairman:

This letter provides additional information and documents responsive to the Committee's subpoena of March 31, 2011. We also want to respond to questions raised by your letter, dated May 5, 2011, about redactions in documents that Committee staff reviewed at the Department on May 4, 2011.

We are delivering today to your office an additional 125 pages of material. These documents, which follow a production of 69 pages on Friday, make a total of 573 pages that we have physically produced to you to date. The documents being produced today again bear limited redactions, like other documents we have previously provided, to protect specific details about the pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Many of these documents contain non-public material and are not appropriate for public disclosure, even in their redacted form.

We are also making available for review at the Department by Committee staff an additional 36 pages. These pages are in addition to the nearly 900 pages of material that we have previously offered to make available for review by Committee staff — the bulk of which Committee staff has in fact reviewed. We have substantial confidentiality interests in these documents because they contain information that relates to sensitive law enforcement techniques and tactics. They bear limited redactions, similar to those set forth in the 466 pages reviewed by Committee staff on May 4.

Your letter of May 5, 2011 raised questions concerning redactions in the 466 pages made available to staff the previous day, May 4. Our re-review of those documents indicated that we made significant redactions of text, concerning specific investigative activities, in just 14 pages. These include redactions of information unrelated to Fast and Furious and text that would identify investigative subjects, targets, and the structure of a criminal organization. In another 65 pages, we made minor redactions of text identifying investigative file numbers, subjects, targets, witnesses, and personal information, such as cell phone numbers. We would be pleased to discuss these and any other specific redactions with Committee staff if that would be useful.

The Honorable Darrell E. Issa
Page Two

We hope this information is helpful and look forward to working with the Committee as this matter continues. Please do not hesitate to contact this office if we can provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Weich', with a stylized flourish at the end.

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Elijah Cummings
Ranking Member

**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Chief Counsel

Washington, DC 20226
www.atf.gov

Robert N. Driscoll, Esq.
Alston and Bird
The Atlantic Building
950 F Street, NW
Washington, DC 20004-1404

JUN 14 2011

Dear Mr. Driscoll:

We understand that the House Committee on Oversight and Government Reform has issued a subpoena for the testimony of your client, John Dodson, before the Committee at a hearing on June 15, 2011. The Committee's subpoena directs Mr. Dodson to testify about information derived from his employment with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and we understand that Mr. Dodson wishes to provide testimony.

In testifying at a hearing before the House Committee on Oversight and Government Reform, your client is encouraged to answer fully and candidly all questions concerning matters within his personal knowledge. His appearance before the Committee does not, of course, relieve him of any obligations of secrecy that are imposed upon him concerning certain matters arising from his official duties as an ATF Special Agent. For example, he may not reveal any information covered by Rule 6(e) of the Federal Rules of Criminal Procedure relating to matters occurring before a grand jury; tax information; Title III information, or any other matters prohibited from disclosure by statute, regulation, or court rule. An extended, but not exhaustive, list of such matters may be found in 28 C.F.R. 16.26.

These policies and regulations require that your client not reveal the existence of any ongoing investigation, the identity of individuals who were the subject of past investigations but never charged, any information that would identify or tend to identify a confidential informant or source, any information about investigative techniques, and classified information. In addition, with regard to any open or pending investigation or prosecution, these policies and regulations require that your client not reveal information unless the Department has already publicly disclosed the information, such as through pleadings or press releases. For example, your client should not identify witnesses, subjects, or targets; evidence obtained in the course of the investigation and investigative leads; or the content of Reports of Investigation (ROIs).

Robert N. Driscoll, Esq.

-2-

If you have any questions regarding this matter, please contact Acting Deputy Chief Counsel Greg Serres at (202) 648-7836. Your cooperation in this matter is appreciated.

Sincerely,

STEPHEN R. RUBENSTEIN
Chief Counsel

By: 

Barry S. Orlov

Associate Chief Counsel (Field Operations and
Information)

Bureau of Alcohol, Tobacco, Firearms and Explosives

99 New York Avenue, NE, Rm. 6E-441

Washington, DC 20226

(202) 648-7043

(202) 648-9620

ALSTON & BIRD LLP

The Atlantic Building
950 F Street, NW
Washington, DC 20004-1404

202-239-3300
Fax: 202-239-3333
www.alston.com

Robert N. Driscoll

Direct Dial: 202-239-3470

E-mail: bob.driscoll@alston.com

June 14, 2011

VIA Email: [REDACTED]

Barry S. Orlow
Associate Chief Counsel (Field Operations and Information)
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE, Room 6E-441
Washington, DC 20226

Dear Mr. Orlow:

Thank you for your letter of today. I find it strange that, hours before his scheduled testimony, this is the first communication that ATF has had with Special Agent Dodson regarding his purported obligation of confidentiality. Mr. Dodson spoke publicly about the matters being investigated by the House Committee on Oversight and Government Reform months ago; and the hearing at which Mr. Dodson will testify has been noticed for almost a week.

Mr. Dodson will appear before the Committee pursuant to a Congressional subpoena (attached) and intends to respond truthfully to any questions asked. If ATF does not recognize the validity of a subpoena to one of its Special Agents, or wishes to restrict the scope of the subpoena or limit the topics about which Mr. Dodson is compelled to testify, it seems that ATF should raise that matter with the Committee itself, not with its own employees.

I do not intend to minimize or ignore the fact that there are always complex separation of powers issues whenever Congressional oversight occurs. However, given that Special Agent Dodson is under Congressional subpoena, and given that it is unlawful to pay the salary of any federal employee who seeks to prevent or limit another federal employee from communicating with Congress,¹ I know that you are not seeking to prevent Special Agent Dodson from testifying or otherwise attempting to "chill" his testimony.

Therefore, it seem to me that your letter implicates the question of whether, with respect to particular questions, the Executive Branch's right to secrecy and confidentiality

¹ Consolidated Appropriations Act, 2010, P.L. 111-117, 123 Stat. 3034, § 714 (2010), as continued by subsequent continuing resolutions.

Barry S. Orlow
June 14, 2011
Page 2

trumps the Legislative Branch's right to conduct oversight of how ATF spends its appropriated funds. While I'm sure we could both exchange letters resembling law review articles to attempt to determine whether some questions might generate competing constitutional claims of co-equal branches of government, it is not Special Agent's Dodson's responsibility to resolve a question that has vexed constitutional scholars for over two hundred years in the hours remaining before the hearing.

I am therefore copying Chairman Issa on this letter and suggest that you direct any proposed restrictions on Special Agent Dodson's testimony to the Chairman or his staff. Unless some other arrangement is reached between ATF and the Committee, Special Agent Dodson will comply with the subpoena issued to him and answer the questions he is asked.

Sincerely,



Robert N. Driscoll

RND:dm

Enclosure

cc: Chairman Darrell Issa, Oversight and Government Reform Committee

LEGAL02/32687058v1



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 14, 2011

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

Dear Mr. Chairman:

This responds to your letter, dated June 8, 2011, to Acting Director Kenneth Melson of the Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) demanding that the Department "produce all documents responsive to [your] March 31, 2011 subpoena by June 10, 2011, at 5:00 p.m." That subpoena requires the review of an extremely large number of documents relating both to Operation Fast and Furious, an ongoing investigation into gun trafficking in which 20 defendants are charged and awaiting trial, and to the active investigation into the murder of Customs and Border Patrol Agent Brian Terry.

The Department has recognized the Committee's legitimate oversight interest in the genesis and strategy pertaining to Fast and Furious. Yet we also have recognized that the Committee's remarkable approach – holding public hearings and releasing documents related to an ongoing criminal investigation and pending criminal cases – could negatively impact our ability to successfully prosecute gun traffickers and violent criminals, and that your subpoena implicates our responsibilities, long recognized by Congress, not to disclose the names of cooperating witnesses, the identities of confidential informants, uncharged targets, the details of investigative techniques and other sensitive law enforcement information and to comply with legal requirements to maintain the secrecy of grand jury materials, sealed court information and other such records.

We have worked assiduously to meet the Committee's needs – there has been no "refusal to comply". Rather, we have surveyed ATF employees, and collected over a million pages of records potentially within the scope of your subpoena. We have had to hire a document processing company and IT vendors at a substantial cost to process the voluminous materials so they could be put in a format to be electronically reviewed. We have diverted ATF and DOJ attorneys and staff from their regular duties for thousands of hours to review documents – not just for responsiveness, but also to identify documents and portions of documents that must not

The Honorable Darrell E. Issa
Page 2

be disclosed because they contain the type of sensitive law enforcement information described above.

In addition to this substantial commitment of resources, since the issuance of your subpoena, we have had a number of productive discussions with the Committee about our ongoing efforts to respond to the subpoena and have kept the Committee apprised of the logistical challenges we face. We have worked with the Committee to prioritize those documents of greatest interest – and your staff identified 19 individuals. We immediately focused our attention on implementing a process to search their records, particularly emails related to those individuals. We also have also briefed the Committee on various aspects of Fast and Furious, and we have sought ways to try to accommodate the Committee's need for information while at the same time working to ensure the confidentiality of sensitive law enforcement information. Towards that end, we have delivered documents to you and made additional sensitive documents, such as those relating to open criminal matters, available for review by Committee staff, consistent with the custom and practice of congressional committees under the leadership of both parties. And we have appreciated staff's willingness to make these reviews.

As set forth below, despite the volume of materials involved and the logistical difficulties presented by the need to protect live investigations and pending trials, our goal remains to give the Committee the information it needs to conduct its oversight responsibilities, consistent with our responsibilities, and it is not correct to say the Department is doing otherwise.

Department Efforts to Date

The Department is taking your request for information very seriously and has dedicated substantial resources to meet the Committee's needs. In the months since ATF began searching for the broad range of documents responsive to your subpoena, a team of Department attorneys and ATF professionals has been working on a full-time basis at ATF to preserve and identify responsive documents. We have undertaken this extraordinary process in order to respond to the Committee's oversight interest in the strategies relating to firearms trafficking investigations even though we are in the midst of major law enforcement efforts relating to the same matter, because we share your interest in resolving the allegations that have been raised. Because these strategies overlap with pending law enforcement efforts, however, we must be careful in our document review to ensure that our responses to the Committee's requests do not harm our pending prosecutions by prematurely disclosing information, by revealing investigative activities in a manner that would violate our legal and ethical duties, or by compromising the effectiveness of our investigations and the safety of the individuals involved. This means that all of the documents, including emails, that we identify as responsive to your subpoena, as well as the additional materials you have requested in other correspondence, must be carefully reviewed, evaluated and, in some instances, redacted.

These tasks have required extensive time and resources because the requested materials are voluminous. In addition to gathering, organizing, and processing data from the field in

The Honorable Darrell E. Issa
Page 3

response to your requests—at substantial additional cost for information technology expenses—our team has conducted a separate, targeted search for responsive documents in the emails of Agents William Newell, George Gillett, and David Voth, in accordance with guidance from Committee staff regarding your oversight priorities. In coordination with your staff, we also have implemented a process to search the emails of nineteen individuals at ATF (including Agents Newell, Gillett, and Voth) in whom staff has indicated a primary interest, and we have agreed with your staff to proceed with specified search terms in conducting the search of their email accounts.

In order to perform that search as quickly as possible, ATF has engaged an outside contractor at an additional expense. The contractor has recently completed the loading of the designated nineteen individuals' emails and attachments into its system and has advised us that the number of records loaded at this point exceeds 724,000. All of the potentially responsive emails must be reviewed to determine whether they are actually responsive in whole or in part, and then evaluated for disclosure to the Committee pursuant to our obligations as described above. We believe that these measures demonstrate our good faith efforts to respond to the Committee's subpoena as quickly as possible.

As you know, we have already made available ATF Agent Newell for an interview by Committee staff that took place on June 8th and we are prepared to make additional representatives available pursuant to the agreements we have reached regarding these interviews. In consultation with your staff we have focused our document search in a manner consistent with the Committee's priorities. In accordance with that guidance, we have delivered to your office 448 pages of documents to date, with limited redactions to protect the details of pending investigations, many of which are not appropriate for public disclosure.

To date, we also have made available for Committee staff review at the Department nearly 900 pages of material, also with limited redactions to protect our on-going law enforcement efforts. While our cover letters explain the basis for our redactions, we are always available to discuss them with Committee staff if that would be helpful. Committee staff should always feel free to raise any questions about redactions with us during their review of documents at the Department. We also expect to produce or make available additional documents later this week. We will keep your staff informed of our progress on other searches, including the email search described above and other searches.

The Six Numbered Requests Set Forth in Your Letter of June 8, 2011

In your June 8, 2010 letter you included six additional requests for documents. We have provided or are already working to provide you with most of the documents your June 8, 2011 letter itemizes, as follows. First, the reports that ATF submitted to the Organized Crime Drug Enforcement Task Force (OCDETF) in 2010 relating to Operation Fast and Furious have already been made available to your staff with limited redactions, and an ATF 2011 interim report to OCDETF is included in the materials to which we offered access yesterday. Second, the briefing books prepared for Acting Director Melson's trips to Arizona in 2010 have already been

The Honorable Darrell E. Issa
Page 4

provided to you electronically or otherwise made available to your staff, again with limited redactions to avoid compromise to our law enforcement efforts. Third, with respect to documents and communications between FBI personnel in Phoenix or Tucson and the FBI Laboratory related to firearms recovered during the investigation of Customs and Border Patrol Agent Terry's death, ATF will add this request to its ongoing search for records, but it would be helpful if you could identify ATF employees whom you believe are most likely to possess these records, if you have that information.

Your fourth and fifth requests, which relate to meetings, documents, and communications among ATF agents and Assistant United States Attorneys, also seek records from new individuals in addition to several who are already among the nineteen ATF employees whose email records are within our existing intensive search efforts. Since these two requests are likely to encompass communications that are central to our on-going investigation and pending prosecution, we would appreciate the opportunity to confer with your staff about how we can respond without jeopardizing the success of our law enforcement efforts. Finally, the March 5, 2010, presentation that you have requested is among the documents that we have offered to make available at the Department for your staff's review, as set forth in our letter of June 10, 2011.

Providing Access to Sensitive Documents Is a Standard Accommodation

Over the past two decades, we have on a number of occasions offered access to sensitive documents to congressional committee staff in a variety of oversight matters in order to provide committees with information of interest to them while preserving the confidentiality of the documents themselves. This has been a valuable tool in the accommodation process because it permits the Department to satisfy oversight needs for information while protecting the Department's confidentiality interests regarding further disclosure of the material. Committee staff have reviewed documents at the Department in oversight matters during Republican and Democratic Administrations, including the Committee on Government Reform and Oversight investigation pertaining to alleged FBI corruption in Boston (2002) as well as Judiciary Committee oversight investigations relating to the removal of United States Attorneys (2007), the New Hampshire Phone Jamming case (2008), and the replacement of a particular United States Attorney (2009). As in these and other oversight inquiries that involved committee subpoenas, we are also prepared to make particular documents to which we have provided access available for the Committee's use during interviews and hearings. We are prepared to discuss further accommodations regarding specific documents on a case by case basis if that is helpful to you.

As with previous oversight matters, we have not provided access to documents that contain detailed information about our investigative activities where their disclosure would harm our pending investigations and prosecutions. This includes information that would identify investigative subjects, sensitive techniques, anticipated actions, and other details that would assist individuals in evading our law enforcement efforts. Our judgments begin with the premise that we will disclose as much as possible that is responsive to the Committee's interests,

The Honorable Darrell E. Issa
Page 5


consistent with our responsibilities to bring to justice those who are responsible for the death of Agent Terry and those who violate federal firearms laws.

Conclusion

As indicated in our letter of June 10, 2011, we understand your interest in our completion of the document search as soon as possible, and we share that goal. In light of the pending investigations, however, we ask for your understanding that we are making an extraordinary effort in the extraordinary context of pending criminal investigations. We will continue our efforts and ask that you continue to work with us to find accommodations that meet both the Committee's oversight needs and the Department's needs to avoid harm to these pending investigations.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in dark ink, appearing to read 'm w', is positioned above the printed name of the signatory.

Ronald Weich
Assistant Attorney General

cc: The Honorable Elijah Cummings
Ranking Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 15, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, regarding Operation Fast and Furious.

Enclosed are an additional 56 pages of material. These documents make a total of 355 pages that we have physically produced to you within the last week, and a total of 734 pages that we have physically produced to date. Most of the enclosed documents bear limited redactions to protect specific details about the pending investigations, including text that would identify confidential informants, targets and sensitive techniques, plus information relating to line employees. One multi-subject document bears substantial redactions of text that is not responsive to the Committee's request. As in our production yesterday, we have not included wholly redacted pages in this multi-subject document in our page counts. Even with the redaction, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

United States Senate
WASHINGTON, DC 20510

June 16, 2011

Via Electronic Transmission

Kenneth Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, & Explosives
U.S. Department of Justice
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

I write today in response to a June 10, 2011, article in *The Wall Street Journal* titled, "Mexican Guns Tied to U.S.", which cites a letter you sent to Senator Diane Feinstein, the Chairman of the Senate Caucus on International Narcotics Control ("Caucus"). As the Co-Chairman of the Caucus, and Ranking Member of the Senate Committee on the Judiciary ("Committee"), I have been investigating serious allegations raised by whistleblowers within the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) that agents knowingly allowed weapons to be sold to straw purchasers who then transferred those weapons to Mexican Drug Trafficking Organizations ("DTOs"). These allegations were the subject of two Congressional hearings this week and the timing of the release of this information raises questions about why the ATF would choose to release this information publicly now. Further, after reviewing the data presented in the article, I have questions about why ATF provided some select information, but not a more detailed analysis that would help Congress, and the American people, better understand the causes and sources of illegal firearms in Mexico.

Federal law prohibits the ATF from releasing firearm trace data or multiple handgun sales reports, but it does not prohibit the release of aggregate statistical data on illegal gun trafficking. However, I am concerned that the selective release of certain statistical data without further clarification and categorization may inaccurately reflect the scope and source of the problem of firearms in Mexico and the DTO violence. For example, the article states that ATF traced firearms in Mexico that were submitted for tracing by the Government of Mexico ("GOM") 21,313 firearms in 2009 and 7,971 firearms in 2010. The article further adds that of the firearms traced, 14,213 in 2009 were manufactured in the U.S. or imported to the U.S. from other countries. The article adds that 6,291 firearms in 2010 were either manufactured in the U.S. or imported from other countries. Taken together, these numbers provided the basis for the general estimate that 70% of firearms provided to the ATF from the GOM were traced back to the U.S.

The implication the article makes is that these firearms must come directly from U.S. manufacturers or U.S. Federal Firearms Licensees ("FFLs") selling guns to DTO members who smuggle the guns over the Southwest border. Unfortunately, this information paints a grossly inaccurate picture of the situation.

First and foremost, it is worth noting that the firearms data discussed in the article is based upon only the firearms that were submitted by the GOM to ATF for tracing. According to a May 6, 2009, article written by the Associated Press, over 305,424 confiscated weapons are locked in vaults in Mexico.¹ The weapons submitted for tracing represent only a small percentage of the number of weapons found to be part of the DTO related crime in Mexico. Further, there has been significant evidence in the media recently regarding the proliferation of weapons in Mexico smuggled out of Central America. For example, at a recent hearing before the Caucus on Central American security cooperation we heard testimony from witnesses that corrupt officers with access to unsecured arsenals in Guatemala and Honduras were an important source of weapons. In one recent media report, they discussed how over 1,100 fragmentation grenades, M-60 machine guns, and over a dozen grenade launchers were recovered in Guatemala at an alleged safe house of the Zetas DTO. That same article added that the Zetas had stolen over 500 weapons from a Guatemalan military base between 2007 and 2008.

Additional evidence regarding the source of weapons in Mexico is contained in an unclassified cable from the U.S. Department of State ("DOS") dated July 2, 2010, obtained by my office and attached to this letter. The cable, titled, "Mexico Weapons Trafficking – The Blame Game" seeks to dispel rumors about the source of weapons trafficked to Mexico. The unclassified cable includes sections such as: "Myth: An Iron Highway of Weapons Flows from the U.S.," "Myth: The DTOs Are Mostly Responsible," "Myth: Mexico Aggressively Investigating Weapons Confiscated," "Myth: Mexico Methodically Registers and Tracks Weapons," and "Myth: The GOM Justice System is Tough on Violators of Gun Laws." While this cable is very candid about the true problem of weapons smuggling inside Mexico, the cover emails forwarding this cable suggest that the ATF and officials associated with the ATF disagreed.

In fact, one email written by Special Agent in Charge William Newell states, "I could go on and on but once our 'Fast and Furious' case breaks it will change this." Unfortunately, it now appears that Special Agent in Charge Newell's prediction was correct, but instead of an "Iron Highway" operating on its own, it was ATF who fueled the flow of weapons through its "Fast and Furious" investigation which knowingly sanctioned the sale of nearly 2,000 firearms to straw purchasers.

I understand that agents working on tracing weapons in Mexico back to the U.S. routinely instruct GOM authorities to only submit weapons for tracing that have a likelihood of tracing back to the U.S. The purpose of this policy is to direct resources to tracing firearms that may have a U.S. nexus, instead of simply wasting resources on tracing firearms that will not trigger a U.S. source. So, based upon this background information, it is not surprising that reviewing a sample of weapons that is purposefully directed to increase the likelihood of U.S. generated weapons would in fact skew toward the direction of making it look like U.S. gun dealers provide more weapons than they actually do. However, further discussion of the data that is presented in the article is warranted.

¹ E. Eduardo Castillo, *AP Impact: Mexico's Weapons Cache Stymies Tracing*, May 6, 2009, available at <http://www.brownsvilleherald.com/common/printer/view.php?db=brownsville&id=97742> (last visited June 13, 2011).

Looking specifically at the information provided by the ATF to Senator Feinstein and the *The Wall Street Journal* raises some questions when compared more detailed data provided to my office. ATF actually traced 26,813 firearms in 2009 and 9,443 in 2010. Further, that data indicates that of those firearms actually submitted for tracing, a vast majority of those firearms did not come from FFLs (either U.S. based or Mexican based). In fact, of the 26,813 weapons traced in 2009, only 5,800 actually traced back to U.S. or Mexican FFLs. Table 1 illustrates a more detailed breakdown of the firearms data for both 2009 and 2010. The most noteworthy portion of the information is that nearly 78% of firearms traced in 2009 and 66% of firearms traced in 2010 were assigned to a catchall category “No Final Sale Dealer” which means the firearms did not trace back to a United States FFL. This category of firearms includes firearms that have no nexus with U.S. commerce. It also includes firearms where the only nexus to U.S. commerce is that they were manufactured by U.S. companies. This means they are not sold by FFLs in the United States. Instead, they may be sold to foreign countries or militaries requiring approval of the State Department and Homeland Security. Additionally, this category includes firearms in the ATF’s Suspect Gun Database—a category which would include nearly 2,000 firearms as part of ATF’s Fast and Furious Investigation where the ATF knowingly authorized firearm sales to straw purchasers before the weapons were trafficked to Mexican DTOs.

Table 1: Firearms Tracing Information for 2009 and 2010

Year	Number of Firearms Submitted for Tracing by Government of Mexico	Number of Firearms Traced to Federal Firearm Licensees (FFLs)	Number of Firearms Assigned to “No Final Sale Dealer”
2009	26,813	5,800 (22%)	21,013 (78%)
2010	9,443	3,176 (34%)	6,267 (66%)

Because the numbers provided to my office indicate that the data provided to Senator Feinstein and *The Wall Street Journal* may not be entirely accurate and because further questions and breakdowns of that data are necessary for Congress to make an informed decision about the sources of weapons that are fueling the DTO related violence in Mexico, I ask that you provide responses to the following questions:

- (1) Of the 21,013 firearms in the “No Final Sale Dealer” category for 2009, how many of those firearms can be traced back to military sales to the GOM? How many can be traced to the military of Guatemala? How many can be traced to the military of Honduras? How many can be traced to the military of El Salvador? How many can be traced to other Central American and South American militaries? How many can be traced to other foreign militaries? How many are in that category because they were in the Suspect Gun Database?
- (2) Of the 6,267 firearms in the “No Final Sale Dealer” category for 2010, how many of those firearms can be traced back to military sale to the GOM? How many can be traced to the military of Guatemala? How many can be traced to the military of Honduras? How many can be traced to the military of El Salvador? How many can

be traced to other Central American and South American militaries? How many can be traced to other foreign militaries? How many are in that category because they were in the Suspect Gun Database?

- (3) How many of those weapons in the "No Final Sale Dealer" category for 2009 and 2010 were previously reported lost or stolen?
- (4) Has the ATF requested access to the 305,424 firearms held by the GOM military vault? How many of those firearms have been traced? How many of those firearms would trace back to the GOM and the Mexican military?
- (5) Data indicates that the top source dealer for illegal firearms traced in Mexico for 2009 was "Direccion General De Industria Milita" or the Directorate General of Military Industry in Mexico. They provided 120 firearms that were later traced back, likely after a crime. Why does this entity have a U.S. Federal Firearms License? Are sales to this and other foreign entities with U.S. FFL's included in the numbers the ATF provided as being a gun from a "U.S. Source". If so, why?
- (6) Why did the number of trace requests drop significantly from 2009 to 2010, but the percentage trace to U.S. FFLs go up? What is behind this trend?

Accordingly, as Co-Chairman of the Caucus and Ranking Member of the Committee, I request your prompt response to these important questions no later than June 23, 2011.

Sincerely,



Charles E. Grassley
Co-Chairman, Senate Caucus on International Narcotics Control
Ranking Member, Senate Committee on the Judiciary

Attachment

Gilbert Police Department
75 E. Civic Center Drive
Gilbert, Arizona 85296

Fax Transmittal
Please Deliver Immediately

To: Tristan Leavitt
Henry Kerner

Fax: 202 [REDACTED]
202 [REDACTED]

From: Kate Weiby, Gilbert Police Department

Date: 6/16/11

Re: Public Records Request (Operation Fast & Furious)

Total number of pages, including cover page: 2

- (1) We have not identified any reports that we have reason to believe may be connected to Operation Fast and Furious.
- (2) We did not identify any report wherein Assistant U.S. Attorney Emory Hurley was listed as a point of contact.
- (3) The attached list identifies the Gilbert departmental reports for the type of crimes as requested (September 1, 2009 – June 14, 2011), and in which the property module indicates a weapon was impounded as evidence.

If you need copies of the reports that have been identified, please advise.

Sincerely,
Kate Weiby
Police Legal Advisor
Gilbert Police Department

[REDACTED] or direct line 480 [REDACTED]

Confidentiality Notice: The materials enclosed with this facsimile transmission are private and confidential and are the property of the Gilbert Police Department. The information contained in the material is privileged and is intended only for the use of the above named party. If you are not the intended recipient, be advised that any unauthorized disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone to arrange for return of the forwarded documents.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 16, 2011

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

Dear Mr. Chairman:

This letter supplements our previous responses to the Committee's subpoena of March 31, 2011, relating to Operation Fast and Furious.

We are delivering today to your office an additional 39 pages of material. These documents make a total of 396 pages that we have physically produced to you within the last week, and a total of 775 pages that we have physically produced to date. The documents being produced bear limited redactions to protect specific details about the pending investigations, including text that would describe targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 44 pages of law-enforcement sensitive documents that we are prepared to make available at the Department for review by Committee staff. Some of these also bear limited redactions of text that would identify investigative subjects, sensitive techniques and the portion of a multi-subject document that is not responsive to your request.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

Congress of the United States

Washington, DC 20510

June 21, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Arturo Sarukhán
Embassy of Mexico
1911 Pennsylvania Avenue, NW
Washington, D.C. 20006

Dear Ambassador Sarukhán:

As you may be aware, we are conducting an investigation into a reckless program by the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) known as Operation Fast and Furious. In Operation Fast and Furious, the ATF pursued a strategy of allowing straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers.

We are attempting to identify all victims from Operation Fast and Furious on both sides of the border. Therefore, out of the firearms that have been submitted to the U.S. eTrace system, whether by agencies in the Mexican government (such as CENAPI) or by ATF agents in Mexico on behalf of the Mexican government, we respectfully request that you provide us with the serial numbers of all those which were recovered in substantial violent crimes. In addition, we would appreciate you providing the serial numbers of any other firearms that you have reason to believe may be connected with Operation Fast and Furious, as well as the circumstances under which each was recovered.

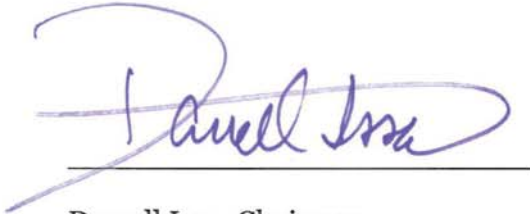
This information would be immensely helpful to us in determining the full scale of the effects of Operation Fast and Furious, which includes the deaths of both Mexican and American citizens. Just last week it came to light that two weapons from Operation Fast and Furious may have been used in the kidnapping and murder of Mario Gonzalez Rodriguez, a Mexican citizen and brother of former Attorney General of Chihuahua, Patricia Gonzalez Rodriguez.¹

¹ William La Jeunesse, "Two AK-47s Used to Murder Mexican Lawyer Were 'Fast and Furious' Guns From U.S., Sources Say," *Fox News*, Jun. 17, 2011, available at <http://www.foxnews.com/politics/2011/06/17/two-ak47s-used-to-murder-mexican-lawyer-were-fast-and-furious-guns-sources-say>.

We have a shared interest with you in getting to the bottom of this matter. We have also contacted most law enforcement jurisdictions in Arizona with this same request.

If you have any questions regarding this request, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner in Chairman Issa's office at (202) 226-5049. Thank you very much for your assistance with this matter.

Sincerely,

A handwritten signature in blue ink, reading "Darrell Issa", written over a horizontal line.

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

A handwritten signature in blue ink, reading "Chuck Grassley", written over a horizontal line.

Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

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June 21, 2011

Mr. William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, N.E.
Washington, D.C. 20226

Dear Deputy Director Hoover:

I write to request your assurance that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will not retaliate against witnesses who have provided information to this Committee. I make this request in light of the fact that on June 15, 2011, in a hearing before the Committee entitled "Operation Fast and Furious: Reckless Decisions, Tragic Outcomes," three veteran ATF special agents gave testimony highly critical of the ATF. They should not face reprisals of any kind for their testimony. No other ATF employees who cooperate with Congress should face retaliation either.

The Committee relies on whistleblowers to conduct unvarnished and thorough oversight. Witnesses who choose to cooperate with the Committee must be confident that they can provide information without fear of punishment. I am sure you agree.

During a meeting on May 5, 2011, you assured my staff that ATF leadership would see to it that witnesses would not suffer for choosing to have communications with our staff. I was encouraged by this because, as you know, there has already been at least one questionable internal affairs inquiry into what appears on its face to be a months-old *de minimis* infraction. Retaliation can take many forms – disciplinary action, less desirable duties and assigned tasks, and assignment transfers that affect personal lives and uproot families, to name a few. Such insidious actions debilitate agency morale.

Mr. William J. Hoover
June 21, 2011
Page 2

In his testimony at the June 15 hearing, Assistant Attorney General Ronald Weich promised in no uncertain terms that there will be no retaliation against the witnesses who testified: "I want to assure the committee – I think a number of Members raised this – that **the Department of Justice will not, would never, retaliate against whistleblowers.**"¹

Despite these assurances, I remain interested in seeing that this is carefully monitored by ATF.

During the course of the Committee's investigation, several ATF agents related that they have already experienced retaliation. Two agents stated they were removed from Group VII after reporting their misgivings about Operation Fast and Furious up the chain of command.² One agent stated he and several other agents in Group VII who expressed unease with the operation received negative performance evaluations.³

Having witnessed these incidents, you might expect that the witnesses who testified on June 15, and other ATF employees with information relevant to this investigation, fear reprisal. In fact, they do. One special agent testified that he was initially reluctant to speak to the Committee because he feared retaliation:

[T]here has been a lot of undertones of retaliation. Like I took the schism as, hey, you don't like what we are doing here, quit, or we will fire you or whatever. . . . ATF is just – they have been known historically from my experience . . . just depending on the supervisor, to be **a very retaliatory agency**. And that's why when . . . your office reached out to me, I wanted to talk back then, but it would have been under the guise of a whistleblower. And . . . this is important enough to blow a whistle on, but **I would be afraid of the retaliation that still might be coming down.**⁴

A second special agent testified that individuals who have information are reluctant to come forward for fear of retaliation:

[T]here are many people that I know of still with firsthand information about this case who want to cooperate, have expressed that to me, that have information that they feel you need to further your investigation, but **are afraid of ATF and retaliation for talking to you.** . . .⁵

¹ *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. 153 (testimony of Hon. Ronald Weich) (emphasis added).

² Transcript of interview with Special Agent Number 1 at 61, 72 [hereinafter Agent 1 Tr.]; Transcript of interview with Special Agent Number 2 at 125 [hereinafter Agent 2 Tr.].

³ Agent 1 Tr. at 124.

⁴ Transcript of interview with Special Agent Number 3 at 104-105 (emphasis added).

⁵ Agent 2 Tr. at 124 (emphasis added).

Mr. William J. Hoover
June 21, 2011
Page 3

A special agent also testified that he feared his cooperation with the Committee would jeopardize his job. He stated that he was “concerned that being here and providing this testimony puts me in a very precarious position in my career.”⁶ A fourth special agent told Committee investigators that he feared he would be deemed “**retroactively incompetent**” by his bosses because the agency has “**a long and rich history of retaliation.**”⁷

These statements reveal a worrying cycle: a history of retaliation by ATF management causes its employees to fear reprisals, which in turn prevents them from coming forward to the Committee. This needs to end.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Darrell Issa', written over a horizontal line.

Darrell Issa
Chairman

⁶ Agent 1 Tr. at 76.

⁷ Interview with Special Agent 4.

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 21, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, relating to Operation Fast and Furious.

We are delivering today to your office an additional 65 pages of material. These documents bear limited redactions to protect specific details about the pending investigations, including text that would describe targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 6 pages of law-enforcement sensitive documents that we are prepared to make available at the Department for review by Committee staff. These pages bear no redactions.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Weich".

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

DARRELL E. ISSA, CALIFORNIA
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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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WASHINGTON, DC 20515-6143

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June 22, 2011

Ms. Cynthia A. Schnedar
Acting Inspector General
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Acting Inspector General Schnedar:

I write to ensure that the ongoing Department of Justice (DOJ) Office of Inspector General (OIG) investigation into Operation Fast and Furious is being conducted free from any political and other improper considerations. Because (1) Fast and Furious may have been inspired by guidance published by your office; (2) your office took no action in response to concerns expressed by an ATF agent in December 2010; and, (3) you may be seeking the position of permanent Inspector General (IG), your investigation of Fast and Furious appears susceptible to improper influence.

To address the appearance that your investigation of Fast and Furious could be unduly influenced by your career aspirations, I request that you refrain from pursuing the position of full-time IG at the justice department.

1. An OIG report may have inspired Fast and Furious.

In September 2009, your office released an interim report questioning ATF's implementation of Project Gunrunner.¹ Operation Fast and Furious began in the fall of 2009, as a part of Project Gunrunner. A final report issued in November 2010 was equally critical of ATF's strategy.² The report found "weaknesses in how ATF implemented Project Gunrunner."³ It stated:

Although . . . ATF has increased some program activities during Project Gunrunner, ATF's focus remains largely on inspections of gun dealers and

¹ See DOJ OIG, *Interim Review of ATF's Project Gunrunner*, Report I-2009-006 (Sept. 2009), available at <http://www.justice.gov/oig/reports/ATF/e0906.pdf> (last visited Jun. 21, 2011).

² See DOJ OIG, *Review of ATF's Project Gunrunner, Evaluation and Inspections*, Report I-2011-001 (Nov. 2010), available at <http://www.justice.gov/oig/reports/ATF/e1101.pdf> (last visited Jun. 21, 2011) (hereinafter OIG Report).

³ *Id.* at v.

Ms. Cynthia A. Schnedar
June 22, 2011
Page 2

investigations of straw purchasers, rather than on high-level traffickers, smugglers, and the ultimate recipients of trafficked guns.

For example, we found that 68 percent of Project Gunrunner cases are single-defendant cases, and some ATF managers discourage field personnel from conducting the types of complex conspiracy investigations that target higher-level members of trafficking rings. . . .⁴

The report laments how cases brought against straw purchasers are difficult to prove and do not carry stringent penalties.⁵ It states that the Federal Sentencing Guidelines categorize straw-purchasing-related crimes as lesser offenses.⁶

ATF officials cited this report as one of the factors that prompted the shift to a riskier strategy of allowing guns to be trafficked rather than arresting straw buyers.⁷ Knowledge that a report published by your office led to a change in strategy which resulted in increased violence may hamper your ability to make findings critical of Fast and Furious.⁸

In his June 15, 2011, appearance before the Committee, ATF Special Agent John Dodson testified that he believes OIG may have a conflict because of its role in inspiring the Fast and Furious strategy:

Mr. Chaffetz: Do you think that there is a conflict between the OIG, given that maybe this started as a result of a recommendation? Or do you see any sort of conflict that the [inspector] general has in this case?

Mr. Dodson: Well, I can see a conflict between the office of the OIG, yes, sir. The actual individuals that are working the case, my interaction with them, since I have been interviewed by them, is that I think that they get it.

However, those two offices, being what they are and how they are aligned, there is inherently a conflict of interest there. If, in fact, someone at DOJ authorized this, knows about it, is as well versed in it as everyone at ATF, that thereby creates the conflict with OIG.⁹

⁴ *Id.*

⁵ *Id. at vi.*

⁶ *Id.*

⁷ Letter from Sen. Charles E. Grassley to Kevin L. Perkins, Chair, Integrity Committee, Council of Inspectors General on Integrity and Efficiency (Mar. 8, 2011).

⁸ *See id.*

⁹ *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong., June 15, 2011 at 74 [hereinafter Hearing Tr.].

Ms. Cynthia A. Schnedar
 June 22, 2011
 Page 3

2. The OIG did not respond to a December 2010 complaint from an ATF Agent.

In December 2010, after the murder of Customs and Border Patrol Agent Brian Terry, Special Agent Dodson contacted your office to allege that Fast and Furious was misguided and dangerous. Your office took no action in response to his allegations. In fact, he received no response until Senator Grassley's staff contacted your office on February 1, 2011.¹⁰ The failure to take these allegations seriously at the outset may encourage OIG to minimize the severity of Operation Fast and Furious in its current investigation.

3. The Fast and Furious investigation may implicate individuals positioned to influence the selection of a permanent IG at the Justice Department.

Your involvement in the OIG investigation creates a potential conflict of interest. If you are pursuing the role of permanent Inspector General, your personal career aspirations may influence your independence and ability to conduct an unbiased investigation. This investigation involves probing into wrongdoing and mismanagement by executive branch officials at the highest levels. Because the DOJ Inspector General is a presidentially-appointed position, you may feel compelled to produce a result palatable to those who will ultimately decide whether you will receive the permanent IG position.

A complete and objective OIG investigation is critical because White House and DOJ officials frequently cite it as a reason for us not to conduct oversight of Fast and Furious. Assistant Attorney General Ronald Weich testified about the OIG investigation at the Committee hearing last week.¹¹ Mr. Weich also questioned the value of congressional oversight in an April 18, 2011, letter to Chairman Leahy of the Senate Judiciary Committee:

Given the ongoing criminal investigations in Arizona and the Inspector General's ongoing review of allegations regarding those investigations, we do not believe that such oversight, or hearings, would be helpful at this time.¹²

In light of the ways in which DOJ has relied on your investigation, the Committee seeks assurances that it is free from political pressure and other influences. For the aforementioned reasons, I believe it is necessary to assuage the doubts of the Committee and the public for you to declare that you will forego any pursuit of the permanent IG job. I request that you reveal to the Committee your intentions regarding the permanent position.

¹⁰ See OIG Report, *supra* note 1, at 2.

¹¹ Hearing Tr. at 123.

¹² Letter from Asst. Att'y Gen. Ronald Weich to Sen. Charles E. Grassley (Apr. 18, 2011).

Ms. Cynthia A. Schnedar
June 22, 2011
Page 4

Accordingly, I request that you respond to the following questions no later than Friday, July 1, 2011, at noon:

1. Are you interested in being nominated by the President to be the permanent Inspector General? If so, to whom have you expressed this interest?
2. Have you had any communications with any member of the White House staff relating to your interest in the appointment? If so, when and with whom? Who initiated the communication?
3. Have you had any communications with any member of the Attorney General's staff or other Justice Department officials relating to your interest in being appointed permanently to the position? If so, when and with whom? Who initiated the communication?
4. Has anyone else asked you whether you have any interest in or intention of pursuing the position of Inspector General? If so, who and when?
5. To remove the appearance of a conflict of interest, will you remove yourself from consideration as a candidate for the position of permanent Inspector General? If not, why not?

The Committee has a responsibility to protect the independence and integrity of the Inspector General's office at the Department of Justice.

If you have any questions about these requests, please contact Henry Kerner or Jean Humbrecht of the Committee staff at (202) 225-5074. Thank you for your attention to this important matter.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 22, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, relating to Operation Fast and Furious.

We are delivering today to your office an additional 9 pages of material. The documents bear limited redactions to protect specific details about a pending investigation, the identity of an unindicted suspect in a closed case, and information relating to line employees. The collection includes the cover page from one document that has been previously reviewed at the Department by Committee staff. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 17 pages of law-enforcement sensitive documents that we are prepared to make available at the Department for review by Committee staff. These pages bear limited redactions to protect the identity of an unindicted suspect in a closed case.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in dark ink, appearing to read "m w", likely representing Ronald Weich.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

**Police Department**

June 23, 2011

Honorable Darrell Issa, Chairman
Committee on Oversight & Government Reform
U.S. House of Representatives

Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

U.S. House of Representatives
Committee on Oversight and Government Reform
Washington, DC 20515-6143

Re: June 2, 2011 Public Records Request

Dear Mr. Issa and Mr. Grassley,

This letter is in response to your public records request dated June 2, 2011, regarding records associated with, "Departmental Records (DRs) as part of an investigation into Operation Fast and Furious conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)."

Generally, the Mesa Police Department (MPD), objects to your June 2, 2011, request as it is overly broad, unduly burdensome, and voluminous, which prevents a proper review of the documents requested and response thereto.

However, without waiving its objections, the MPD responds as follows:

1. All DRs which the Department has reason to believe may be connected to Operation Fast and Furious.

The MPD has no record of "Operation Fast and Furious" or any known involvement, either formal or informal or otherwise.

2. All DRs that list Assistant U.S. Attorney Emory Hurley as a point of contact.

The MPD does not have any records listing assistant U.S. Attorney Emory Hurley as a point of contact.

06/23/2011 13:08

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MESA PD ADMIN

PAGE 03/03

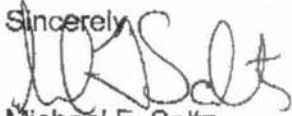
3. All DRs from September 2009 to the present where firearms were recovered attendant to investigations to homicide, aggravated assault, kidnapping, or home invasion.

The MPD is unable to comply with your request with the information provided. As I am sure you are aware, in 2009 MPD responded to 23,020 crimes involving persons or property; in 2010 responded to 21,518 crimes involving persons or property; and so far in 2011 responded to 6,836 crimes involving persons or property, all of which makes it difficult to determine what you are requesting. This is not to say your request will not be disclosed, but more specific information is needed in order to make that determination (i.e., date(s), location(s)).

Also, "kidnapping" generally is not the primary offense listed in a departmental report, which would make it impossible to comply with your request without additional information and "home invasion" is not an enumerated crime in Arizona.

Upon consideration, if you have any concerns please do not hesitate to contact me at (480) 644-2008.

Sincerely,



Michael F. Saltz
Sergeant - Attorney
Mesa Police Department
Office of Legal Services

Cc:

Nancy Sorensen
MPD Staff Attorney

**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

Washington, DC 20226

JUN 23 2011

The Honorable Charles E. Grassley
Co-Chairman, Senate Caucus on International Narcotics Control
Ranking Member, Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This is in response to your inquiry dated June 16, 2011, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) relative to Mexico trace data. As you may be aware, this information was requested by Senator Dianne Feinstein and provided by ATF. The information was based on a query of ATF's Firearms Tracing System and was vetted by ATF's Violent Crime Analysis Branch (VCAB).

There are no United States Government sources that maintain any record of the total number of criminal firearms seized in Mexico. Any ATF release of information relative to Mexico trace data relates only to firearms recovered in Mexico and subsequently traced by ATF based upon firearms identifiers supplied by the Government of Mexico (GOM). Further, these ATF releases of information have centered on United States-sourced firearms and not necessarily those traced back to an initial purchaser.

In your letter, a number of assertions are made that challenge the accuracy of the ATF trace data provided to Senator Feinstein. The assertions appear to be based upon trace data provided to your office by an unknown source. The discrepancies in the vetted VCAB release and unknown sourced data with respect to the total number of firearms recovered and traced in Mexico in calendar years 2009 and 2010 can be explained. The data you reference in your letter appears to be an ATF eTrace-generated data report that is not designed to provide the actual number of firearms submitted for tracing by the Government of Mexico, but is intended to identify the retail Federal Firearms Licensees (FFL) that sold a firearm to an unlicensed purchaser. This report entitled "Top Source Dealers of Firearms Traced," has a documented issue wherein the sub-category for "No Final Sale Dealer" is displaying an inaccurate count, which subsequently impacts the overall total trace count. This discrepancy can result in a single trace request being counted two or more times, thus erroneously increasing the reported total number of firearms traced. Therefore, this report is not intended to provide an accurate portrayal of aggregate trace results or the number of United States-sourced firearms.

-2-

The Honorable Charles E. Grassley

A June 2011 release of ATF Mexico trace data, vetted by VCAB, indicated a total of 21,313 firearms recovered in Mexico in 2009 and traced by ATF. Of these, 10,945 were manufactured in the United States; 3,268 were imported into the United States; and 7,100 were of undetermined origin due to insufficient information provided. In addition a total of 7,971 firearms recovered in Mexico in 2010 were traced by ATF. Of these firearms, 4,186 were manufactured in the United States; 2,105 were imported into the United States; and 1,680 were of undetermined origin due to insufficient information provided. So, in aggregate, of the 29,284 firearms recovered in Mexico in 2009 and 2010 that were subsequently submitted to ATF's National Tracing Center for tracing, 20,504 are United States-sourced firearms. A country or origin for the remaining firearms could not be determined because of a lack of information supplied on the trace request.

In order to accurately respond to your inquiries, we will apply the June 2011 release of ATF Mexico trace data in response to your submitted questions.

Question 1: Of the 21,013 firearms in the "No Final Sale Dealer" category for 2009, how many of those firearms can be traced back to military sales to the GOM? How many can be traced to the military of Guatemala? How many can be traced to the military of Honduras? How many can be traced to the military of El Salvador? How many can be traced to other Central American and South American militaries? How many can be traced to other foreign militaries? How many are in that category because they were in the Suspect Gun Database?

Of the 21,313 firearms recovered in Mexico in 2009 and submitted to ATF for tracing, 204 traced to either foreign firearm dealer/importer or military sale in Mexico; 9 traced to either foreign firearm dealer/importer or military sale in Guatemala; 1 traced to either foreign firearm dealer/importer or military sale in Honduras; 0 traced to either foreign firearm dealer/importer or military sale in El Salvador; 12 traced to either foreign firearm dealer/importer or military sale in other Central American and South American countries; 18 traced to either foreign firearm dealer/importer or military sale in Africa, Asia, Europe and North America; and 2 traced to either foreign firearm dealer/importer or military sale in unknown countries.

ATF's National Tracing Center is notified only of the name of the foreign entity, not its status as foreign government or private entity, therefore the designation "foreign firearm dealer/importer or military sale". There is no Federal law requiring a report to ATF of any firearms sales to foreign countries. There is no "suspect gun" data included in any eTrace statistical report or in a trace result. None of the trace results relating to the above foreign firearm dealer/importer or military sale traces were listed as "suspect guns."

Question 2: Of the 6,267 firearms in the "No Final Sale Dealer" category for 2010, how many of those firearms can be traced back to military sale to the GOM? How many can be traced to the military of Guatemala? How many can be traced to the military of Honduras? How many can be traced to the military of El Salvador? How many can be traced to other Central American and South American militaries? How many can be traced to other foreign militaries? How many are in that category because they were in the Suspect Gun Database?

-3-

The Honorable Charles E. Grassley

Of the 7,971 firearms recovered in Mexico in 2010 and submitted to ATF for tracing, 89 traced to either foreign firearm dealer/importer or military sale in Mexico; 1 traced to either foreign firearm dealer/importer or military sale in Guatemala; 3 traced to either foreign firearm dealer/importer or military sale in Honduras; 1 traced to either foreign firearm dealer/importer or military sale in El Salvador; 4 traced to either foreign firearm dealer/importer or military sale in other Central American and South American countries; and 5 traced to either foreign firearm dealer/importer or military sale in Australia, Europe and North America.

ATF's National Tracing Center is notified only of the name of the foreign entity, not its status as foreign government or private entity, therefore the designation "foreign firearm dealer/importer or military sale." There is no Federal law requiring a report to ATF of any firearms sales to foreign countries. There is no suspect gun data included in any eTrace statistical report. None of the trace results relating to the above foreign firearm dealer/importer or military sale traces were listed as "suspect guns."

Question 3: How many of those weapons in the "No Final Sale Dealer" category for 2009 and 2010 were previously reported lost or stolen?

A trace of the firearm will only yield information regarding the status of a firearm as lost or stolen if reported by an FFL or transit carrier, not a private citizen. For the firearms recovered in Mexico in calendar year 2009 and traced by ATF, 41 can be categorized as lost/stolen; for calendar year 2010, 14 can be categorized as lost/stolen.

Question 4: Has the ATF requested access to the 305,424 firearms held by the GOM military vault? How many of those firearms have been traced? How many of those firearms would trace back to the GOM and the Mexican military?

ATF personnel in Mexico continue to encourage comprehensive tracing for all criminal firearms recovered in Mexico. For calendar years 2009 and 2010, Mexico recovered 29,284 firearms and subsequently submitted them to ATF for tracing. ATF cannot comment or speculate on any possible other recoveries or sources of those possible recoveries.

Question 5: Data indicates that the top source dealer for illegal firearms traced in Mexico for 2009 was "Direccion General De Industria Milita" or the Directorate General of Military Industry in Mexico. They provided 120 firearms that were later traced back, likely after a crime. Why does this entity have a U.S. Federal Firearms License? Are sales to this and other foreign entities with U.S. FFLs included in the numbers the ATF provided as being a gun from a "U.S. Source". If so, why?

There are no foreign entities that possess an FFL. The firearms attributed to Directorate General of Military Industry were sold by United States FFLs to the Directorate. There is a default within the "Top Source Dealers of Firearms Traced" report in ATF eTrace, for record keeping purposes only, that merely lists the foreign entities as "Z-FFLs". All firearms that are sold by an FFL or imported by an FFL (and thereby bear the U.S. importer stamp on the firearm) are said to

-4-

The Honorable Charles E. Grassley

be U.S.-sourced firearms. As recorded in our responses to questions 1 and 2 above, 349 firearms (of the 29,284 recovered in Mexico in calendar years 2009 and 2010 and traced by ATF) fit into this category.

Question 6: Why did the number of trace requests drop significantly from 2009 to 2010, but the percentage trace to U.S. FFLs go up? What is behind this trend?

In September 2009, the government of Mexico provided ATF with electronic files containing firearms identifiers and recovery data. The electronic files contained information that initiated over 43,000 firearms traces with most having recovery years ranging from calendar year 2007 to 2009. Once each trace was initiated, it was organized by year of recovery. With this influx of traces from the electronic files, the number of firearms listed as recovered in 2009 and traced increased from earlier releases of information. Many of the initiated trace requests contained incomplete data thereby reducing the number of traces linked to an FFL.

We hope this information is responsive to your inquiry. Please let me know if we can be of further assistance.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'K. Melson', with a stylized, flowing script.

Kenneth E. Melson
Acting Director

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 23, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, relating to Operation Fast and Furious.

We are delivering today to your office an additional 62 pages of material. These documents bear limited redactions to protect specific details about the pending investigations, including text that would describe targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 29 pages of law-enforcement sensitive documents that we are prepared to make available at the Department for review by Committee staff. These pages also bear limited redactions of text that would identify investigative subjects and sensitive techniques.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in dark ink, appearing to read "m. u. l.", likely representing Ronald Weich.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

June 23, 2011

The Honorable Eric Holder Jr.
 Attorney General of the United States
 United States Department of Justice
 950 Pennsylvania Ave, N.W.
 Washington, D.C. 20001

Dear Attorney General Holder:

I write to request that copies of all documents delivered to the Chairmen and Ranking Members of the House Committee on Oversight and Government Reform and the House Committee on the Judiciary in connection with the Bureau of Alcohol, Tobacco, Firearms and Explosives' Project Gunrunner and Operation Fast and Furious be delivered to the Senate Committee on the Judiciary, to me as its Chairman and Senator Grassley as our Ranking Republican Member. I also request that any documents made available for inspection by the bipartisan staff of those two House Committees in this regard likewise be made available for inspection by the bipartisan staff of the Senate Committee on the Judiciary under the same terms and conditions as made available to the House Committees. Finally, I request that any witnesses made available for interviews by the staffs of the House Committees in this regard be made available for interviews by bipartisan staff of the Senate Committee on the Judiciary.

Since I have prepared this letter in an effort finally to allow the Senate to vote on the President's nominations of Jim Cole to be Deputy Attorney General, Lisa Monaco to be Assistant Attorney General for National Security and Virginia Seitz to be Assistant Attorney General for the Office of Legal Counsel, my request is not intended to become operative until after the Senate Majority Leader has proceeded to those nominations, the debates are concluded and the Senate has voted on each of them.

Sincerely,



PATRICK LEAHY
 Chairman

cc: Honorable Charles E. Grassley
 Ranking Republican Member

Congress of the United States
Washington, DC 20510

June 24, 2011

Via Electronic Transmission

The Honorable Janet Napolitano
Secretary
Department of Homeland Security
3801 Nebraska Avenue, N.W.
Washington, D.C. 20528

Dear Secretary Napolitano:

As you are aware, we are conducting a joint investigation into the program of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) known as Operation Fast and Furious. This case involved a special agent from an agency within your department, the U.S. Immigration and Customs Enforcement (ICE), who was assigned to ATF's Phoenix Group VII for deconfliction purposes and operated as a member of that group. Reportedly, this agent functioned as a co-case agent. In your testimony to Congress on March 9, you stated that you had no knowledge of this case. We need to know at what level and in what detail Operation Fast and Furious was briefed and authorized by officials in the Department of Homeland Security.

We have also been made aware of alleged incidents involving another agency within your Department, the U.S. Customs and Border Protection (CBP). In a March 16 letter to CBP Commissioner Alan Bersin, enclosed as an attachment, Senator Grassley requested information on whether CBP officials had the opportunity to seize weapons from straw purchasers yet were requested not to do so. The letter referenced two separate incidents in which CBP allegedly conducted traffic stops of individuals possessing firearms, yet received requests from either the ATF or the U.S. Attorney's Office for the District of Arizona to allow the individuals to proceed.

The first incident referred to in the letter involved a January 14, 2010 traffic stop of Blas Gutierrez and Miguel Carrillo, who were found to be in possession of eight weapons, including three AK-47-type pistols. The incident was detailed in a March 8, 2011 indictment of 11 defendants, including the Mayor and the Police Chief of Columbus, New Mexico, for conspiring to smuggle weapons from the United States into Mexico.¹ The second incident outlined in the letter involved Jaime Avila, whom CBP allegedly stopped in the spring or summer of 2010 in possession of over thirty weapons, including the two WASR-10 rifles which would later be found at the scene of Agent Brian Terry's murder.

¹ Indictment, *United States v. Villalobos*, No. 11-cr-487 (D.N.M. Mar. 8, 2011).

Although CBP officials briefed Senator Grassley's staff on March 17, 2011 they refused to provide any information related to the above issues. Instead, Commissioner Bersin later responded in an April 13 letter that "any CPB records relating to these individuals would be covered by the *Privacy Act of 1974*, Title 5 USC § 552a, which limits CBP's ability to provide information in response to this request."

On May 17, 2011 Commissioner Bersin and ICE Director John Morton appeared at a hearing before the Senate Judiciary Committee. Senator Grassley broadened his inquiry to ask Commissioner Bersin whether CBP agents had ever stopped *any* suspect with weapons near the border and were instructed by ATF or the U.S. Attorney's Office to let them go. Commissioner Bersin responded that he had no personal knowledge on that matter.

As you know, Congress is explicitly exempt from the Privacy Act. Specifically, Section 552a(b)(9) of the Privacy Act permits the Executive Branch to provide to Congress or a "committee or subcommittee thereof" information that would otherwise be protected by the Privacy Act. Therefore, we write to reiterate the above questions with reference to all of the agencies under your direction:

- (1) Which agency conducted the January 14, 2010 vehicle stops of Blas Gutierrez and Miguel Carrillo referenced in their March 8, 2011 indictment? Why were these individuals not arrested?
- (2) Did any agency under your direction stop Jaime Avila near the border at any time in 2009 or 2010? If so, why was Avila not arrested at that time? Did the ATF or any U.S. Attorney's Office request at the time of the stop(s) that Avila be allowed to proceed without having his weapons seized?
- (3) Has any agency under your direction ever stopped *any* suspects with weapons near the border but received direction from the ATF or any U.S. Attorney's Office to let them go? If so, please explain each incident in detail.

Additionally, please provide the following:

- (4) The serial numbers of all weapons from September 2009 to the present that any agency under your direction encountered but did not seize along the U.S.-Mexico border.

Please provide this information, including the requested documentation, no later than July 8, 2011. If you have any questions regarding this request, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner in Chairman Issa's office at (202) 226-5049. We look forward to receiving your response.

Sincerely,



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



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

Attachment

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

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



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 24, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, and your letter of June 8, 2011, relating to Operation Fast and Furious.

We are delivering today to your office an additional 97 pages of material. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional page of law-enforcement sensitive material that we are prepared to make available at the Department for review by Committee staff. This also bears limited redactions of text that would disclose specific details about the pending investigation.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

EMBAJADA DE MÉXICO

Washington, DC
June 24, 2011

The Honorable Charles Grassley
United States Senate
135 Hart Senate Building
Washington, DC 20510

Dear Senator Grassley,

Thank you for your June 21, 2011, letter in which you request information regarding weapons seized in Mexico and connected to violent crimes, as part of the investigations that the Committee on Oversight and Government Reform of the House of Representatives and the Committee on the Judiciary of the Senate are currently conducting on Operation "*Fast and Furious*".

Allow me first to convey my recognition and appreciation for your interest in and commitment to the cooperation between our two countries as we jointly combat transnational organized crime operating on both sides of our border. Confronting this challenge certainly demands unequivocal actions from both our governments, based on the principle of shared responsibility. In this regard, we are certainly encouraged by the important and decisive steps that the U.S. Administration has taken these past years in deepening and widening cooperation with Mexico. Particularly encouraging are the results of our on-going intelligence-sharing efforts that have resulted in the arrests of key kingpins in Mexico and retail level distribution networks in the U.S.

The Government of Mexico is closely following the investigations under way and being conducted by the U.S. Department of Justice as well as by the U.S. Congress, and we evidently share the same interest in learning about the full scale and scope of the aforementioned operation. We too have requested a comprehensive investigation from the Department of Justice regarding Operation "*Fast and Furious*", and to be informed of the findings once the investigation concludes.

EMBAJADA DE MÉXICO

/2


The results of said investigation are deemed vital to complement Mexico's own evaluation of the repercussions of this Operation. We are aware of the fact that these are on-going investigations, but we are confident that the U.S. Government will honor its commitment to fully and forcefully investigate what transpired, and if probable cause is determined, apply the law to its fullest extent. Doing so would further strengthen our unprecedented cooperation in security matters.

In your letter you request specific information regarding identification of all firearms that were traced and recovered in connection to violent crimes in Mexico through the *eTrace* program. As you are certainly aware, Mexico and the U.S. are parties to a Mutual Legal Assistance Cooperation Treaty (MLAT), which establishes the mechanisms to provide, among other types of assistance, information relevant to the purposes of criminal investigations. Under the terms of the Treaty, the designated Coordinating Authorities of each country, Mexico's Attorney General's Office (PGR) and the U.S. Department of Justice respectively, will promptly comply with the requests of their counterpart, or will convey them to the national competent agencies to do so. Therefore, the Mexican Executive branch would not have the legal authority to provide that information to an entity other than the U.S. Executive branch, under the provisions of the MLAT.

Both our governments are committed to the security, the prosperity and well-being of our peoples. I am certain that the working visit of the Codel, headed by Chairman Issa, to Mexico will further strengthen our shared commitment, the important and constructive relationship between Mexico and the U.S Congress, and will help to underscore the efforts that Mexico is implementing to combat transnational organized crime.

Thank you for your leadership and commitment to enhancing the U.S.-Mexico relationship, and improving our ability to develop a holistic strategy to confront transnational organized crime and the key drivers that propel drug-related violence, drug trafficking, and drug consumption. I take this opportunity to renew to you the assurances of my high esteem and consideration.

Sincerely,


Arturo Sarukhan
Ambassador of Mexico*Best wishes,*

Cc: The Honorable Darrell Issa
United States House of Representatives

**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

Washington, DC 20226

JUN 28 2011

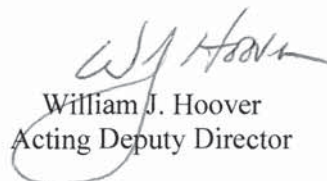
The Honorable Darrell Issa
Chairman, Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is in response to your letter to me dated June 21, 2011. As stated in your letter, on May 5, 2011, I assured your staff that the leadership of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) would not engage in any reprisals against any ATF employee who testified before the Committee on Oversight and Government Reform.

I write here to memorialize that commitment: ATF will not engage in any reprisal against any ATF employee because of his or her having testified before the Committee on Oversight and Government Reform, and will in all respects act towards such employees exactly as they would have had such employee not so testified.

Sincerely yours,



William J. Hoover
Acting Deputy Director

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 27, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, relating to Operation Fast and Furious.

We are delivering today to your office an additional 22 pages of material. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. We also have redacted text unrelated to the Committee's request in one multi-subject document. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in dark ink, appearing to read "mch".

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 29, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 35 pages of documents that we produced to the House Oversight and Government Reform Committee on June 29, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. Most of the enclosed documents bear limited redactions to protect specific details about the pending investigations, including text that would identify confidential informants, targets and sensitive techniques, plus information relating to line employees. The collection also includes multi-subject documents that bear substantial redactions of text that is not responsive to the House Oversight and Government Committee's request. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

In addition, we have located eight additional pages of law-enforcement sensitive documents that we are prepared to make available at the Department for review by Committee staff. Some of these also bear limited redactions of text that would identify investigative subjects, sensitive techniques, and portions of multi-subject documents not responsive to the House Oversight and Government Reform Committee's request. We have offered the same access to the House Oversight and Government Reform Committee and, in response to Chairman Smith's request, we will extend the same offer to the House Judiciary Committee.

The Honorable Patrick Leahy
Page Two

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R Weich', is positioned above the printed name.

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Charles Grassley
Ranking Minority Member

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 30, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, and your letter of June 8, 2011, relating to Operation Fast and Furious.

We are delivering today to your office an additional 39 pages of material. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Weich".

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

July 2011

July 2011



Chandler, Arizona
Where Values Make The Difference

July 1, 2011

Darrell Issa, Chairman
 Committee on Oversight
 And Government Reform
 U.S. House of Representatives
 C/O Henry Kerne

Charles Grassley, Ranking Member
 Committee on the Judiciary
 United States Senate
 C/O Tristan Leavitt

RE: Request for Public Records concerning Operation Fast and Furious conducted by Bureau of Alcohol, Tobacco Firearms and Explosives.

Dear Sirs:

Pursuant to your request for the above records dated June 2, 2011, the Chandler Police Department has conducted a search for the following:

1. All DIs which the Department has reason to believe may be connected to Operation Fast and Furious;
2. All DRs that list U.S Attorney Emory Hurley as the point of contact;
3. All ERs from September to the present where firearms were recovered attendant to investigations into homicide, aggravated assault, kidnapping, or home invasion.

Please be advised that the Department's search has uncovered no DRs pertaining to request numbers 1 and 2 above. The attached list of weapons pertains to request number 3. If you need further assistance, please do not hesitate to contact me at 480-782-4489

Respectfully,

Thomas A. Zaworski
 Assistant Chandler City Attorney
 Police Legal Advisor Unit

Mailing Address
 Mail Stop 602
 PO Box 4008
 Chandler, Arizona 85244-4008

Printed on recycled paper ♻️

Police Legal Unit
Office of the City Attorney
 Telephone (480) 782-4640
 Fax (480) 782-4652
 Web www.chandleraz.gov

Location
 Suite 202
 55 North Arizona Place
 Chandler, Arizona 85225



U.S. Department of Justice

Office of the Inspector General

July 1, 2011

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

Dear Chairman Issa:

I am writing to respond to your June 22, 2011, letter in which you raised concerns regarding the ability of the Department of Justice (Department) Office of the Inspector General (OIG) to conduct a review of Operation Fast and Furious free from political or other improper considerations. In sum, I can assure you that the OIG's review is moving forward expeditiously and, like all OIG reviews, is being conducted objectively, aggressively, and independently.

I will address the three major points raised in your letter in turn.

First, you expressed concern that officials at the Bureau of Alcohol, Tobacco, Firearms and Explosive (ATF) cited an OIG report on a separate ATF program called Project Gunrunner as a factor that prompted them to shift to "a riskier strategy" that resulted in Operation Fast and Furious.¹ However, the ATF could not have instituted the strategies we are reviewing in Operation Fast and Furious in response to our Gunrunner report because we had neither reached any findings nor provided any recommendations to the ATF at the time the ATF initiated Operation Fast and Furious.

The ATF first became aware of our findings and recommendations with respect to developing more complex firearms trafficking cases in Project Gunrunner on September 3, 2010, when we provided a draft of our report to ATF for its review prior to publication. Our understanding is that Operation Fast and Furious was initiated in late 2009 and that the investigative strategy employed in this operation was implemented shortly thereafter, well before the OIG began to formulate its recommendations relating to the investigative strategies of Project

¹ A *Review of Project Gunrunner*, issued by our office in November 2010, can be found at: <http://www.justice.gov/OIG/reports/ATF/e1101.pdf>.

Gunrunner. Contrary to the suggestion in your letter, our Gunrunner report does not recommend that ATF move to a strategy of "allowing guns to be trafficked rather than arresting straw buyers." Moreover, an interim review of the Gunrunner project issued by the OIG in November 2009 focused solely on administrative aspects of the program and did not involve an examination of ATF's investigative strategies.²

The second concern you raised in your letter is that the OIG received allegations from an ATF Special Agent about Operation Fast and Furious in December 2010 and failed to adequately follow up on those allegations. This concern is unfounded. We first learned of this agent's allegations on January 27, 2011, when a member of Senator Grassley's staff contacted me about the matter. We took these allegations very seriously as soon as we became aware of them, and we promptly followed up by interviewing the agent.³

Your third concern relates to whether there is a conflict of interest with my supervision of the ongoing OIG review because I may be under consideration for the position of Inspector General. Whether I am being considered as a nominee for the Inspector General position has no bearing on my ability to lead the OIG's review of this matter. I have been a career employee in the Department for 22 years, including 7 years as a criminal prosecutor and over 5 years in OIG senior leadership positions. Through my long history as a career public servant, I have demonstrated my ability to conduct my work with independence and objectivity.⁴

In addition, this Office has a demonstrated history of conducting sensitive reviews in an independent, objective, and aggressive manner.

² This *Interim Review of ATF's Project Gunrunner* can be found at: <http://www.justice.gov/DOJ-OIG/reports/ATF/e0906.pdf>.

³ The OIG's public webpage at <http://www.justice.gov/OIG> provides several means of reporting allegations of waste, fraud, abuse, or misconduct, including a hotline number, an e-mail address, an on-line submission form, and a fax number. We discussed with the agent the unsuccessful attempts he made to contact our office so that we could identify and correct any possible deficiencies in our intake process.

⁴ As you may be aware, in February 2011 Senator Grassley requested a determination by the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE) that the OIG be recused from conducting its review of Operation Fast and Furious for many of the same reasons you raise in your letter. The CIGIE Integrity Committee informed Senator Grassley that it found no basis for such a recusal. Indeed, the Integrity Committee characterized the OIG as "a model of independence, objectivity, and above all, integrity in every aspect of its daily pursuits." The Committee concluded by stating that the OIG "fully earned an unquestioned reputation for successfully addressing highly difficult and sensitive cases, and deserves the trust and confidence of the public." A copy of the Integrity Committee's response is enclosed with this letter.

The OIG investigative team we have assembled for the Operation Fast and Furious review is comprised of experienced attorneys, Special Agents, and analysts with a combined total of more than 70 years of investigative experience.

While I serve as Acting Inspector General, the OIG's review of Operation Fast and Furious – and all of our audits, reviews, and investigations – will be conducted free from political or any other improper considerations. At no time has any Department leader, anyone in the Administration, or anyone in Congress attempted to improperly influence our investigation. We will follow the facts in this matter wherever they may lead, and we will report our findings to the Department of Justice, Congress, and the public.

If you have any further questions, please feel free to contact me at [REDACTED]

Sincerely,

Cynthia A. Schnedar

Cynthia A. Schnedar
Acting Inspector General

Enclosure

cc: The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 1, 2011

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

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, and your letter of June 8, 2011, relating to Operation Fast and Furious.

Enclosed please find an additional 32 pages of material. Pursuant to our agreement with Committee staff, we will no longer deliver hard copies to your office. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure. In response to requests from Chairmen Smith and Leahy, we also will provide these documents to the House Committee on the Judiciary and the Senate Committee on the Judiciary, respectively.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Hank Burton for", written in dark ink.

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Elijah Cummings
Ranking Member

Congress of the United States
Washington, DC 20510

July 5, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

Yesterday, Acting ATF Director Kenneth Melson participated in a transcribed interview regarding Operation Fast and Furious and related matters with both Republican and Democratic staff. He appeared with his personal counsel, Richard Cullen of McGuireWoods LLP. His interview had originally been scheduled through the Justice Department to occur on July 13 in the presence of DOJ and ATF counsel. As you know, however, under our agreement Department witnesses who choose to attend a voluntary interview with their own lawyer are free to exercise that right rather than participate with counsel representing the Department's interests.

After being made aware of that provision of our agreement, Acting Director Melson chose to exercise that right and appeared with his own lawyer. We are disappointed that no one had previously informed him of that provision of the agreement. Instead, Justice Department officials sought to limit and control his communications with Congress. This is yet another example of why direct communications with Congress are so important and are protected by law.¹

¹ Specifically, no officer or employee may attempt to prohibit or prevent "any other officer or employee of the Federal Government from having direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress" about a matter related to his employment or the agency "in any way, irrespective of whether such communication or contact is at the initiative" of the employee or Congress (emphasis added). Moreover, the prohibition also applies to any officer or employee who "removes, suspends from duty without pay ... any other officer or employee of the Federal Government ... by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress." Consolidated Appropriations Act, 2010, P.L. 111-117, 123 Stat. 3034, § 714 (2010), as continued by §1104 of P.L. 112-10—which extends the funding levels, as well as "the authority and conditions provided in such Acts," through September 30, 2011. *See generally*,

Attorney General Eric Holder
 July 5, 2011
 Page 2 of 5

Acting Director Melson's cooperation was extremely helpful to our investigation. He was candid in admitting mistakes that his agency made and described various ways he says that he tried to remedy the problems. According to Mr. Melson, it was not until after the public controversy that he personally reviewed hundreds of documents relating to the case, including wiretap applications and Reports of Investigation (ROIs). By his account, he was sick to his stomach when he obtained those documents and learned the full story. Mr. Melson said that he told the Office of the Deputy Attorney General (ODAG) at the end of March that the Department needed to reexamine how it was responding to the requests for information from Congress.

According to Mr. Melson, he and ATF's senior leadership team moved to reassign every manager involved in Fast and Furious, from the Deputy Assistant Director for Field Operations down to the Group Supervisor, after learning the facts in those documents. Mr. Melson also said he was not allowed to communicate to Congress the reasons for the reassignments. He claimed that ATF's senior leadership would have preferred to be more cooperative with our inquiry much earlier in the process. However, he said that Justice Department officials directed them not to respond and took full control of replying to briefing and document requests from Congress. The result is that Congress only got the parts of the story that the Department wanted us to hear. If his account is accurate, then ATF leadership appears to have been effectively muzzled while the DOJ sent over false denials and buried its head in the sand. That approach distorted the truth and obstructed our investigation. The Department's inability or unwillingness to be more forthcoming served to conceal critical information that we are now learning about the involvement of other agencies, including the DEA and the FBI.

The Role of DEA, FBI, and Other Agencies

When confronted with information about serious issues involving lack of information sharing by other agencies, which Committee staff had originally learned from other witnesses, Mr. Melson's responses tended to corroborate what others had said. Specifically, we have very real indications from several sources that some of the gun trafficking "higher-ups" that the ATF sought to identify were *already known* to other agencies and may even have been paid as informants. The Acting Director said that ATF was kept in the dark about certain activities of other agencies, including DEA and FBI. Mr. Melson said that he learned from ATF agents in the field that information obtained by these agencies could have had a material impact on the Fast and Furious

Government Accountability Office, "Department of Health and Human Services—Chief Actuary's Communications with Congress," B-302911 (Sep. 7, 2004) (discussing the history and background in support of the government-wide prohibition on attempts to prevent direct communications with Congress). As you know, obstructing or impeding a Congressional inquiry is also a criminal violation under 18 U.S.C. § 1505.

Attorney General Eric Holder
July 5, 2011
Page 3 of 5

investigation as far back as late 2009 or early 2010. After learning about the possible role of DEA and FBI, he testified that he reported this information in April 2011 to the Acting Inspector General and directly to then-Acting Deputy Attorney General James Cole on June 16, 2011.

The evidence we have gathered raises the disturbing possibility that the Justice Department not only allowed criminals to smuggle weapons but that taxpayer dollars from other agencies may have financed those engaging in such activities. While this is preliminary information, we must find out if there is any truth to it. According to Acting Director Melson, he became aware of this startling possibility only after the murder of Border Patrol Agent Brian Terry and the indictments of the straw purchasers, which we now know were substantially delayed by the U.S. Attorney's Office and Main Justice. Mr. Melson provided documents months ago supporting his concerns to the official in the ODAG responsible for document production to the Committees, but those documents have not been provided to us.

It is one thing to argue that the ends justify the means in an attempt to defend a policy that puts building a big case ahead of stopping known criminals from getting guns. Yet it is a much more serious matter to conceal from Congress the possible involvement of other agencies in identifying and maybe even working with the same criminals that Operation Fast and Furious was trying to identify. If this information is accurate, then the whole misguided operation might have been cut short if not for catastrophic failures to share key information. If agencies within the same Department, co-located at the same facilities, had simply communicated with one another, then ATF might have known that gun trafficking "higher-ups" had been already identified. This raises new and serious questions about the role of DEA, FBI, the United States Attorney's Office in Arizona, and Main Justice in coordinating this effort. Nearly a decade after the September 11th attacks, the stovepipes of information within our government may still be causing tragic mistakes long after they should have been broken down.

Efforts to Oust Melson

In the last few weeks, unnamed administration officials have indicated to the press that Acting Director Melson would be forced to resign. According to Mr. Melson, those initial reports were untrue. Regardless of what we might have thought before about how he should handle a request to resign, we now know he has not been asked to resign. We also now have the benefit of hearing his side of the story and will have a chance to examine what he said and compare it to the other evidence we are gathering. However, that will take some time.

Attorney General Eric Holder
July 5, 2011
Page 4 of 5

Mr. Melson served as the First Assistant to the U.S. Attorney in the Eastern District of Virginia for 21 years, from 1986 to 2007. That is a career position. After the controversy over the firing of the U.S. Attorneys, he took over the Executive Office for U.S. Attorneys (EOUSA). He indicated that he was asked to convert to a non-career Senior Executive Service (SES), a politically appointed position, in order to speed the hiring process, and he agreed. However, his former position at EOUSA is currently filled by a career SES employee, Marshall Jarrett. As you know, for civil servants, the distinction between career and non-career status is significant.

In 2009, he said he was asked to take over as Acting Director of the ATF. Acting Director of the ATF is by its nature a temporary job. According to Mr. Melson, he was willing to serve the Department with the understanding that after a short tenure as Acting Director, he would return to a position as a career senior executive elsewhere within the Department.

However, two days after he told Acting Deputy Attorney General Cole about serious issues involving lack of information sharing, the *Wall Street Journal* reported that unnamed sources said that Melson was about to be ousted.

The revelations about Operation Fast and Furious have focused intense scrutiny on the ATF. It has no doubt taken a toll on the agency and the good people who work there. Much of that damage has occurred because the Department prevented ATF from being more forthcoming and responsive to questions from Congress. This is the context in which Mr. Melson decided to submit to an on-the-record interview with private counsel, pursuant to our agreement with the Department.

Technically, Mr. Melson no longer enjoys the due process protections afforded to career officials. Given his testimony, unless a permanent director is confirmed, it would be inappropriate for the Justice Department to take action against him that could have the effect of intimidating others who might want to provide additional information to the Committees.

We hope that the Department will take a much more candid and forthcoming approach in addressing these very serious matters with the Committees. If other important fact witnesses like Mr. Melson have a desire to communicate directly with the Committees they should be informed that they are free to do so. They should also be notified that if they are represented by personal counsel, they may appear with personal counsel rather than with Department lawyers.

Any decision about Mr. Melson's future with the Department would need to be justified solely on the basis of the facts and the needs of the agency, rather than on his decision to speak to us. We encourage you to communicate to us any additional significant information about any such decision so that we can work together to ensure

Attorney General Eric Holder
July 5, 2011
Page 5 of 5

that it would not impede our investigation. For now, the Office of Inspector General is still conducting its review, and we are still conducting ours. Knowing what we know so far, we believe it would be inappropriate to make Mr. Melson the fall guy in an attempt to prevent further congressional oversight.

Sincerely,



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



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

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

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

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 5, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 18 pages of documents that we produced to the House Oversight and Government Reform Committee on July 5, 2011. Pursuant to our agreement with Committee staff, we will no longer deliver hard copies to your office. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. Most of the enclosed documents bear limited redactions to protect specific details about the pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "m w", likely representing Ronald Weich.

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Charles Grassley
Ranking Minority Member

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 5, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 18 pages of documents that we produced to the House Oversight and Government Reform Committee on July 5, 2011. Pursuant to our agreement with Committee staff, we will no longer deliver hard copies to your office. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. Most of the enclosed documents bear limited redactions to protect specific details about the pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "m w", is located below the word "Sincerely,".

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Charles Grassley
Ranking Minority Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 6, 2011

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

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letter to the Attorney General dated July 5, 2011. Contrary to the suggestion in your letter, the Department of Justice has in no way sought to limit the Committee on Oversight and Government Reform's (the "Committee") appropriate access to information concerning Operation Fast and Furious. Rather, like you, the Department is deeply interested in understanding the facts surrounding Operation Fast and Furious. That is why the Attorney General several months ago asked the Department's Inspector General to look into concerns raised about this Operation and why the Department has and will continue to cooperate with that ongoing independent inquiry. That is also why the Department has assigned dozens of attorneys and reviewers to work on the Committee's extremely broad requests for information about the Operation.

We are puzzled by your criticism of the Department for its efforts to facilitate the Committee's access to documents and witnesses. Indeed, those concerns seem flatly inconsistent with statements that Chairman Issa has made on this subject in the recent past. For example, in a Committee hearing on June 15, 2011, Chairman Issa recognized that the Department had facilitated a "breakthrough" on the production of information and said "we're thankful for the breakthrough." Yet, just a few weeks later and notwithstanding the Department's continued production of documents, that "breakthrough" has been re-characterized as an effort to prevent the Committee from receiving the information it requested.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
Page Two

Similarly, while your letter suggests that the Department has made it difficult for you to gain access to witnesses, that simply is not the case. The Committee requested that the Department make witnesses available for interviews on a voluntary basis and without need for subpoenas. The Department agreed to do so and this has been a significant benefit to the Committee, whose rules make interviews conducted pursuant to subpoena much more cumbersome. If the Department were attempting to make interviews more difficult, it would not have agreed to make witnesses voluntarily available. Indeed, as noted in your letter, Acting Director Melson was scheduled for just such a voluntary interview on July 13 when he instead appeared for two sessions over the Fourth of July weekend. Even beyond the Acting Director, a number of other voluntary interviews have either been conducted or are scheduled.

Your letter further questions why the Department took a lead role in managing the process through which information from ATF's files is provided to the Committee. The answer is that the Department wanted to ensure that the information being provided to the Committee was accurate, complete and timely. After Chairman Issa expressed frustration with the pace of document production during the early phase of his review, the Department added its resources to ATF's in order to speed the production of responsive materials and provide a mechanism for orderly access by the Committee to witnesses of the Committee's choosing. Regrettably, your letter unfairly criticizes both the Department's efforts to address the Committee's concerns and the integrity of the professionals at the Department who have worked long hours to make responsive information available to you. Such criticism is unjustified and does little to advance our mutual interest in learning the true facts surrounding this matter.

Your letter also suggests that the coordination process adopted by the Department is somehow an effort to "distort[] the truth" or "obstruct[]" the Committee's review. Nothing could be further from the truth, as Chairman Issa again recognized during the Committee's June 15th hearing. There, Chairman Issa said that he "share[s] [the Department's] concerns" about the provision of sensitive law enforcement information to the Committee because "once something comes over here, with the exception of the Select Intelligence Committee, it becomes much more problematic as far as review or release [by the Committee]." The Department continues to believe – as Chairman Issa did on June 15 – that the provision of certain sensitive law enforcement information to the Committee is problematic because, once in the Committee's possession, it is likely to become public. And, once public, such information could easily jeopardize ongoing law enforcement operations.

To date, hundreds of thousands of pages of documents have been reviewed for responsiveness and over 2000 pages of documents have either been produced to the Committee or made available for review and productions of more material are occurring on a near-daily basis. While we do not question the Committee's right to conduct appropriate oversight, we reject entirely any suggestion that our extraordinary efforts have been designed to limit – rather than facilitate – the Committee's access to information.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
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The Department has a legitimate interest in ensuring that its ongoing investigations and prosecutions are not compromised. Unfortunately, your letter completely ignores the Department's equities on that issue. We believe both sides can continue to work cooperatively to address the Department's and the Committee's concerns.

The Interview of Acting Director Melson

Your letter indicates that Acting Director Melson participated in a transcribed interview with Committee staff on July 4. Your letter fails to note, however, that Acting Director Melson also submitted to a three-hour interview by Committee staff on July 3 that was not transcribed. The Department of Justice learned of these significant facts for the first time last evening, when Acting Director Melson provided notice that these events had already occurred. Your letter recites that the interview was "extremely helpful to [y]our investigation" and that Acting Director Melson admitted "mistakes that his agency made and described various ways he says that he tried to remedy the problems." In addition, your letter explains that "it was not until after the public controversy [surrounding Operation Fast and Furious] that he personally reviewed hundreds of documents relating to the case..."

Relatedly, you express "disappoint[ment]" that, in your view, Acting Director Melson did not understand that he could have a private lawyer accompany him to an interview with the Committee. We believe that Acting Director Melson was aware of his right to private representation. The supposition of your letter is that Mr. Melson, who was a long-time Assistant United States Attorney, including service as the First Assistant in the Eastern District of Virginia, and in the Executive Office for U.S. Attorneys, did not understand that he could have a private lawyer accompany him to an interview. Lower-level employees of ATF have asked for representation by private counsel in connection with your inquiry and it seems unreasonable to suppose that Mr. Melson did not understand what appears quite clear to his subordinates.

Information Concerning Other Law Enforcement Agencies

Your letter raises concerns about the alleged role of other agencies in matters that you say touch on Operation Fast and Furious. Chairman Issa's staff previously raised this issue with representatives of the Department and it is my understanding that discussions about whether and how to provide any such sensitive law enforcement information have been ongoing. Again, such information – to the extent it exists -- is something that Chairman Issa has recognized should not simply be turned over to the Committee. Accordingly, this is not a matter of the Department attempting to keep any such material from the Committee for an improper purpose but a question of whether such material appropriately should be provided and, if so, how to best to protect ongoing investigations.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
Page Four

We trust that this letter has addressed your concerns. Please do not hesitate to contact this office if we may be of further assistance on this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc:

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

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

JUL-06-2011 16:24

Gila Sheriff Globe

P.001

Thomas H. Melcher
Chief Deputy



James A. Eskew
Jail Commander

Office of
Sheriff of Gila County
John R. Armer

Date: 7/6/11
To: Chairman Darrell Issa or Ranking Member Charles Grassley
Fax Number: 202- [REDACTED]
From: Misty Allinson
Document Description: Records pertaining to Operation Fast and Furious
Number of Pages (including cover sheet): 48

If documents received were not legible, please call:
(928) [REDACTED] Fax: (928) [REDACTED]

Additional Comments: Per your request

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P.O. Box 311, Globe, AZ 85502 – Phone: (928)425-4449 – Toll Free: (800) 635-8017 – Fax: (928) [REDACTED]
108 Main St., Payson, AZ 85541 – Phone: (928)474-2208 – Toll Free: (866) 866-4452 – Fax: (928) [REDACTED]



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 6, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 16 pages of documents that we produced to the House Oversight and Government Reform Committee on July 6, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 9 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by Committee staff. There are significant redactions of non-responsive text in several multi-subject documents and limited redactions of text that would disclose specific details about the pending investigation. In response to Chairman Smith's request, the documents will also be made available for review at the Department by staff of the House Committee on the Judiciary.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Charles Grassley
Ranking Minority Member

JUL-7-2011 09:08 FROM: GILBERT POLICE ADMIN (480) [REDACTED]

TO: 1208 [REDACTED]

P. 1

Gilbert Police Department
75 E. Civic Center Drive
Gilbert, Arizona 85296

Fax Transmittal
Please Deliver Immediately

To: Tristan Leavitt
Henry Kerner

Fax: 202 [REDACTED]
202 [REDACTED]

From: Kate Weiby, Gilbert Police Department

Date: 07/07/11

Re: Operation Fast and Furious, Follow-Up Request

Total number of pages, including cover page: 2

Attached are the serial numbers of the firearms involved from the previously identified Gilbert Police reports.

Sincerely,
Kate Weiby
Police Legal Advisor
Gilbert Police Department

[REDACTED] or direct line 480 [REDACTED]

Confidentiality Notice: The materials enclosed with this facsimile transmission are private and confidential and are the property of the Gilbert Police Department. The information contained in the material is privileged and is intended only for the use of the above named party. If you are not the intended recipient, be advised that any unauthorized disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone to arrange for return of the forwarded documents.

Congress of the United States
Washington, DC 20515

July 11, 2011

The Honorable Janet Napolitano
 Secretary
 U.S. Department of Homeland Security
 301 7th Street, NW
 Washington, D.C. 20528

Dear Secretary Napolitano:

Many unanswered questions remain surrounding the death of Immigration and Customs Enforcement (ICE) Special Agent Jaime Zapata. As you know, Agent Zapata died on February 15, 2011 in Mexico in the line of duty. On June 14, 2011, representatives of the Zapata family wrote a letter to José Angel Moreno, U.S. Attorney for the Southern District of Texas, Cory Nelson, the FBI Special Agent in Charge for San Antonio, and several ICE officials in Texas requesting information surrounding Jaime Zapata's death.¹ Congress and the American people also have a legitimate interest in finding out how a federal agent's life came to such a tragic and untimely end. We trust you have now been able to gather sufficient facts to satisfy the valid concerns of the Zapata family and the public.

We therefore ask that you provide answers to the following questions:

- 1) What was Jaime Zapata's mission on the day he was murdered?
- 2) Was he armed? If not, why not?
- 3) Please describe, in detail, the actual circumstances leading up to, and including, the shooting of Jaime Zapata.
- 4) What investigative steps has the Department of Homeland Security (DHS) taken since the shooting?
- 5) Have there been any changes in DHS policy to ensure that no other agents will face similar situations?

Additionally, please provide the following:

- 6) Copies of all ICE Reports of Investigation related to this incident.
- 7) Any other investigative reports prepared by DHS regarding the Zapata murder.
- 8) Any photographs of the crime scene taken by DHS personnel.

¹ Letter from Benigno Martinez & Raymond Thomas to José Angel Moreno et al. (Jun. 14, 2011).

The Honorable Janet Napolitano
July 11, 2011
Page 2

Please provide the information and documents requested by no later than July 15, 2011 at noon. If you have any questions regarding this request, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. We look forward to receiving your response.

Sincerely,



Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives



Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

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

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

Congress of the United States
Washington, DC 20515

July 11, 2011

The Honorable Eric H. Holder, Jr.
 Attorney General
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, D.C. 20530

Dear Attorney General Holder:

We have recently learned that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has afforded potential witnesses for the Committees' investigation into Operation Fast and Furious access to a shared drive on its computer system replete with pertinent investigative documents, including official ATF e-mails. Although, our staff has been advised the Department has since terminated access to this document cache, we write to seek additional information relating to this egregious decision. We also ask that you promptly self-report this matter to the Office of Inspector General (OIG).

As we understand it, the shared drive contains the documents that have been produced to the Committees through the course of our investigation, those made available for *in camera* review and possibly documents that the Department of Justice (DOJ) has not yet provided to the Committee. These witnesses had not previously seen many of these documents.

Allowing witnesses access to such documents could taint their testimony by allowing them to tailor their responses to what they think the Committees already know. Additionally, witnesses who gain access to documents they have not previously seen could alter their recollection of events. This practice harms not only our investigation, but also the independent investigation that you instructed the Inspector General to conduct.

One witness who had access to these documents informed us of this questionable practice:

- Q. What other documents have you gone through other than your emails?
- A. A couple of the things that have been produced. They put a link on our computer, some kind of drive that I can click on and read things that have been produced. So I do that every once in a while, but not normally.
- Q. And so what is the purpose of that, to your knowledge?
- A. Just to refresh my recollection about what is out there, you know.

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The Honorable Eric H. Holder, Jr.
 July 11, 2011
 Page 2

Q. So you have a link on your computer so that you know what we have been provided by Justice?

A. Yes. There is a link in our computer for Gunrunner, Fast and Furious produced to Congress, and there is updates every once in a while of those documents that are being produced.¹

Yet in a May 5, 2011 meeting with Committee staff, an Associate Deputy Attorney General expressed the Department's concern that the Committee might allow witnesses exposure to documents they had not previously seen. He further stated:

To the extent that you nevertheless plan to interview our trial witnesses prior to trial, we would appreciate you taking the following steps to help reduce the risk of harm to the case that could arise from such interviews. First . . . we ask that you not show the witnesses new documents, as exposing the witnesses to facts that are not already within their personal knowledge may contaminate their recall of events. Second, for the same reasons, we ask that you not orally convey facts to the witness of which the witness was previously unaware.²

In essence, it appears that DOJ did to witnesses in our investigation precisely what it asked us not to do to witnesses in its investigation.

Please provide answers to the following questions no later than Monday, July 18, 2011 at noon:

1. Identify which ATF and DOJ employees had access to this shared drive.
2. Provide a log of documents and the date each document was posted to the shared drive.
3. Provide a log of any other documents relating to this investigation, not on the shared drive, to which these employees had access.
4. Provide the dates for which these employees had access to the shared drive.
5. Identify those employees who still have access to this information.

In order to mitigate any harm that may have been caused to the OIG investigation, please also send your responses to the OIG.

¹ Transcript of William McMahon, Deputy Assistant Director for Field Operations, at 96 (June 28, 2011).

² E-mail from Associate Deputy Attorney General [Name Redacted] to Chief Counsel for Investigations, H. Comm. on Oversight and Gov't Reform Steve Castor (May 17, 2011).

The Honorable Eric H. Holder, Jr.
July 11, 2011
Page 3

If you have any questions about these requests, please contact Brian Downey in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner or Jean Humbrecht in Chairman Issa's office at (202) 225-5074. Thank you for your attention to this important matter.

Sincerely,



Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives



Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

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

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

Ms. Cynthia A. Schnedar, Acting Inspector General
U.S. Department of Justice, Office of Inspector General

Congress of the United States
Washington, DC 20515

July 11, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

As our investigation into Operation Fast and Furious has progressed, we have learned that senior officials at the Department of Justice (DOJ), including Senate-confirmed political appointees, were unquestionably aware of the implementation of this reckless program. Therefore, it is necessary to review communications between and among these senior officials. As such, please provide all records relating to communications between and among the following individuals regarding Operation Fast and Furious:

- 1) David Ogden, Former Deputy Attorney General;
- 2) Gary Grindler, Office of the Attorney General and Former Acting Deputy Attorney General;
- 3) James Cole, Deputy Attorney General;
- 4) Lanny Breuer, Assistant Attorney General;
- 5) Kenneth Blanco, Deputy Assistant Attorney General;
- 6) Jason Weinstein, Deputy Assistant Attorney General;
- 7) John Keeney, Deputy Assistant Attorney General;
- 8) Matt Axelrod, Associate Deputy Attorney General;
- 9) Ed Siskel, Former Associate Deputy Attorney General;
- 10) Brad Smith, Office of the Deputy Attorney General;
- 11) Kevin Carwile, Section Chief, Capital Case Unit; and
- 12) Joseph Cooley, Criminal Fraud Section.


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The Honorable Eric H. Holder, Jr.
July 11, 2011
Page 2

These records should include e-mails, memoranda, briefing papers, and handwritten notes. Additionally, any records related to communications referring to a large firearms trafficking case within the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) or in Phoenix should be included in any production.

Please provide this information no later than July 18, 2011, at noon. If you have any questions regarding this request, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. I look forward to receiving your response.

Sincerely,



Darrell Issa
Chairman
House Committee on
Oversight and Government Reform



Charles E. Grassley
Ranking Member
Senate Committee on the Judiciary

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

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

Congress of the United States
Washington, DC 20515

July 11, 2011

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Director Mueller:

For the past six months, we have been conducting an investigation into Operation Fast and Furious, conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). This program allowed approximately 2,000 heavy-duty assault type firearms to be illegally trafficked, and hundreds of these weapons have already been recovered at crime scenes in Mexico. Operation Fast and Furious was an Organized Crime Drug Enforcement Task Force (OCDETF) prosecutor-led strike force case where ATF worked in coordination with other agencies. The Federal Bureau of Investigation (FBI) was one of these agencies. To help us better understand the role of the FBI in this multi-agency OCDETF case, we request that you produce communications relating to Operation Fast and Furious by FBI personnel based in Phoenix, Arizona, Tucson, Arizona, and El Paso, Texas, including the below-listed officials:

- 1) Nathan Gray, Former Special Agent in Charge, Phoenix Field Division
- 2) Annette Bartlett, Assistant Special Agent in Charge, Phoenix Field Division
- 3) Stephen Cocco, Acting Special Agent in Charge, Phoenix Field Division
- 4) Steven Hooper, Assistant Special Agent in Charge, Phoenix Field Division
- 5) John Iannarelli, Assistant Special Agent in Charge, Phoenix Field Division
- 6) John Strong, Assistant Special Agent in Charge, Phoenix Field Division
- 7) David Cuthbertson, Special Agent in Charge, El Paso Field Division
- 8) The Case Agent from the Tucson office in charge of the Brian Terry murder investigation

Such communications should include e-mails, documents, memoranda, briefing papers, and handwritten notes. You should also produce communications these individuals had with any ATF employee between October 1, 2009, and June 30, 2011.

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The Honorable Robert S. Mueller, III
 July 11, 2011
 Page 2

Paid FBI Informants

In recent weeks, we have learned of the possible involvement of paid FBI informants in Operation Fast and Furious. Specifically, at least one individual who is allegedly an FBI informant might have been in communication with, and was perhaps even conspiring with, at least one suspect whom ATF was monitoring. We are interested in determining the veracity of these claims. To that end, please provide a response to the following questions:

- 1) How many paid FBI informants, prospective informants assigned an informant number, or cooperating defendants ("informants") were in communication with any of the ATF suspects or their associates under Operation Fast and Furious? What was the nature of, and how frequent were, these contacts?
- 2) Were any of these informants previously deported by the Drug Enforcement Administration or any other law enforcement agency? If so, when did these deportations take place?
- 3) What is the process for repatriation for FBI informants? What other agencies are notified? Did that process occur here?
- 4) Were FBI personnel in Arizona aware of the involvement of these informants during Operation Fast and Furious?
- 5) Did other law enforcement agencies learn of the involvement of FBI informants related to Operation Fast and Furious? If so, please explain in detail when and how?

Additionally, please provide the following:

- 6) Any FBI 302s relating to targets, suspects, defendants or their associates in the Fast and Furious investigation, including the 302s provided to ATF Special Agent Hope MacAllister during the calendar year 2011.
- 7) Any other investigative reports prepared by the Bureau relating targets, suspects or defendants in the Fast and Furious case.

Jaime Zapata

Additionally, we understand that the FBI is the lead investigative agency into the death of Immigrations and Customs Enforcement (ICE) Special Agent Jaime Zapata, who was murdered in Mexico on February 15, 2011. The family of Jaime Zapata is still seeking answers about the circumstances involving his death. On June 14, 2011, attorneys for the Zapata family wrote a letter to José Angel Moreno, U.S. Attorney for the Southern District of Texas, Cory Nelson, the FBI Special Agent in Charge for San Antonio, and several ICE officials in Texas requesting information about the specific circumstances of Jaime Zapata's death.¹ Given the FBI's lead role in this investigation, we respectfully ask the following questions related to the Zapata murder:

¹ Letter from Benigno Martinez & Raymond Thomas to José Angel Moreno et al. (Jun. 14, 2011).

The Honorable Robert S. Mueller, III
 July 11, 2011
 Page 3

- 1) Was Jaime Zapata armed? If not, why not?
- 2) Was Jaime Zapata traveling in a bulletproof vehicle? If so, how was he killed inside of the vehicle?
- 3) Please describe, in detail, the actual circumstances leading up to, and including, the shooting of Jaime Zapata.
- 4) What investigative steps have been taken by the Bureau since the shooting?

Additionally, please provide the following:

- 5) Any FBI 302s relating to this investigation.
- 6) Any other investigative reports prepared by the Bureau regarding the Zapata murder.
- 7) Any photographs of the crime scene taken by FBI personnel.

Please provide the requested documents and information as soon as possible, but no later than noon on July 25, 2011. If possible, the preference is to receive all documents in electronic format.

If you have any questions regarding these requests, please contact Brian Downey in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner in Chairman Issa's office at (202) 225-5074. We look forward to receiving your response.

Sincerely,



Darrell Issa
 Chairman
 Committee on Oversight and Government Reform
 United States House of Representatives



Charles E. Grassley
 Ranking Member
 Committee on the Judiciary
 United States Senate

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

The Honorable Patrick Leahy, Chairman
 Committee on the Judiciary
 United States Senate

CLU S M. BILIRAKIS

CLERK OF THE HOUSE

UNITED STATES HOUSE OF REPRESENTATIVES
SERIALS ACQUISITION SECTION
BUREAU OF CONGRESSIONAL SERVICES
WASHINGTON, DC 20540

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Congress of the United States

House of Representatives

Washington, DC 20515-0000

July 12, 2011

Mr. Eric H. Holder, Jr.
Attorney General
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Mr. Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue NE
Washington, DC 20226

Dear Attorney General Holder and Director Melson:

I am writing to share my deep concern about reports that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and the Department of Justice (DOJ) have participated in multiple acts of "gun walking," purposely allowing firearms to pass from straw purchasers into the possession of criminals and other dangerous third party organizations. These reports raise troubling questions about the motives, intentions, and competency of the ATF and the DOJ.

The ATF has noted that illegal weapons trafficking is a "problem with consequences on both sides" of our border, and that ATF's objective should be to prevent dangerous foreign groups and organizations from obtaining firearms "which they employ to murder rival drug traffickers, civilians, as well as political, military, and law enforcement figures in order to strengthen their grip on the lucrative drug and firearms routes into and out of the United States." However, two weapons found at the scene of the murder of U.S. Border Patrol Agent Brian Terry were traced back to the ATF's "Operation Fast and Furious" – a gun walking operation conducted by the ATF's Phoenix Field Division. This evidence suggests that the federal government has severely failed the very objective it proposed for Project Gunrunner, the ATF's comprehensive strategy to reduce violent crime associated with foreign criminal organizations.

In recent days, it has come to light that the ATF and DOJ may have participated in the act of "gun walking" beyond the acts conducted within the scope of "Operation Fast and Furious." Recent reports have suggested that Project Gunrunner may not have been limited to weapons trafficking to Mexico and that similar programs included the possible trafficking of arms to dangerous criminal gangs in Honduras with the knowledge of the ATF's Tampa Field Division.

WWW.BILIRAKISHOUSE.ORG

CLERK OF THE HOUSE

and the Department of Justice's Middle District of Florida through an operation known as "Operation Castaway."

As a member of the House Committee on Homeland Security and a member of the House Committee on Foreign Affairs, I find it troubling that the United States government would willfully allow weapons to be acquired by dangerous criminal and drug trafficking organizations, in direct contravention to our strategic and national interests.

I would therefore appreciate your answers to the following questions.

1. Can you confirm whether or not the ATF Tampa Field Division and/or the Department of Justice's Middle District of Florida participated in a "gun walking" scheme that allowed weapons to be trafficked to Honduras?
2. If so, does the ATF or the DOJ have knowledge of any of these firearms ending up in the possession of the notorious MS-13 gang?
3. How many guns have been allowed to pass into Honduras and how many have since been accounted for?
4. Were trafficked weapons subject to any special monitoring processes once they left the United States?
5. Has "Operation Castaway" been terminated? If not, does the DOJ or the ATF plan to terminate this program or urge its termination?
6. Has the DOJ or the ATF established any criteria or guidance pertaining to what is admissible for future operations aimed at preventing firearms from being obtained and used by dangerous foreign criminal organizations in crimes similar to the murder of U.S. Border Patrol Agent Brian Terry?

It is my belief that the ATF and the DOJ operated in an extremely misguided manner in allowing guns to walk across the border and end up in the possession of dangerous criminal organizations. These actions have already resulted in the loss of human life and property. I hope that you would agree that we must not allow flawed programs to continue to operate to the detriment of the safety and security of the United States of America.

In that regard, I look forward to receiving your answers to these questions in a timely manner.

Sincerely,



GUS M. BILIRAKS
Member of Congress

Congress of the United States
Washington, DC 20510

July 12, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

There has been public speculation that gun control politics may have been a motivating factor behind approving the risky strategy used in Operation Fast and Furious. In other words, by allowing straw purchasers to continue to operate and by encouraging gun dealers to go through with what were obviously suspicious sales, the ATF helped create a “big case” in order to justify additional regulatory authorities. Unfortunately, yesterday’s announcement, requiring firearms dealers in border states to alert officials anytime they sell more than two semi-automatic rifles to someone in a five-day period, only serves to fuel such speculation.

While we have seen no evidence that this was the initial aim of Operation Fast and Furious, senior ATF officials did contemplate using the case to justify imposing additional requirements on gun dealers as early as July 2010, when straw buyers were still purchasing weapons with the approval of ATF and DOJ.¹ E-mails also indicate that six months later, after Border Patrol Agent Brian Terry was killed, senior ATF officials again discussed using the case to justify the long gun sale reporting requirement.²

There were about 93 multiple handgun purchases by Fast and Furious suspects, averaging nearly five handguns per purchase. Even if gun dealers had not been cooperating, each of these sales did trigger reporting requirements under existing regulations. Yet ATF did not use this information to interdict the flow of firearms to the

¹ E-mail from Mark R. Chait to William D. Newell, cc William G. McMahon (July 14, 2010, 10:25 AM).

² E-mail from William D. Newell to William G. McMahon (Jan. 4, 2011, 6:19 PM); e-mail from William D. Newell to William G. McMahon (Jan. 5, 2011, 1:10 PM) (talking points attached); e-mail from Mark Chait to William D. Newell, cc William G. McMahon (Jan. 26, 2011, 09:30:54).

Attorney General Eric Holder
July 12, 2011
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cartels. There were about 148 multiple long gun purchases by Fast and Furious suspects, averaging over nine long guns per purchase, mostly by just a few straw purchasers. Cooperating gun dealers reported the vast majority of these sales to the ATF contemporaneously even in the absence of a reporting requirement because they were suspicious sales to known straw purchasers. Yet ATF did not use this information to interdict the flow of firearms to the cartels.

The problem with Operation Fast and Furious was not the failure to collect enough information. It was the failure to act on information that the government had already collected.

In light of this information, please answer the following questions:

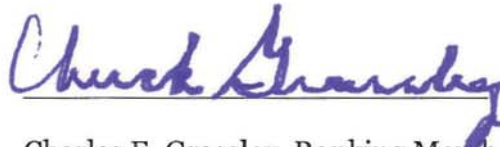
1. Is there any other evidence suggesting that ATF or DOJ officials discussed how Operation Fast and Furious could be used to justify additional regulatory authorities for the ATF? If so, are there any such indications prior to July 14, 2010?
2. Rather than collecting additional information on law-abiding gun owners, what steps have you taken to ensure that the ATF is better able to act on the information it already possesses to interdict the flow of firearms to criminals?

Thank you for cooperation and attention in this matter. We would appreciate a response by July 26, 2011. If you have any questions regarding this letter, please contact Jason Foster at (202) 224-5225 or Steve Castor at (202) 225-5074.

Sincerely,



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



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

Attachment

Attorney General Eric Holder
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cc:

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

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



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 12, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 31 pages of documents that we produced to the House Oversight and Government Reform Committee on July 12, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about a pending investigation, sensitive techniques, and information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member



Coconino County Sheriff's Office

Bill Pribil, Sheriff

July 13, 2011

Mr. Henry Kerner
[REDACTED]

On behalf of Chairman Darrell Issa
Committee on Oversight & Government Reform
U.S. House of Representatives

Mr. Tristan Leavitt
[REDACTED]

On behalf of Ranking Member Charles Grassley
Committee on the Judiciary
United States Senate

Dear Mr. Kerner and Mr. Leavitt,

This letter and attachments are in response to your June 2, 2011 request for firearms related information.

The Coconino County Sheriff's Office did not participate in any fashion with the Bureau of Alcohol, Tobacco and Firearms on Operation Fast and Furious. We have no Departmental Reports that we are aware of, that are in any way connected to this operation. We have no Departmental Reports that list Emory Hurley. Additionally, our records are shared and maintained by the Flagstaff Police Department's Records Section, and they advised they have no request for our departmental reports by either the A.T.F. or the United States Attorney's Office.

Attached you will find a list that includes the Department Report number, date, make, model and serial number of all weapons that have come into this agency's possession during the time frame you requested. These are not necessarily "recovered" weapons, but rather any firearm we have taken into possession.

Attached also is an invoice for the cost of providing these records. Payment can be made to: the Coconino County Sheriff's Office, 911 E. Sawmill, Flagstaff, AZ 86001.

If we can be of any further assistance, please feel free to call me at [REDACTED]

Sincerely,

Rex Gilliland
Operations Commander

911 E. Sawmill Rd.
Flagstaff, AZ 86001
928-774-4523 or 1-800-338-7888
www.coconino.az.gov/sheriff.aspx

"SERVICE TO COMMUNITY"



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 13, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 74 pages of documents that we produced to the House Oversight and Government Reform Committee on July 13, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. In addition, we have redacted from multi-subject documents text that is not responsive to your requests. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional nine pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by Committee staff. There are limited redactions of text that would disclose sensitive techniques and specific details about the pending investigation. In addition, text that is not responsive to your requests has been redacted from a multi-subject document. In response to Chairman Smith's request, the documents will also be made available for review at the Department by staff of the House Committee on the Judiciary.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

M. Keith Burton for
Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 14, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 36 pages of documents that we produced to the House Oversight and Government Reform Committee on July 14, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in black ink, appearing to read "m w", written over a horizontal line.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member

Congress of the United States
Washington, DC 20515

July 15, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Michele M. Leonhart
 Administrator
 U.S. Drug Enforcement Administration
 700 Army Navy Drive
 Arlington, VA 22202

Dear Administrator Leonhart:

On March 15, 2011, Senator Grassley sent you a letter requesting a briefing to gain a better understanding of the Drug Enforcement Administration's (DEA) involvement in Operation Fast and Furious. Conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Operation Fast and Furious, was an Organized Crime Drug Enforcement Task Force (OCDETF) case. That letter is attached for your ready reference. Nearly four months later, your agency has yet to respond directly.

On April 12, 2011, the Department of Justice (DOJ) responded on behalf of DEA. In its letter, DOJ stated:

Generally speaking, . . . when another Department component leads an OCDETF investigation, DEA works cooperatively to support drug-related aspects of the investigation. Such cooperation means that DEA may share investigative expertise, report leads, and provide manpower to assist in an investigative or enforcement operation as requested by the lead investigative agency.¹

This information sharing, or lack thereof, is precisely the reason Senator Grassley made the initial request. Consequently, we request that you make arrangements by no later than July 22, 2011 for DEA supervisors and personnel with specific knowledge of details

¹ Letter from Assistant Attorney General Ronald Weich to Senator Charles E. Grassley (Apr. 12, 2011).

The Honorable Michele M. Leonhart
July 15, 2011
Page 2

related to Operation Fast and Furious and the parallel DEA case to brief members of both of our staffs.

In addition to the aforementioned briefing, please provide the following documents:

- 1) The number of informants or cooperating defendants handled by other agencies identified in the course of any investigations related to Operation Fast and Furious defendants. For each informant or cooperating defendant, please identify the other agency, the date that DEA learned of their informant or cooperating defendant's status, and a description of how the DEA learned of their informant or cooperating defendant's status.
- 2) All information related to indicted Fast and Furious suspect Manuel Fabian Celis-Acosta.
- 3) A list of all personnel designated as DEA liaisons with other federal law enforcement agencies in Arizona, New Mexico, and Texas.

Please also include any communications of the following individuals at DEA relating to Operation Fast and Furious or Manuel Fabian Celis-Acosta:

- 1) Elizabeth Kempshall, Special Agent in Charge, Phoenix
- 2) Doug Coleman, Acting Special Agent in Charge, Phoenix
- 3) Chris Feistle, Assistant Special Agent in Charge, Phoenix
- 4) Albert Laurita, Assistant Special Agent in Charge, Tucson
- 5) David Hathaway, Resident Agent in Charge, Nogales
- 6) Joe Muenchow, Resident Agent in Charge, Yuma

These records should include emails, memoranda, briefing papers, and handwritten notes. You should also produce communications these individuals had with any ATF employee from between October 1, 2009, and June 30, 2011.

The Honorable Michele M. Leonhart
 July 15, 2011
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Please provide the documents and information requested no later than July 29, 2011. If you have any questions regarding this request, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. Thank you for your prompt attention to this important matter.

Sincerely,



Darrell Issa
 Chairman
 Committee on Oversight and
 Government Reform
 United States House of Representatives



Charles E. Grassley
 Ranking Member
 Committee on the Judiciary
 United States Senate

Enclosure

cc: The Honorable Eric H. Holder, Jr., Attorney General
 United States Department of Justice

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

The Honorable Patrick Leahy, Chairman
 Committee on the Judiciary
 United States Senate

Congress of the United States
Washington, DC 20515

July 18, 2011

The Honorable Eric H. Holder, Jr.
 Attorney General
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, D.C. 20530

Dear Attorney General Holder:

We received your letter of July 6, 2011.¹ Your letter responded to our letter of the evening before where we informed you that ATF Acting Director Kenneth Melson testified about ATF's Operation Fast and Furious on the 4th of July. We were surprised by the tone of your letter and also by your willingness to mischaracterize Chairman Issa's words. The Department's extraordinary steps to restrict the flow of information to Congress served no one's interest in this case.

In his July 6 letter, the Assistant Attorney General for Legislative Affairs claimed to be "puzzled" by our criticism of the Department's lack of cooperation in this investigation.² Since Senator Grassley personally informed you about Operation Fast and Furious in January of this year, the Department seems to have been unable to fully grasp the magnitude and seriousness of this issue. Acting Director Melson's 4th of July testimony shed new light on what has been going on inside the Department as it comes to grips with what happened in its once prized, multi-agency Operation Fast and Furious case.

The Justice Department prevented Acting Director Melson from communicating with Congress and even his own staff.

The Department has blocked the flow of information from the Acting Director's office. Mr. Melson testified:

[A]fter receiving [Senator Grassley's initial] letter, our first instinct and intuition was to directly march over to Senator Grassley's office and brief him on what Fast and Furious was for purposes of explaining the concept and the role it played and how it got there, and where ATF was going in it. And we expressed that desire to the [Deputy Attorney General]'s office.³

As you know, the Department did not permit Mr. Melson to brief Senator Grassley. Instead, the Department devised a strategy to withhold information from the Senator. Mr. Melson testified further:

¹ Letter from Asst. Att'y Gen. Ronald Weich to Chairman Darrell Issa and Ranking Member Charles Grassley, July 6, 2011, at 1 [hereinafter Letter of July 6].

² *Id.*

³ Transcript, Transcribed Interview of Acting Director Kenneth Melson, July 4, 2011, at 30. [hereinafter Melson Tr.]

The Honorable Eric H. Holder, Jr.
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I sat in [the office of the Associate Deputy Attorney General with responsibility for ATF] one day when they were writing the letter to Senator Grassley about him being only a ranking member and not the chair of the committee. I sat there across the desk from [him], as I recall, and said, this is really just poking [Senator Grassley] in the eye. What's the sense of doing this? Even if you say you can't give it to him, he's going to get it through the back door anyhow, so why are we aggravating this situation.⁴

Instead of giving Congress information, the Department quarantined ATF and sent officials with no personal knowledge of the facts to deny the whistleblower allegations in a widely attended briefing open to all Senate Judiciary staff on February 10, 2011. Instead of providing Congress answers from the individuals best-positioned to provide them, Mr. Melson and his staff were muzzled. The decision to withhold information at the earliest sign of congressional interest set the Justice Department on a course that required Congress to aggressively pursue testimony and documents elsewhere. As you now know, this was entirely avoidable. The Department's leadership chose to protect its own interests at the expense of exposing the leadership of a subordinate agency to Congressional scrutiny.

While Congress waited, ATF's senior leaders examined how and why Fast and Furious happened. Mr. Melson and his staff identified institutional problems. They concluded that the Phoenix Field Division needed new supervision and reassigned every manager involved in Fast and Furious. Mr. Melson wanted to share this important development with Congress to show that ATF was taking the allegations seriously. The Department resisted. Mr. Melson observed that "[t]he [Deputy Attorney General's] office wasn't very happy with us, because they thought this was an admission that there were mistakes made. **Well, there were some mistakes made.**"⁵

Your Department's leadership chose not to share this information with Congress. Instead, congressional investigators learned of this development directly from ATF agents interviewed without the Department's cooperation in Phoenix and Washington. The Department treated the Fast and Furious inquiry as merely a public relations problem, rather than a legitimate topic in need of congressional oversight and corrective action.

The Department needs to transition out of damage control mode. Just two days after Mr. Melson raised concerns about ATF's failure to communicate with the FBI and DEA about the potential role of paid informants in Fast and Furious—and just one day after the House Committee on Oversight and Government Reform held a hearing that highlighted ATF's missteps—an anonymous source leaked a report to the *Wall Street Journal* that Mr. Melson was about to be ousted. According to the unnamed source, Andrew Traver, head of ATF's Chicago Field Division, would replace him. The rumor mill had Mr. Traver on the job as soon as July 5, 2011:

⁴ *Id.* at 133.

⁵ *Id.* at 70 (emphasis added).

The Honorable Eric H. Holder, Jr.
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Q You mentioned earlier that after our hearings, hearings on the 15th, you had a meeting with the [Deputy Attorney General James Cole] on the 16th.

A On the 16th.

Q And during that meeting, was there any discussion about whether you would be leaving the agency.

A I think that was the meeting that I asked to have a couple minutes with him, and he and I discussed the reason for Traver coming in.

* * *

Q On Friday night around 7:00 or 8:00 at night *The Wall Street Journal* reported that you were going to be asked to step down.

A Uh-huh.

Q Did that surprise you, given that that you as recently as the day before had a personal interaction with your immediate supervisor, the [Deputy Attorney General James Cole], and you were told that you would be told in person rather than read it in the newspaper.

A Yes, I was surprised at it.

* * *

Q When you had become aware that Mr. Traver was coming to town -- was he coming to meet [Mr. Cole,] the [Deputy Attorney General].

A That's what I understand.

Q Did you hear any rumor that Mr. Traver was telling people that he would be in your office by July 4th.

A That was the rumor that was circulating around ATF headquarters, that he would be in not on the 4th but shortly after the 4th.⁶

Melson's interview with congressional investigators was originally scheduled through the Justice Department to occur on July 13 in the presence of Department lawyers. The Inspector General then scheduled an interview with him for July 7, in advance of his congressional interview.

⁶ *Id.* at 184-188.

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 July 18, 2011
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However, once Mr. Melson was advised directly by our staff about the option to appear without Department minders, he chose to appear immediately with his own lawyer instead.

Your staff's July 6 letter contains a misinterpretation of our concern about the Department's failure to communicate to Mr. Melson his option to appear outside the presence of Department lawyers. The issue was not whether Mr. Melson had a right to personal counsel, which we presume he knew. The issue was whether he knew that the Department had agreed to allow witnesses to appear *voluntarily* and *without* DOJ handlers. He did not. By contrast, the agent interviews cited in your staff's letter were conducted to satisfy obligations pursuant to House Committee subpoenas and were not agreed to by the Department. Once again, this demonstrates why it is so important that congressional staff have direct communications with agency personnel.

The Department's efforts to isolate Mr. Melson went so far as to prevent him from communicating with his own staff about Fast and Furious. Mr. Melson testified:

Part of the problem, and one of the things that frustrated me was that I have not been allowed to communicate to the troops about anything. So, for example, earlier on, I wanted to do a broadcast that just talked about the case, because everybody was wondering what's this case about? What are you doing at headquarters? How come you were not issuing press releases and how come you were not ordering press conferences and pushing back and things like that? And **I was told not to do that**. Then after we wanted to do several things to talk to our people about what this case was about, what it wasn't about, and you know, where we were going and the fact that we were cooperating as much as we could with the committee and with the Department, but **we were restrained from doing that**. And even after your hearings on the -- was it the 16th or whatever that Wednesday was, we wanted to do the same thing, and they said, well, let us read it first. So we finally drafted something and sent it over to them. I don't know whether we ever got it back, but **it has restrained our ability to work with our people**⁷

In short, we asked to speak to Mr. Melson months ago. Mr. Melson desired to speak as far back as January. Now that he has shared what he knows with Congress, the Department needs to move from spin mode to disclosure mode.

According to the July 6 letter, Main Justice took over the document production process because it "wanted to ensure that the information being provided to the Committee was accurate, complete and timely."⁸ In fact, the Department's management of the process has prevented the Committee from gaining access to documents and information. The Department has repeatedly pointed to the existence of ongoing criminal cases to justify withholding evidence. Yet months

⁷ *Id.* at 110-111 (emphasis added).

⁸ Letter of July 6 at 2.

The Honorable Eric H. Holder, Jr.
 July 18, 2011
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ago, ATF leadership realized that they could have provided information to Congress if they had been allowed to do so:

[W]e were concerned that the information was not getting to you all. I'm not saying that I would have given you what we call open discovery [B]ut we don't need to talk -- in order to let you know what's going on, we don't need to talk about [hypothetically] what happened on [a particular date] at the 7-11 parking lot on [a particular] Street in Phoenix. We don't have to get into that type of detail to explain what our role was and what the proposed strategy was, and what we did well and what we did badly, and what we won't do again, and what we have done to fix it. And so there were ways in which I think it could have been handled differently.⁹

The Slow Roll

In your July 6 letter, the Department touted the fact that, "To date, hundreds of thousands of pages of documents have been reviewed for responsiveness and over 2000 pages of documents have either been produced to the Committee or made available for review. . . ." ¹⁰ It was also noted that the Department has assigned dozens of attorneys to work on our "extremely broad requests for information about the Operation."¹¹ Contrary to that assertion, however, our requests have been specific and tailored as narrowly as possible to obtain the necessary information. This is no fishing expedition.

We identified several specific documents for immediate production, yet the Department has refused to produce them. For example, we sought a narrow category of records relating to a key December 17, 2009 meeting between ATF, Arizona U.S. Attorney's Office officials, and a cooperating gun dealer. These documents have yet to be provided or made available for review. The only explanation offered for withholding them has been a vague and undefined assertion that the records are "law enforcement sensitive." Meanwhile, the Department acknowledges that we are already in possession of many more truly sensitive documents that have not been inappropriately disclosed. The December 2009 meeting is critical because it occurred immediately after an unusual spike of activity by the straw buyers in which just a few of them purchased 212 guns in six days, primarily from one cooperating gun dealer. According to witnesses, that meeting was for the purpose of convincing the gun dealer to continue selling to the suspects and continue providing information to the ATF despite misgivings caused by the high volume of purchases. The Department withheld records about that meeting. Yet, we learned from Mr. Melson that a key record purporting to memorialize that meeting was dated sometime *after* the controversy broke. Creating such a record more than a year after the meeting could suggest an attempt to paper the file with an after-the-fact rationalization rather than an honest attempt to record an accurate and contemporaneous account of the meeting. However, we are unable to fully evaluate these issues because the Department is still withholding the documents.

⁹ Melson Tr. at 134.

¹⁰ Letter of July 6 at 2.

¹¹ *Id.* at 1.

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After issuing a subpoena, Chairman Issa wrote numerous letters to ATF and DOJ – dated April 8, April 11, April 20, May 3, May 5, and June 8 – before receiving a single piece of paper responsive to the subpoena that was not already public. It was not until the eve of a hearing in which constitutional law experts testified that contempt proceedings may be necessary that the Department turned over the first non-public documents. On June 10, 2011, we went from having received zero non-public documents to having received just 69 pages of non-public documents. At the time, it seemed like an initial act of good faith. Accordingly, Chairman Issa acknowledged what appeared to be a “breakthrough.” Despite being fully aware of this context, in the July 6 letter your staff chose to cite Chairman Issa’s comment as evidence of the Department’s full cooperation. Acknowledging that the Department had finally provided a few non-public documents is hardly an excuse for withholding the vast majority of documents for months. Nor does it justify continuing to withhold key documents now. It has always been our position that Congress is entitled to receive possession of every single responsive page.

Chairman Issa’s acknowledgment of an initial “breakthrough” came *before* we learned that Mr. Melson had identified for the Deputy Attorney General’s office certain documents, including a particular report of investigation that he characterized as a “smoking gun.”¹² That report is still being withheld. The acknowledgment of a “breakthrough” also came *before* we learned that Mr. Melson identified for the Deputy Attorney General’s office information in the wiretap application that contradicted the Department’s previous public denials. That information is also still being withheld. Thus, we are disappointed that the Department is now throwing those words back at the Chairman publicly while keeping these important facts secret. This is not productive or conducive to arriving at mutually agreeable accommodations of one another’s legitimate interests.

The 2,000 pages of documents made available to date are a tiny fraction – less than one percent – of the documents the Department, by its own admission, has reviewed. This is alarming. If the attorneys working on the Department’s response to the Committee spent less time redacting documents and more time producing them, we would be much closer to understanding the failures in leadership surrounding Operation Fast and Furious.

¹² Melson Tr. at 78-79 (emphasis added). Mr. Melson testified:

I assigned a task force of agents to read through all the [Reports of Investigation or ROIs] to determine whether or not the allegations that were being made by individuals in CBS and Senator Grassley were true or not, because frankly we didn't think they were true.

They did a review of those and found nothing that would indicate that that was true. I then asked them to bring to me all the ROIs that pertained to [one defendant] in particular and **I read through those and found ROIs that indeed suggested that interdiction could have occurred, and probably should have occurred, but did not occur.**

And it was at that point that I took that ROI and gave it to our people and the Department. In fact, we briefed and gave it to [the Associate Deputy Attorney General with responsibility for ATF] in particular, because to me that was a **smoking gun** that we really needed to look at the rest of this particular case.

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The FBI's Role

In its July 6 letter, the Department questioned whether information concerning the involvement of other law enforcement agencies should be provided, yet carefully avoided denying the validity of the concerns raised in our letter. Undoubtedly, all relevant information must be provided. Congress expects a full and complete production of documents responsive to the subpoena issued on March 31, 2011—more than 3 months ago—as well as all documents responsive to related letter requests.

Witnesses have testified that some of the very targets of Operation Fast and Furious – the high-level weapons suppliers to the cartels – may have been paid informants. While this is preliminary information, if true, the implications are dramatic. Not only would this mean taxpayer dollars could have funded those helping to arm Mexican drug cartels, it would also mean ATF unwittingly targeted unindictable defendants:

Q [W]e've come to learn, not from you but from other witnesses, plural, that the folks immediately up the line from [the straw purchasers and money men] are unindictable folks, because they are working with [government agencies]. Is that consistent with your understanding.

A That's consistent with my understanding, yes.

Q That they may be, in fact, FBI informants and they may be receiving money from the FBI, which presents the remarkable situation that you've got the money man in this firearms trafficking matter that is perhaps ATF's biggest case in years, a most sophisticated case, you are trying to track money, you are trying to get the cartel contacts, and all along the money is possibly being supplied by an FBI informant. How does that make you as the head of ATF, the head of an agency, how does that make you -- how does that make you feel.

A Well, it makes me feel very torn. Torn between doing my job as a good citizen . . . on the one hand. And on the other hand, representing my agency and not letting my agency be dragged through the dirt unnecessarily. And so – that's why I raised the issue with the IG. That's why I raised the issue with the [Deputy Attorney General], so that it can be handled appropriately. And that's why I continue to defend ATF as a whole, and hope that its agony right now is not compounded by the acts of other agencies in our government.

* * *

The Honorable Eric H. Holder, Jr.
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Q So when you shared the information that you obtained with the [Deputy Attorney General], what was the reaction that you got from Mr. Cole.

A His words were, "we'll have to look into this."

Q Does that give you the impression that this was the first time he was learning about it.

A I couldn't draw that conclusion one way or another, although I know that others in the room had been -- I had mentioned that, too, on more than one occasion.

* * *

That's why the issue is so difficult for us in ATF, and why the issue should have been addressed immediately to determine whether there was corrective action that needed to be taken or at least someone informed of what was happening, so we were comfortable in knowing that it wouldn't just unravel at some point and really make us look bad. And the reaction I got from the [Deputy Attorney General]'s office was, oh, we'll get to that after we do the Fast and Furious investigation.¹³

There is no question that this information is relevant to our investigation. Inter-agency cooperation, especially in an Organized Crime Drug Enforcement Task Force (OCDETF) case, is of paramount importance. Any failure to communicate between and among fellow law enforcement agencies is a legitimate subject of public concern and congressional scrutiny. The Department must gather all the relevant documents in its possession related to the role of other law enforcement agencies and provide them without further delay.

The Department's response to this investigation has been a "disaster."

Acting Director Melson was totally frustrated with the Department's handling of the congressional inquiries into Operation Fast and Furious. In his view, the Department was more concerned with protecting its political appointees than with obtaining and sharing the truth. He believed that a more forthcoming approach would have been preferable for all interested parties:

Q. I will represent to you that the Department came and briefed our staff in May.

A. Yes. And that was in May. And in conjunction with ATF. . . .

¹³ *Id.* at 119-123.

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- Q. Mr. Hoover and [the Associate Deputy Attorney General with responsibility for ATF] came in, and it was a sense by then that this was a case that perhaps warranted some congressional oversight. I think the terminology shared with us was that maybe there is a there there. And I wonder if you recall at what point the Justice Department realized that indeed this was a matter worthy of congressional interest.
- A. Well, I don't know that I can say precisely when they thought it was of congressional interest. I might characterize it, and I hope I'm not going too far abroad, but I think they were doing more damage control than anything.

My view is that the whole matter of the Department's response in this case was a disaster. That as a result, it came to fruition that the committee staff had to be more aggressive and assertive in attempting to get information from the Department, and as a result, there was more adverse publicity towards ATF than was warranted if we had cooperated from the very beginning. And a lot of what they did was damage control after a while. Their position on things changed weekly and it was hard for us to catch up on it, but it was very clear that they were running the show.¹⁴

* * *

- Q. What is your -- given your experience with the Justice Department, are you disappointed with the Department as a whole, that this has shaken out as it has.
- A. Well, let me say that I am frustrated and disappointed in the way the whole thing has been handled, unfortunately. Of course, this is unfortunately my first experience with something like this with a congressional investigation.

But I think the way it was handled went sideways and it could have been avoided with perhaps a more thoughtful approach to what was going on instead of such a strident approach to it. I think there could have been accommodations made between the Hill and ATF and DOJ has to how information was shared. **It was very frustrating to all of us, and it appears thoroughly to us that the Department is really trying to figure out a way to push the**

¹⁴ *Id.* at 30-31.

The Honorable Eric H. Holder, Jr.
 July 18, 2011
 Page 10

information away from their political appointees at the Department.¹⁵


The Department should produce the documents identified by Mr. Melson months ago for the Deputy Attorney General's Office as critical to his understanding that the allegations in this case raise valid concerns. Specifically, the Department should not be withholding what Mr. Melson described as the "smoking gun" report of investigation or Mr. Melson's emails regarding the wiretap applications.¹⁶ Mr. Melson said he reviewed the affidavits in support of the wiretap applications for the first time after the controversy became public and immediately contacted the Deputy Attorney General's office to raise concerns about information in them that was inconsistent with the Department's public denials.¹⁷ The Department should also address the serious questions raised by Mr. Melson's testimony regarding potential informants for other agencies. These steps would be far more productive and would advance the Department's interests more effectively than sending a letter that takes Chairman Issa's words out of context and makes unsupported, self-serving, and conclusory assertions of full cooperation.

We are hopeful that this letter clarifies for you and your staff why we believe the Department's response has been unsatisfactory thus far and how we believe the Department could move forward more productively in the future. This should not be a public relations project. It should be a mutual effort to understand how and why the Department allowed American guns to fall into the hands of Mexican drug cartels with deadly consequences. We look forward to increased cooperation as we continue to investigate this matter.

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

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

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

¹⁵ *Id.* at 123-124 (emphasis added).

¹⁶ *Id.* at 79.

¹⁷ *Id.* at 36-37.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 18, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 66 pages of documents that we produced to the House Oversight and Government Reform Committee on July 18, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. In addition, we have redacted from multi-subject documents text that is not responsive to your requests. The nature of specific redactions is indicated by a redaction code ("RC") in accordance with the attached index. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 14 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by Committee staff. There are limited redactions of text that would identify investigative targets. In response to Chairman Smith's request, the documents will also be made available for review at the Department by staff of the House Committee on the Judiciary.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member



Pinal County Sheriff's Office

Paul Babeu
Sheriff

To Whom It May Concern:

The Pinal County Sheriff's Office is in receipt of your request for a weapons check concerning "Fast and Furious". Under the direction of Sheriff Paul Babeu we have conducted a weapons inventory focusing on the types of crimes indicated in your request and specific types of weapons you are focusing on. During this inventory search we have located the following weapons which meet your criteria:

Case#	Weapon type	Serial #
110506271	AK	CS05222
110321012	AK	A0342682
110321012	AK	GR2709
110321012	AK	DC031610
110218275	UKN used in homicide	613207
110328008	AK	94112034
110218001	ROMARM AK	1712054
110218136	AK	1985SBH1648
100911064	AK	1706119
100911064	AK	47802000
100223009	AK	1971081762
100128066	AK	1 20490 2001
100216017	WASR AK	18618287
100216017	AK	KR2247-80
110221216	WASR 10 Folder	0699680 (possible hard to read)

If you have any further request/questions for follow up please contact:

HG
Lt. Harry Grizzle
Pinal County Sheriff's Office
520-866-5241
harry.grizzle@pinalcountyaz.gov

971 Jason Lopez Circle Building C * P.O. Box 867 * Florence, AZ 85232
Main (520) 866-6800 * Fax (520) 866-5195 * TDD (520) 868-6810

JUL-20-2011 14:53

P.02/18



MARICOPA COUNTY SHERIFF'S OFFICE

JOSEPH M. ARPAIO
SHERIFF



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

Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

July 20, 2011

Dear Representative Issa and Senator Grassley,

Sheriff Arpaio has asked me to respond to your information request. Enclosed with this letter are the records of the Maricopa County Sheriff's Office that are responsive to your June 2, 2011 request. We have searched our data base for any DR's which would match the three categories set out in your request and have transmitted the face sheets and summaries by facsimile and hard copy letter.

There is no separate criminal code charge for home invasion in the Arizona Criminal Code. We did however, search any DR's which would fit the generally assumed fact pattern for that criminal conduct. If you have any questions, please feel free to contact me at [REDACTED] or write to me at the address listed above.

Sincerely,

A handwritten signature in cursive script that reads "John Mac Intyre".

Deputy Director John J. MacIntyre
Maricopa County Sheriff's Office
Wells Fargo Plaza
100 W. Washington, 19th Floor
Phoenix, AZ 85003

Wells Fargo Plaza • 100 West Washington • Suite 1900 • Phoenix, Arizona 85003
(602) 876-1000 • Statewide Toll Free 1-800-352-4553 • WWW.MCSO.ORG

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 19, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 53 pages of documents that we produced to the House Oversight and Government Reform Committee on July 19, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. In addition, we have redacted from multi-subject documents text that is not responsive to your requests. The nature of specific redactions is indicated by a redaction code ("RC") in accordance with the attached index. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in black ink, appearing to read "mcl", written over a horizontal line.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 21, 2011

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

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

Dear Chairman Issa and Ranking Member Grassley:

This responds to your letter to the Attorney General dated July 18, 2011. As an initial matter, we reject the unfounded allegations leveled at the Department and its personnel with regard to the Department's response to the Committee's Fast and Furious investigation. The facts refuting these allegations are set forth at length in our letter to you dated July 6, 2011.

Your most recent criticisms are predicated in large part on selected excerpts from what is represented to be the testimony of Acting Director Melson on July 4. As you know, we have not been provided with a transcript of the Acting Director's interview with Committee staff. In order to allow us to provide an informed response to your criticisms, we ask that you provide us with a transcript of Acting Director Melson's interview.

Other criticisms in your letter are premised on a misapprehension about the materials we have already provided the Committee. For example, your letter states that documents "relating to a key December 17, 2009 meeting between ATF, Arizona U.S. Attorney's Office officials, and a cooperating gun dealer . . . have yet to be provided or made available for review," and that this supposed failure of production demonstrates that the Department has withheld documents and failed to cooperate with your investigation. In fact, the documents you were referring to were physically produced or made available to the Committee weeks prior to your July 18, 2011 letter. The documents are Bates numbered HOCR-ATF A 001105 to 001107; HOCR-ATF A 001672 to 001673; and HOCR-ATF 001665 to 001667.

The Honorable Darrell E. Issa
 The Honorable Charles E. Grassley
 Page Two

In addition to providing the transcript to us, we request that you consider providing the transcript to the Department's Acting Inspector General, who is conducting an independent review of Operation Fast and Furious. Since you recently asked that we send copies of all documents we provide to the Committee to the Acting Inspector General, we ask that you consider whether you should provide her with a copy of the transcript of the Acting Director's interview.

The truth-seeking process will be enhanced if the Department is able to respond to your concerns in an informed manner, and we look forward to receiving your response regarding our request for a copy of the transcript of Acting Director Melson's interview.

Sincerely,



Ronald Weich
 Assistant Attorney General

cc:

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

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



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 21, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 57 pages of documents that we produced to the House Oversight and Government Reform Committee on July 21, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. In addition, we have redacted from multi-subject documents text that is not responsive to your requests. The nature of specific redactions is indicated by a redaction code ("RC") in accordance with the attached index. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 16 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by Committee staff. In response to Chairman Smith's request, the documents will also be made available for review at the Department by staff of the House Committee on the Judiciary.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member



U.S. Department of Justice
Drug Enforcement Administration

Office of the Administrator

Springfield, Va 22152

July 22, 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
 United States Senate
 Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letter of, July 15, 2011, regarding the Committee's investigation of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation called Operation FAST AND FURIOUS. Your inquiry seeks a direct response from the Drug Enforcement Administration (DEA), a briefing of your staff, and any related documents and electronic messages meeting established criteria.

DEA is reviewing its role in the OCDETF investigation, and our efforts to identify responsive documents are ongoing. We look forward to providing you with a briefing on DEA's role and deconfliction processes, but we would like to defer the briefing until our document survey and assessment are concluded. In the meantime, we hope that the summary below—based on the preliminary information available to us—will be helpful.

DEA works cooperatively with its federal, state and local partners in support of drug-related aspects of their investigations, in many cases simply sharing investigative expertise and leads or responding to ad hoc manpower requests for an investigative or enforcement operation by the lead agency. Relative to ATF Operation FAST AND FURIOUS, the targeted criminal organization is under investigation through the Organized Crime Drug Enforcement Task Force (OCDETF), whereby the resources and expertise of its member agencies, which include DEA and ATF, are brought to bear for the purpose of disrupting and dismantling the most serious drug trafficking and money laundering organizations and those primarily responsible for the nation's drug supply. Task forces dedicated to this prosecutor-led model of enforcement are known as Strike Forces.

-2-

DEA's preliminary review to identify any investigative activity associated with ATF Operation FAST AND FURIOUS revealed that the DEA El Paso Division and Phoenix Division have been indirectly involved in the ATF operation through DEA-associated investigative activity. The DEA El Paso Division responded to a duty call in March 2010 from ATF for assistance in conducting an ongoing surveillance operation in the El Paso area as part of Operation FAST AND FURIOUS.

The DEA Phoenix Division had the most notable associated investigative activity, though DEA personnel had no decision-making role in any ATF operations. During the course of a DEA Phoenix Division investigation conducted in late 2009, which was unrelated to ATF's Operation FAST AND FURIOUS, DEA intercepted conversations pursuant to court authorized electronic surveillance indicating that a subject was involved in the trafficking of weapons and small quantities of drugs. DEA performed a background check and case deconfliction on the subject and telephone number through established mechanisms. During this deconfliction, DEA discovered that the Phoenix ATF Strike Force Group had initiated an investigation in October 2009 on the subject intercepted in the DEA case. Since the subject who was intercepted was not the target of the current DEA investigation and was involved in relatively small scale drug trafficking activities, the DEA group passed the information and an audio copy of the intercepted call to the Phoenix ATF Strike Force Group. On February 19, 2010, the DEA opened a case file and assigned a DEA Special Agent to assist the ATF Strike Force in drug-related aspects of the subject's affiliated weapons and drug trafficking organization.

While we are continuing to develop information responsive to your requests, as noted above, the information currently available to us indicates that the DEA Phoenix Division support during the investigative phase of Operation FAST AND FURIOUS included the following:

- Telephone and address deconfliction through established deconfliction mechanisms.
- Issuance of administrative subpoenas for telephone subscriber information related to telephone numbers identified during the investigation.
- Funding linguist costs in the amount of \$128,000 in support of the court authorized electronic intercepts that were conducted by the ATF.
- Assistance in the "round up" phase of the case with the execution of search warrants.
- Assistance in processing four drug exhibits and submission of the same to the DEA laboratory system for evidence processing.
- Participation in defendant debriefings.
- Upon invitation from ATF, participation in the press conference held in Phoenix on January 25, 2011, along with ATF, IRS and the U.S. Attorney's Office, although DEA did not have a speaking role.

-3-

DEA does not generally designate particular personnel in the field to serve as liaisons with other federal law enforcement agencies, in part, because DEA agents often work closely with other law enforcement personnel on a routine basis. The Special Agents in Charge (SACs) have responsibility for addressing any unresolved liaison issues and a list of the current SACs in Arizona, New Mexico, and Texas is set forth below.

Phoenix, Arizona Field Division – Acting SAC Douglas Coleman
El Paso, Texas Field Division (Note: New Mexico is within the El Paso Field
Division's area of responsibility) – SAC Joseph Arabit
Dallas, Texas Field Division – SAC James Capra
Houston, Texas Field Division – Acting SAC Thomas Hinojosa

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this, or any other matter.

Sincerely,


Michele M. Leonhardt
Administrator

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

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

DARRELL E. ISSA, CALIFORNIA
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MIKE KELLY, PENNSYLVANIA

LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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FACSIMILE (202) 225-3974
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JOHN A. YARMUTH, KENTUCKY
CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPEIER, CALIFORNIA

July 25, 2011

Mr. William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE
Washington, D.C. 20226

Dear Deputy Director Hoover:

On the afternoon of Friday July 22, 2011, a witness scheduled to testify before this Committee at a hearing tomorrow, July 26, 2011, received an intimidating letter from Barry Orlow, Associate Chief Counsel for Field Operations and Information at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) seeking to set certain conditions on the witness's testimony. The letter suggests to the witness the possibility of criminal prosecution for participating in our hearing. It has thus had a chilling effect on the individual's desire to provide complete and candid recollections to Members of this Committee. Fearing reprisals, that witness is now reluctant to testify and has requested that the Committee relieve him of his obligation to appear under subpoena.

The timing and content of this letter strongly suggest that ATF is obstructing and interfering with the congressional investigation into Operation Fast and Furious. Unfortunately, this problem is not new. In April, Senator Grassley expressed his unwillingness to tolerate such behavior in no uncertain terms:

[A]ttempts to prevent direct communications with Congress are not a lawfully authorized activity of any officer or employee of the United States whose salary is paid with appropriated funds. Specifically, no officer or employee may attempt to prohibit or prevent "any other officer or employee of the Federal Government from having direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress" about a matter related to his employment or the agency "in any way, irrespective of whether such communication or contact is at the initiative" of the employee or Congress.¹

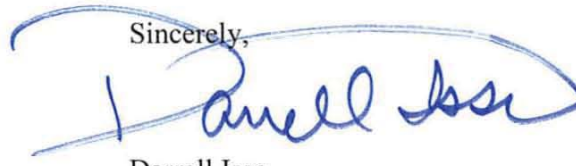
¹ Letter from Sen. Charles E. Grassley, Ranking Member, Senate Judiciary Committee, to Kenneth E. Melson, Acting Director, ATF (Apr. 8, 2011) (citations omitted).

Mr. William J. Hoover
 July 25, 2011
 Page 2

In response to inquiries about retaliation at the Committee's June 15, 2011, hearing, Assistant Attorney General Ronald Weich said, "The Department of Justice will not, would never, retaliate against whistleblowers."² In addition, I sent you a letter following that hearing, noting that "no other ATF employees who cooperate with Congress should face retaliation either."³ In your response, you assured me that "ATF will not engage in any reprisal against any ATF employee because of his or her having testified before the Committee on Oversight and Government Reform, and will in all respects act towards such employees exactly as they would have had such employee not so testified."⁴ Your letter reflected the same promise you made in person to my staff on May 5, 2011, and again at your transcribed interview on July 21, 2011.

ATF's July 22, 2011, letter appears to be an inappropriate effort to intimidate ATF personnel and discourage them from testifying before Congress. Any such action could be construed an unlawful attempt to interfere with a Congressional inquiry.⁵ As such, ATF's letter may provide guidance that is contrary to law.

I expect you to abide by your unequivocal promises. Please assure all witnesses personally that they will face no retaliation of any kind for participating in the hearing or for testifying truthfully and completely to the best of their abilities. Anything short of complete cooperation is simply unacceptable.

Sincerely,

 Darrell Issa
 Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
 Committee on Oversight and Government Reform

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

² *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes: Hearing before the House Committee on Oversight & Government Reform*, 112th Cong. 153 (testimony of Hon. Ronald Weich).

³ Letter from Rep. Darrell E. Issa, Chairman, House Committee on Oversight & Government Reform, to William J. Hoover, Deputy Director, ATF (June 21, 2011).

⁴ Letter from William J. Hoover to Chairman Darrell E. Issa (June 28, 2011).

⁵ See 18 U.S.C. § 1505.

**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

JUL 28 2011 Washington, DC 20226

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

Dear Mr. Chairman:

This responds to your letter to me dated July 25, 2011 regarding a July 22, 2011, letter from Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Associate Chief Counsel Barry Orlow to an ATF special agent who was subpoenaed as a witness before your committee at a hearing, July 26, 2011. Your letter describes the July 22 letter as "intimidating" and states that it "suggests to the witness the possibility of criminal prosecution for participating" in your hearing.

A copy of the July 22 letter is enclosed for your reference. That letter is similar to the standard document provided to ATF witnesses subpoenaed to testify in court and that I understand has been used since ATF became part of the Department of Justice in 2003. It provides guidance to our employees in the event that an attempt is made to compel them to reveal information the disclosure of which is statutorily prohibited, i.e., grand jury information, tax information; and Title III or classified information. Moreover, in an effort to encourage cooperation with the Committee, the letter further provides guidance on the types of information DOJ has already provided to Congress regarding Operation Fast and Furious and that therefore properly is the subject of testimony by the witnesses. These disclosure tenets comport with longstanding DOJ policy. I am also enclosing a copy of DOJ's letter to Senator Grassley, dated April 28, 2011, which explains that the DOJ policies and practices in this regard are consistent with the appropriations statutes Senator Grassley cited in the portion of his April 8 letter that you quote in your letter.

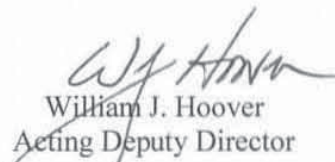
We did not intend -- and do not believe -- the July 22 letter to be in any way "intimidating." In that regard, the first sentence after the introductory paragraph states that the witness "is encouraged to answer fully and candidly all questions concerning matters within his personal knowledge." Moreover, the letter is devoid of any mention of criminal prosecution for participating in your hearing. In any event, ATF remains committed to ensuring that no witness will face retaliation of any kind for participating in the hearing or testifying truthfully and completely to the best of their abilities. I spoke with each of our employees who received the letter to ensure they were so informed.

-2-

The Honorable Darrell Issa

We trust that this letter has addressed your concerns. Please do not hesitate to contact me if I may be of further assistance on this matter.

Sincerely yours,



William J. Hoover
Acting Deputy Director

cc: Representative Elijah Cummings
Senator Charles Grassley

Enclosures

**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Chief Counsel

Washington, DC 20226
www.atf.gov

Counsel
Federal Law Enforcement Officers Association
1100 Connecticut Ave., NW, Suite 900
Washington, DC 85004

JUL 22 2011

Dear Sir/Madam:

We understand that the House Committee on Oversight and Government Reform has issued a subpoena for your client, Special Agent Carlos Canino, to testify before the Committee at a hearing on July 26, 2011. The Committee's subpoena directs Special Agent Canino to testify about information derived from his employment with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and we understand that he wishes to provide testimony.

In testifying at a hearing before the House Committee on Oversight and Government Reform, Special Agent Canino is encouraged to answer fully and candidly all questions concerning matters within his personal knowledge. His appearance before the Committee does not, of course, relieve him of any obligations of secrecy concerning certain matters arising from his official duties as an ATF Special Agent. For example, he may not reveal any information covered by Rule 6(e) of the Federal Rules of Criminal Procedure relating to matters occurring before a grand jury; tax information; or Title III or classified information. An extended, but not exhaustive, list of such matters may be found in 28 C.F.R. § 16.26. We note that section 16.26 does not apply on its face to Congressional hearings and it is cited only by way of illustration.

In sum, he should not reveal any information prohibited from disclosure by statute, regulation, or court rule. In addition, longstanding Department policy precludes discussing any information regarding the details of any ongoing investigation, such as witnesses; targets or subjects; evidence; the identity of a confidential informant; or investigative techniques. In this instance, the Department has provided documents and other information about the genesis and strategy of Operation Fast and Furious, with particular reference to strategic decisions, if any, about the timing of arrests in connection with alleged sales of firearms to suspected straw purchasers, the legal basis to seize such firearms, and any efforts to track the firearms to individuals higher up the chain of command in firearms and drug trafficking enterprises. Consistent with the limitations above, he is authorized to testify about such matters within his personal knowledge.

-2-

Counsel

If you have any questions regarding this matter, please contact me at [REDACTED]. Your cooperation in this matter is appreciated.

Sincerely Yours,

A handwritten signature in dark ink, appearing to read "Barry Orlow". The signature is fluid and cursive, with the first name "Barry" and last name "Orlow" clearly distinguishable.

Barry S. Orlow
Associate Chief Counsel
(Field Operations and Information)

August 2011

August 2011

Assistant Secretary for Legislative Affairs

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

August 3, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

Thank you for your July 11, 2011 request for information relating to the murder of Special Agent Jaime Zapata. Special Agent Zapata's death is a loss that has been felt by the entire law enforcement community and DHS in particular. DHS has made, and will continue to make, a concerted effort to ensure proper communication of developments in the case where sharing information will not interfere with the ongoing investigation being conducted by the Federal Bureau of Investigation (FBI). We welcome the opportunity to provide a representative from U.S. Immigration and Customs Enforcement (ICE) to brief you on these matters. Within the constraints of the investigation and ongoing prosecution, we have made every effort to respond to your specific questions.

With regard to items one (mission), three (circumstances), six (reports of investigation), and eight (photographs), which specifically relate to the investigation, we regret that DHS is unable to comment on these questions at this time due to the sensitivities of the ongoing criminal investigation led by the FBI. DHS cannot release information uncovered during the investigation, including answers to the specific questions you asked that could potentially interfere with the successful prosecution of those involved.

With regard to item two (whether Agent Zapata was armed), as this is related to the circumstances of the event under investigation, we must defer to the FBI. With regard to any more general questions related to U.S. Government personnel carrying weapons in foreign countries, we refer you to the Department of State. Because DHS personnel working in Mexico follow the policies and protocols established by the U.S. Embassy in Mexico, the Department of State is the proper entity to address such questions.

We note that ICE is currently in the process of responding to a request for information from the Zapata family. In doing so, ICE is reviewing all Reports of Investigation (ROIs) relating to the incident and will provide responsive information in accordance with applicable laws. We will, of course, be happy to share the results of this review with you as soon as they are available; this will respond to item six of your letter. As mentioned above, however, ROIs relating specifically to the investigation may not be released due to the ongoing investigation. In response to item seven, the Department has not prepared any investigative reports, other than those referenced above.

www.dhs.gov

The Honorable Charles E. Grassley
Page 2

With respect to items four and five (investigative steps and changes in policy), in coordination with the FBI and Department of Justice, and consistent with ICE policy on review of critical incidents, ICE is undertaking a review of the incident and surrounding circumstances. Finally, ICE continues to work with the Department of State on recommended policies and procedures for Embassy personnel stationed in Mexico. We will be happy to provide additional information on these efforts in a briefing.

We assure you that DHS, and ICE in particular, have made a concerted effort to ensure the Zapata family is aware of developments in the case in a timely manner and answer as many questions as possible within the constraints of the ongoing investigation and prosecution. In addition to the close and continuing relationship ICE San Antonio Special Agent in Charge Jerry Robinette has developed with the Zapata family, ICE leadership, including Director Morton, Deputy Director Kibble, and Homeland Security Investigations Executive Associate Director Dinkins continue to meet with and support the entire Zapata family.

Unfortunately, until such time as the investigation is closed and those responsible for these heinous acts are prosecuted, we are unable to release any information beyond what is outlined above, as it may substantially interfere with efforts to bring the perpetrators of this terrible crime to justice.

Thank you again for your letter. If I can be of any further assistance, please contact me at [REDACTED]. An identical letter has been sent to Chairman Issa, who cosigned your letter.

Respectfully,



Nelson Peacock
Assistant Secretary for
Legislative Affairs

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

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

JOHN CORNYN
TEXAS

United States Senate

WASHINGTON, DC 20510-4305

August 11, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue Northwest
Washington, DC 20530-0001

Dear Attorney General Holder:

I write to express my deep concerns regarding press reports of an ATF “gun-walking” program that allegedly operated in the state of Texas. I request that the Department of Justice immediately brief my office regarding the scope and details of any past or present ATF “gun-walking” programs operated in the state of Texas.

As you are aware, recent congressional investigations have revealed the existence of a controversial “gun-walking” program operated by the ATF in Phoenix, Arizona. As a part of that program, known as “Operation Fast and Furious,” ATF agents instructed federally licensed firearms dealers to illegally sell more than 1,000 weapons to straw purchasers working for drug cartels in Mexico. These ATF agents were also ordered by their superiors to ignore well-established practice and refrain from interdicting these weapons before they flowed into the hands of Mexican drug cartels. Sadly, this ill-advised program had tragic consequences, with these “walked” weapons showing up at the scene of multiple violent crimes—including the murder of United States Border Patrol Agent Brian Terry.

Unfortunately, the Department of Justice has been less than forthcoming during congressional investigations into the failed “Operation Fast and Furious.” For instance, Assistant Attorney General Ronald Weich initially told Congress that the allegation that “ATF sanctioned or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico—is false.” Additionally, Acting ATF Director Kenneth Melson told congressional investigators that “ATF’s senior leadership would have preferred to be more cooperative” with the congressional investigation of “Operation Fast and Furious,” but “Justice Department officials directed [ATF] not to respond and took full control of replying to briefing and document requests from Congress.”

I believe it is important that you promptly disclose the details of any past or present Texas-based ATF “gun-walking” program similar to “Operation Fast and Furious.” My constituents deserve a full accounting of any such activities in Texas. I look forward to your reply.

Sincerely,



JOHN CORNYN
United States Senator

**U.S. Department of Justice****Federal Bureau of Investigation**

Washington, D.C. 20535

August 12, 2011

The Honorable Darrell 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
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Grassley:

Thank you for your letter to Director Mueller, dated July 11, 2011, requesting documents and other information concerning certain FBI activities and their relationship to the Operation Fast and Furious investigation led by the Bureau of Alcohol Tobacco Firearms and Explosives ("ATF"). The FBI has started the process of identifying and reviewing documents responsive to Committee's requests and that process is ongoing; a summary of our preliminary findings are below. As we have discussed with staff, we appreciate the Committee's willingness to work with us to provide information in an appropriate way to protect the integrity of ongoing investigations and to protect sources and methods.

Operation Fast and Furious was an Organized Crime Drug Enforcement Task Force ("OCDETF") investigation led by the ATF. The FBI did not have agents assigned to the Fast and Furious investigation, and at this time, the FBI is not aware of our agents having an operational role in the Fast and Furious investigation. In addition, at this time, the FBI is not aware of our agents authorizing or approving any gun purchases or sales related to Operation Fast and Furious.

The FBI does participate along with other federal law enforcement agencies in the Phoenix OCDETF Local Committee. As a result, the investigative proposal for Operation Fast and Furious was reviewed by the Phoenix OCDETF Local Committee, which has representation from several federal law enforcement agencies including the FBI. OCDETF investigative proposals are subject to approval by this committee, which serves to deconflict potential targets and provide resources for the investigations. We understand that the initial OCDETF proposal for the Fast and Furious investigation, along with later proposals to extend the investigation, have been made available for your review. The initial OCDETF proposal and its extensions make clear that the FBI was not a participating agency in Operation Fast and Furious.

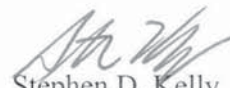
Honorable Darrell Issa and Honorable Charles E. Grassley

Your letter asks questions about whether FBI sources were involved in Operation Fast and Furious, as well as seeking documents related to informant activities. As an initial matter, the discussion of FBI sources and their activities is a particularly sensitive matter, as the safety of those cooperating with U.S. law enforcement is essential to the success of our investigations and to the security of individuals and their families who provide information to federal authorities. As a result, the FBI is severely limited in what it can discuss publicly about sources and their use in particular investigations. At this time, however, the FBI is not aware of any circumstances where the FBI paid, directed, or authorized a source to participate in gun trafficking activities with the targets or subjects of the Fast and Furious investigation as identified in the OCDETF proposal or its extensions. The FBI is continuing to review whether sources had contact with subjects or targets of the Fast and Furious investigations prior to becoming sources, and we will provide an update to the Committee after our review is complete. We are aware of circumstances where the FBI provided information and assistance, including deconflicting targets, sharing intelligence, and giving access to case files and sources, to assist the ATF and other law enforcement agencies related to investigations in the Phoenix OCDETF strike force. We would welcome the opportunity to brief the Committee on this assistance and information sharing in a secure setting, given the need to protect sources and methods and the ongoing nature of investigations. We believe that this briefing will clarify how the FBI deconflicts targets and shares source information with other law enforcement agencies, as well as answer the specific questions in your letter.

Your letter also asks for specific information related to the crime scene and events leading to the murder of ICE Agent Jaime Zapata in Mexico on February 15, 2011. As you know, crime scene evidence and the circumstances of a crime are generally not made public in an ongoing investigation. Furthermore, the investigative reports of an ongoing investigation are kept confidential during the investigation to preserve the integrity of the investigation and to ensure its successful conclusion. We regret that we cannot provide more details about the investigation at this time, but we need to ensure all appropriate steps are taken to protect the integrity of the investigation.

We look forward to working with you and your staff to answer your questions related to your investigation.

Sincerely,



Stephen D. Kelly
Assistant Director
Office of Congressional Affairs

1 - Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

1 - Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Congress of the United States
Washington, DC 20510

August 16, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
 Attorney General
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, D.C. 20530

Dear Attorney General Holder:

We received your letter of July 21, 2011,¹ which responded to our letter of July 18, 2011. In your letter, you ask that we provide both the Justice Department and the Office of Inspector General (OIG) the transcript of the July 4, 2011 interview of Acting Director Kenneth Melson conducted by Committee staff. Since the OIG is supposed to be conducting an independent inquiry, it seems odd that the Department would make a document request on behalf of that office. We presume that if the OIG would like to make such a request, it is capable of doing so on its own initiative. However, we have not received any such request from the OIG.

As you know, your agreement with Senator Grassley on proceeding with voluntary interviews of Department personnel stipulated you would not seek "immediate possession of interview transcripts."² One of the many goals served by this provision of our agreement was to accommodate the Department's concerns about our inquiry providing defense counsel with specious arguments regarding discovery obligations under *Brady*.³ Additionally, given that Mr. Melson chose to appear outside the presence of Department lawyers, we intend to respect his decision and would hope that you would as well.

We all have mutual interests in facilitating successful criminal prosecutions, maintaining the integrity of our inquiry, guarding the independence of the OIG's inquiry, and fostering candid, direct communications with Congress. Therefore, we respectfully request that you abide by your previous commitment not to seek possession of interview transcripts at this time, including the transcript of Mr. Melson's interview as well as the transcripts of future interviews.

¹ Letter from Asst. Att'y Gen. Ronald Weich, Dep't of Justice, to Chairman Darrell Issa & Ranking Member Charles Grassley (July 21, 2011).

² "Good Faith First Steps," term sheet used during negotiations between Attorney General Holder and Senator Grassley (June 7, 2011).

³ *Brady v. Maryland*, 373 U.S. 83 (1963). Prosecutors have a duty to disclose exculpatory material in the custody of other prosecuting agencies. *U.S. v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989). However, Congress is not a prosecuting agency, and we are not in possession of any exculpatory material. *U.S. v. Trie*, 21 F. Supp. 2d, 25 n.17 (D.D.C. 2005) ("The Congress is not an 'agency' and the DOJ has no obligation under *Brady* to disclose information in the possession of Congress that is not also in the possession of the DOJ or [another executive branch agency].").

The Honorable Eric H. Holder, Jr.
 August 16, 2011
 Page 2

Your agreement with Senator Grassley also stipulated that “*responsive*, written answers to *each subpart of each question* for the record related to the ATF controversy submitted by Senator Grassley” would be provided on an expedited basis.⁴ While we received a reply to that request on July 22, it did not contain answers to each subpart of each question. Moreover, many of the answers were non-responsive. For example, Question 37(a) asked whether you had read the ATF briefing paper which states, “Currently, our strategy is to *allow the transfer of firearms to continue to take place*.” There is no response enumerated specifically to subpart (a) of Question 37. Rather, the first sentence of what purports to respond to subparts (a) through (d) of Question 37 says, “The Department is aware of the briefing paper.” Simply put, that does not answer the question.

Moreover, there is no enumerated response to subpart (b) of Question 37, which asked whether the briefing paper was “ever provided to the Deputy Attorney General’s Office or any other component of the Justice Department other than ATF” and if so to describe the circumstances in detail. The second sentence of the response to subparts (a) through (d) is presumably meant to reply to subpart (b). However, it is so vague and incomplete as to be non-responsive to the question. It says merely that “based on information presently available, Justice Department officials outside of ATF became aware of the briefing paper in connection with” the House Committee investigation. That may be true and somewhat related to the question, but it falls far short of being responsive. Whether *some* unnamed DOJ officials may have learned of the briefing paper during the Congressional investigation in 2011 tells us nothing about which other officials at Department components outside ATF may have received the briefing paper in 2010.

Subpart (g) of question 37 asked for the names of *each official* who reviewed a draft of the February 4, 2011 letter to Senator Grassley. The reply failed to answer the question, stating only that the Department “followed its standard practice” in drafting the letter and seeking input from other components. Moreover, the replies to questions 43, 44(a-b), and 45(a-b) merely refer back to responses from earlier questions that are non-responsive and merely indicate that the Department is producing documents that “may relate to this matter.”

Perhaps the most troubling reply is to question 49(a), which asked how many Fast and Furious weapons have been recovered in connection with violent crimes in the United States, other than the guns recovered from the Brian Terry murder scene. The question specifically asked you to “describe the date and circumstances of each recovery in detail.” However, the reply fails to do so. It indicated that there are 11 instances of Fast and Furious guns recovered in the United States in connection with violent crimes. However, the reply also claimed that “ATF does not have complete information available to respond to the question.” Regardless of whether “complete information” is available, it seems clear that much more information could easily have been provided.

⁴ “Good Faith First Steps,” term sheet used during negotiations between Attorney General Holder and Senator Grassley (June 7, 2011) (emphasis added).

The Honorable Eric H. Holder, Jr.
 August 16, 2011
 Page 3

The answer states that “when a law enforcement agency submits a trace request, the information provided by the law enforcement agency does not indicate if the firearm recovered has been *used* in connection with a violent crime” (emphasis added). However the question was not phrased in terms of firearms used in connection with a violent crime. It was phrased in terms of firearms recovered in connection with a violent crime. Yet the answer leads the reader to believe that there is no additional information available from the trace request. At a minimum, the date of the request, the jurisdiction submitting the request, the make and model of the weapon, and the serial number of the weapon could have been provided, since all of that information is available from the trace request.

More troubling than the failure to provide those requested details, however, is that the answer adds the element of whether the firearm was “used” even though that was not an element of the question. That addition serves to obscure key information about the content of trace requests. Contrary to the implication in the reply, law enforcement agencies actually do indicate as part of a trace request whether the firearm was recovered in connection with a violent crime. One of the required data elements of a trace request is the National Crime Information Center (NCIC) crime code. The NCIC crime code indicates whether the weapon was recovered in connection with a “homicide” or other specific violent crimes. Yet, the Department’s reply to question 49(a) leads the reader to believe that such information is unavailable.

We are disappointed that the Department has chosen to play word games rather than simply responding with as much detail as possible about these additional 11 cases. Our staff inquired about this matter on July 27, and it is our understanding that the Department is working on a correction to the answer provided to Question 49(a). However, it has been nearly three-and-a-half months since the initial inquiry and nearly three weeks since the follow-up inquiry. Accordingly, as our staff previously requested, please provide unredacted copies of all records related to these 11 trace requests.

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

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

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

**U.S. Department of Justice**

United States Attorney
District of Arizona

*Two Renaissance Square
40 N. Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408*

*(602) 514-7500
FAX: (602) 514-7693*

The President
The White House
Washington, D.C.

Dear Mr. President:

I want to thank you for the extreme honor of serving my country and the Department of Justice as the United States Attorney for the District of Arizona for the last two years.

My office has made considerable progress during my tenure in prosecuting cases in the areas of border security/immigration, Indian Country and White Collar fraud as well as the creation of the first Civil Rights Unit in this District. We have made unprecedented gains in so many areas. I am very proud of the dedication and success of the employees in this office. They epitomize public service.

Nonetheless, I believe it is an appropriate time for me to step down so that the office can continue its progress under new leadership. I will assist in any and all aspects of transition.

It has really been an extreme pleasure to serve you in this Administration and I am confident this office will continue in its immense success and impact.

Sincerely,

A handwritten signature in black ink that reads "Dennis Burke".

DENNIS K. BURKE
United States Attorney
District of Arizona

cc: The Honorable Eric H. Holder, Jr.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 31, 2011

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

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

Dear Chairman Issa and Senator Grassley:

This corrects and updates information provided in our original responses to Questions for the Record (QFRs) of the Senate Judiciary Committee Hearing on May 4, 2011. In particular, we would like to correct and update the information provided in our original responses to QFRs 49(a) and (b) on July 22, 2011. In addition, and in response to your letter dated August 16, 2011, we are reviewing information about the circumstances of recoveries of firearms related to Operation Fast and Furious. We will supplement this response with appropriate information as soon as possible.

Our original response to QFR 49(a) stated that, as of May 26, 2011, "ATF is aware of eleven instances where a recovered firearm associated with this case was recovered in connection with a crime of violence in the United States." That answer mistakenly combined the total number of known traces for such recoveries in the United States and Mexico, instead of providing the number for the United States alone, as the Question requested. Moreover, the response included the two firearms recovered at the scene of the tragic death of Border Patrol Agent Brian Terry, even though the Question asked that those firearms be excluded. In fact, beyond these two firearms, ATF is aware of only one instance where a firearm associated with Operation Fast and Furious was traced and coded as recovered in connection with a crime of violence in the United States.

In our first response, we also erroneously included one firearm which, when recovered in the United States in connection to Operation Fast and Furious, was traced with a non-violent crime code. The error stemmed from a previous trace of the same firearm in May 2009, before

The Honorable Darrell E. Issa
 The Honorable Charles E. Grassley
 Page Two

Operation Fast and Furious began, to a purchaser unconnected with Operation Fast and Furious, which used a domestic violence crime code. The other seven traces included in the eleven firearms reported in our original answer involved recoveries in Mexico, not in the United States.

In response to QFR 49(b), ATF advises that, as of August 16, 2011, it has identified twenty-one additional firearms associated with Operation Fast and Furious that were recovered in Mexico and reportedly were associated with violent crimes. As further firearms are traced and additional analysis of recoveries occurs, ATF advises that additional firearms associated with Operation Fast and Furious may be identified.

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Ronald Weich
 Assistant Attorney General

cc:

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

The Honorable Patrick Leahy
 Chairman
 Committee on the Judiciary
 United States Senate

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 31, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy:

This corrects and updates information provided in our original response to Questions for the Record (QFRs) of the Senate Judiciary Committee Hearing on May 4, 2011. In particular, we would like to correct and update the information provided in our original responses to QFRs 49(a) and (b) on July 22, 2011. We are reviewing information on the circumstances of recoveries of firearms related to Operation Fast and Furious, as requested in questions 49(a) and 49(b), and will supplement this response further. In the interim, we request that you include the information below in the record of the hearing as a formal correction of our previous response.

Our original response to QFR 49(a) stated that, as of May 26, 2011, "ATF is aware of eleven instances where a recovered firearm associated with this case was recovered in connection with a crime of violence in the United States." That answer mistakenly combined the total number of known traces for such recoveries in the United States and Mexico, instead of providing the number for the United States alone, as the Question requested. Moreover, the response included the two firearms recovered at the scene of the tragic death of Border Patrol Agent Brian Terry, even though the Question asked that those firearms be excluded. In fact, beyond these two firearms, ATF is aware of only one instance where a firearm associated with Operation Fast and Furious was traced and coded as recovered in connection with a crime of violence in the United States.

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The Honorable Patrick Leahy
Page Two

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We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc:

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate



FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION



General Counsel

70 Glen Street, Suite 280 Glen Cove, NY 11542

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Associate General Counsel
GEORGIA DEPLAS
Associate General Counsel

JON ADLER
President
NATHAN CATURA
Executive Vice President

August 31, 2011

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

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

Re: Whistleblower Retaliation against Group Supervisor
Peter J. Forcelli resulting from his testimony before the U.S.
House of Representative, Committee on Oversight and
Government Reform

Honorable Sirs:

As you may recall, Group Supervisor Peter J. Forcelli (GS Forcelli), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Phoenix I Field Office and Yuma Satellite Office, was subpoenaed to provide testimony before the U. S. House of Representatives, Committee on Oversight and Government Reform regarding "Operation Fast and Furious" conducted by a unit of the Phoenix, AZ ATF office.

GS Forcelli's testimony, which was preceded by a sworn deposition, included an outline of several contacts with Assistant United States Attorney Emory Hurley, and Assistant United States Attorney Rachel Hernandez of the District of Arizona's United States Attorney Office in Phoenix. This portion of GS Forcelli's testimony focused on what he strongly believed to be inaction, bordering on malfeasance, with regard to several investigations. There were additional protected disclosures by GS Forcelli regarding additional instances that would be contained in transcribed interviews with both Congressional Staffers and the Investigators from the Department of Justice, Office of the Inspector General.

GS Forcelli's testimony was extensive, truthful and heartfelt,

though extremely difficult for him. It is never easy to disclose potential impropriety and mistake on the part of colleagues. Unfortunately GS Forcelli has now found himself to be the victim of perceived retaliation on the part of the United States Attorneys Office (USAO) for the District of Arizona and the Department of Justice, Office of the Deputy Attorney General (DAG) for his testimony regarding the USAO's actions/inaction and conduct. Therefore, we find it necessary to respectfully notify you of certain events which have transpired since GS Forcelli's testimony which rise to the level of whistleblower retaliation in violation of the Whistleblower Protection Act of 1989 and which, in seem to fly in the face of your completely proper and appropriate of exercise of Congressional authority.

Initially GS Forcelli would like to assure Your Honors that in his 25 years as a sworn law enforcement officer, he has had extensive experience in dealing with prosecutors on both the state and federal level. His dealings with these attorneys have always been positive, and he can provide a lengthy list of laudatory references from the United States Attorney's Offices from both the Southern and Eastern Districts of New York, as well as the District Attorney's Office for Bronx and New York Counties, in the State of New York.

In his previous dealings with prosecutors, there have been many instances where he and they did not see eye to eye, but all such instances of disagreement were worked out in pursuing criminal cases professionally, respectfully, and in the interest of both justice and public safety. In his career, GS Forcelli has developed lifelong friendships with many of the prosecutors with whom he had worked, and he has always conducted himself professionally in his dealings with them, fully realizing that there must be a partnership between the investigator and the prosecutor to achieve the goals of any criminal investigation.

In the interest of full disclosure, GS Forcelli would have it known that prior his testimony, he had always had a pleasant professional relationship with AUSA Hurley, often speaking and meeting over coffee. As GS Forcelli testified, unfortunately, he also had a great deal of displeasure with AUSA Hurley's seeming laziness, and lack of vigor in prosecuting cases. [As stated hereinabove, testifying regarding the conduct Emory Hurley, Hope MacAllister, David Voth and Bill Newell, all of whom GS Forcelli liked and got along well with, has been difficult and taxing on him personally. Others about whom GS Forcelli was forced to testify were not close associates. In all of such instances however, GS Forcelli realized that his testimony affected them personally, and affected their families as well. It was difficult, but mandated by subpoena, and was GS Forcelli's duty.]

The first instance of what GS Forcelli now sees as retaliatory behavior actually occurred during the time of his testimony. Patrick Cunningham of the USAO, District of Arizona, while visiting ATF Headquarters, had the temerity of accusing GS Forcelli of being untruthful in regards to AUSA Emory Hurley's declination of the "X-Caliber Arms" case. As soon as GS Forcelli was made aware of this statement, he made contact with Mr. Cunningham, through Assistant Special Agent in Charge, Jim Needles. GS Forcelli advised Mr. Cunningham of the fact that AUSA Hurley's declination of the "X-Caliber Arms" case was witnessed by another

ATF employee (Senior Special Agent Jose Wall). Mr. Cunningham's tone then became conciliatory, and he expressed an interest in moving forward on future cases. GS Forcelli immediately contacted Investigator Sean O'Neill, of the U.S. Department of Justice, Office of Inspector General, and advised him of the above. GS Forcelli also notified Carlton Davis, of Congressman Darrell Issa's Staff, and Brian Downey of Senator Grassley's Staff of the contact, and documented this in an e-mail to GS Forcelli's chain of command. At the time, GS Forcelli did not view this as Whistleblower Retaliation, because he understood that Mr. Cunningham was protecting the reputation of the U.S. Attorney's Office in the heat of the moment and seemed to strike an ameliorative tone when confronted by GS Forcelli.

More recent events, however, have changed GS Forcelli's pinion on the situation. It now appears to GS Forcelli that an pattern of conduct has emerged designed to attack GS Forcelli's credibility. On August 15th, 2011, at approximately 7:30 AM, GS Forcelli contacted Michael Morrissey, the Chief of the National Security Division at the Phoenix USAO, regarding a case involving the purchase of grenade components (portions of this case remain classified), to discuss an e-mail that had been sent by Patrick Cunningham to Acting (ATF Phoenix) SAC Thomas Atteberry. Said e-mail mischaracterized the work done by the case agent, bordering on accusing the case agent of being less than candid. Having reviewed the case file, and spoken with AUSA Morrissey on several occasions, GS Forcelli knew what the agent had done on the case. GS Forcelli requested that Mr. Morrissey contact him if there were any further issues with the case, rather than have incorrect, and possibly discoverable, e-mails sent in the case. During this conversation, and to GS Forcelli's dismay, Mr. Morrissey advised him that he had been instructed to report **any** contact with GS Forcelli to his chain of command because his office viewed GS Forcelli as a "Whistleblower". Mr. Morrissey indicated that he did want to sit down with GS Forcelli over coffee and discuss "a few things," but that his "Whistleblower" status complicated this. GS Forcelli advised Mr. Morrissey that he viewed this as unfortunate, and offered to remove himself from the grenade component case if it would be in the best interest of the case.

Mr. Morrissey then stated that GS Forcelli should be aware that his "office's position is that they did not sit on this case," and that "the case was pulled from Emory in April". [NOTE - Neither GS Forcelli nor the case agent was made aware of the case re-assignment by the USAO, which leads GS Forcelli to suspect that the case was not actually re-assigned until a meeting which occurred on May 5, 2011 where incoming SAC Tom Brandon, ASAC's Joe Anarumo, Tom Atteberry, Division Counsel Tom Karmgard and GS Forcelli met with the USAO requesting that this case be given a "second look" or that it would be referred it to the U.S. Department of Justice, Narcotics and Dangerous Drugs Section]. The conversation ended shortly thereafter. It must be noted that at no time during this conversation was Mr. Morrissey unpleasant, or disrespectful toward GS Forcelli. GS Forcelli did, however, take offense to the fact that Mr. Morrissey's office would institute such a policy. More offensive, was the fact that this case involved what GS Forcelli viewed as unethical conduct by Emory Hurley, for a period of over one year. [Since the case is partially classified as secret, and has since been re-assigned to a prosecutor who is moving forward diligently with the case, GS Forcelli will refrain from

naming it herein.] GS Forcelli notified ASAC's Joe Anarumo and Tom Atteberry of this conversation with Mr. Morrissey.

GS Forcelli, during another telephone conversation with Chief Michael Morrissey, which occurred on August 18, 2011, at approximately 11:41AM, sought additional clarification on the USAO policy which required notification of any contact with GS Forcelli up the USAO chain of command. After briefing Mr. Morrissey of a major development in the aforementioned case, GS Forcelli advised him that GS Forcelli would contact him from this point forward on any issues involving the case, so as to not burden AUSA Josh Parecki with having to make notifications on such contacts. GS Forcelli then asked Mr. Morrissey if these notifications were mandated up to United States Attorney Burke (who has, apparently, recently resigned his position), or beyond Mr. Burke to the DAG or to Attorney General Eric Holder? Mr. Morrissey replied that he needed to notify his local chain of command. ASAC Joe Anarumo was a witness to this conversation. once again, at no point was Mr. Morrissey rude, disrespectful or discourteous. However, GS Forcelli does have an issue with being singled out in such a manner.

[Both of these conversations were reported to the Department of Justice, Office of the Inspector General (OIG), and GS Forcelli showed the OIG investigators the call records on his cellular phone to corroborate this].

After this August 18, 2011 phone call terminated, GS Forcelli conversed with ASAC Anarumo, and advised him of the fact that he found this conduct improper. ASAC Anarumo then brought to GS Forcelli's attention a packet of paperwork which had been delivered to him and ASAC Atteberry. Among the papers was a memorandum out of the USAO, from Raynette Logan to Dennis Burke, Ann Scheel and Patrick Cunningham, which mischaracterized the conduct of both GS Forcelli and SAC Thomas Brandon, as well as some of the statements made, at a certain meeting which had occurred on May 5, 2011. With regard to GS Forcelli's conduct Ms. Logan's memo alleged, "*Forcelli looked visibly angry when he spoke of this case, and when he spoke of Emory*". [Interestingly, the memo was dated August 10th, 2011 but memorialized the meeting (mentioned above) which occurred on May 5, 2011.] This description of GS Forcelli's demeanor is decidedly not true.

Clearly, the USAO is clumsily attempting to paint a picture that GS Forcelli's testimony and conduct resulted from a "personal issue" between AUSA Hurley and himself, rather than hold AUSA Hurley accountable for missteps in several of his cases. GS Forcelli believes that most of the ATF special agents assigned to the Phoenix Field Division's Offices in the City of Phoenix would be able to describe the glaring problems and issues at hand with AUSA Hurley and the USAO in Phoenix.

The aforementioned package of documents which the USAO delivered and which was shown to GS Forcelli by ASAC Anarumo also included an e-mail from AUSA Emory Hurley, dated May 11, 2011. This e-mail, referred to the "secret" classification of the grenade

component investigation mentioned hereinabove. GS Forcelli had sent an e-mail to his group, and sent copies to AUSA's who had involvement in the investigation. AUSA Hurely's reply to this E-mail, which was sent to Patrick Cunningham, merely stated "This is convenient for GS Forcelli". A review of GS Forcelli's transcribed deposition with Congressional staffers will actually confirm that GS Forcelli was against the "secret" classification of portions of the case because he believed that it would appear that it was being so classified to prevent oversight as part of the "Fast and Furious" inquiry. While GS Forcelli necessarily did not provide any of the information about the case to congressional investigators, and did NOT discuss the classified matter at all. GS Forcelli did advise said staffers of his concern with the timing of such classification.

The fact is that GS Forcelli finds the actions of the U.S. Attorney's Office and the Office of the Deputy Attorney General in the grenade component case to be problematic. This case revolves around an individual who is believed to have manufactured over 2000 hand grenades for the Sinaloa and La Familia Michoacana Cartels. On June 16, 2010, after he was caught with 116 disassembled grenades hidden in a tire at the San Luis Port of Entry, ATF Agents under GS Forcelli's supervision interviewed the suspect. The suspect confessed to his involvement in arming these cartels with hand grenades, which he makes in Mexico with parts he exports from the United States, with explosives that he acquires in Mexico.

This individual also confessed to teaching cartel operatives how to convert AK-47 variant rifles and AR-15 rifles into automatic weapons. Finally, he confessed to sometimes transporting instructions, including assassination orders, to cartel operatives working in the United States on thumb drives.

On June 16, 2010, both before, during and after his confession, GS Forcelli had requested, and, at one point, practically begged the assigned prosecutor, AUSA Emory Hurley, for permission to arrest the suspect on a criminal complaint. GS Forcelli was horrified with the thought of releasing this individual, who, in his opinion, was engaged in terrorist-like activity. These requests were repeatedly denied by AUSA Hurley, and GS Forcelli was told that the suspect would be indicted "in a couple of weeks". As of today, this individual remains free and un-indicted.

Recent information indicates that this suspect is still operating in Mexico, though, as a result of information that ATF has shared with the Mexican Government, GS Forcelli believes and fervently hopes an arrest by Mexican authorities is imminent.

What is additionally disturbing is the fact that representatives from the DAG Office came to Phoenix on a fact-finding mission, and seemed less concerned with the lack of initiative and follow-up on the part of the U.S. Attorney's Office, than they did with ATF failing to interdict items which, as a matter of fact, it could not do since possession of the items at issue **is not** and **was not** illegal.

More specifically, the DAG's investigators focused on a delivery of inert grenade hulls, which occurred in November of 2009. These hulls were intercepted and marked by ATF, for the purpose of identifying whether or not the suspect was, in fact, making IEDs. In this instance, the USAO had indicated that ATF should not allow the subject to export the items, even though **the USAO would not prosecute the suspect if he was caught exporting them.** This, of course, caused a problem, in that ATF could not seize the items, in that, regardless of the suspect's criminal history, the items were not contraband. The items would only become contraband if they were exported, but, of course, the USAO had made it clear that it would not prosecute the case as an export violation. ATF notified Customs and Border Protection (CBP) of the matter, so that CBP could stop the suspect if they observed him crossing the border. (At the time of this delivery, ATF was not certain if the subject was making IEDs in Yuma, AZ or in Mexico. In fact it was believed that he may possibly have also been using the items for the manufacture of novelty items.]

In January of 2010, a controlled delivery was conducted. This delivery consisted of other components, which were marked in the event they were able to be interdicted at the border. By this time, ATF had developed information that indicated that the subject was, in fact, transporting the items to Mexico, and ATF believed that he was using the items in the manufacture of IEDs. Since the USAO had indicated that they would not prosecute the subject for an export violation, a plan was enacted which would allow assets from the Government of Mexico to conduct an interdiction and prosecute the case. This plan was discussed and given approval from the U.S. Attorney himself. However, after GS Forcelli's testimony before Congress, he received a phone call from Michael Morrissey who advised him that his office's position was that the USAO never authorized ATF to conduct a cross-border operation where grenade components crossed into Mexico. GS Forcelli, in turn, advised Mr. Morrissey of U.S. Attorney Dennis Burke's e-mail authorizing said operation. Mr. Morrissey seemed surprised. It troubles GS Forcelli that a package was forwarded to the DAG's Office summarizing this case which included a copy of a related e-mail but which left Mr. Burke's authorizing e-mail out.

GS Forcelli believes that the USAO has aggressively and systematically attacked his credibility, but has lost sight of and/or ignored the facts in the process.

As a result, GS Forcelli has been placed in a position which has him worried about his career. Due to the economy, a transfer to another post-of- duty would probably be untenable. GS Forcelli, having bought at the height of the real estate bubble, is "underwater" on his residence by nearly \$150,000.00. He has medical issues related to his work as a recovery worker at the World Trade Center following the 9/11 terror attacks. His daughter has just begun college on a full scholarship to a school in the State of Arizona.

The actions of the USAO have made his ability to work as a field supervisor in Arizona nearly impossible, yet leaving would financially devastate GS Forcelli and his family. GS Forcelli is now being forced to work under conditions where his words are taken out of context, my actions mischaracterized, and anything he authors "word-smithed" by a team of attorneys,

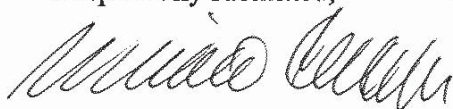
who are more intent on diverting blame, than holding some of their own accountable. The options which ATF management have heretofore given GS Forcelli would not adversely affect him financially, though he believes same were given in good faith (should they come to fruition). Assignments which have been suggested to him by his management are not his chosen assignments, as they would take him away from law enforcement, and place him in more of an administrative sphere. The alternative however, remaining in the cross-hairs of the USAO is also, however, not what he believes to be in his best interest.

GS Forcelli would like to emphasize, that he has thus far been treated fairly by ATF Management. His present concerns are with Patrick Cunningham and others from the USAO in Phoenix and with the DAG's office, all of who serve under the U.S. Department of Justice. it is respectfully suggested that these individuals and entities have acted in a manner that is, at a minimum, unethical. They have caused GS Forcelli significant grief and mental anguish, and have adversely affected his career and family life.

GS Forcelli has sacrificed his health, and missed much of his children's youth in the performance of his duties. He refuses to sacrifice, or fail to defend, is his integrity. GS Forcelli would respectfully request that the actions of certain members of the Department of Justice be investigated inasmuch as said actions seem to flout the power of Congress to oversee and reform the workings of our great Nation's government. Simultaneously, GS Forcelli and this office will be considering further remedies to protect his reputation and his career from those who seek to hide rather than uncover the truth by besmirching GS Forcelli's character and reputation.

We thank you for your anticipated courtesy and consideration in this matter.

Respectfully submitted,



Luciano Cerasi,
Associate General Counsel

September 2011

September 2011

Congress of the United States
Washington, DC 20510

September 1, 2011

The Honorable Ann Birmingham Scheel
Acting U.S. Attorney for the District of Arizona
Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, AZ 85004-4408

Dear Ms. Scheel:

We understand that you are currently the Acting U.S. Attorney for the District of Arizona. As you are undoubtedly aware, many questions about your office's role in Operation Fast and Furious remain unanswered.

The level of involvement of the United States Attorney's Office for the District of Arizona in the genesis and implementation of this case is striking. Operation Fast and Furious was a prosecutor-led Organized Crime Drug Enforcement Task Force (OCDETF) Strike Force case. The congressional investigation has revealed that your office, and specifically Assistant United States Attorney (AUSA) Emory Hurley, played an integral role in the day-to-day, tactical management of the case. In fact, Mr. Hurley served as a prosecutor on this case until very recently.

Witnesses have reported that AUSA Hurley may have stifled ATF agents' attempts to interdict weapons on numerous occasions. Many ATF agents working on Operation Fast and Furious were under the impression that even some of the most basic law enforcement techniques typically used to interdict weapons required the explicit approval of your office, specifically from AUSA Hurley. It is our understanding that this approval was withheld on numerous occasions. It is unclear why all available tools, such as civil forfeitures and seizure warrants, were not used in this case to prevent illegally purchased guns from being trafficked to Mexican drug cartels and other criminals. We have further been informed that AUSA Hurley improperly instructed ATF agents that they needed to meet unnecessarily strict evidentiary standards merely in order to temporarily detain or speak with suspects.

It is essential for Congress to fully understand your office's role in Operation Fast and Furious. Therefore, please provide documents and communications of the following individuals in your office regarding Operation Fast and Furious:

- 1) Dennis Burke, former U.S. Attorney for the District of Arizona
- 2) Ann Scheel, Acting U.S. Attorney for the District of Arizona
- 3) Emory Hurley, Assistant United States Attorney

Ms. Ann Birmingham Scheel
 September 1, 2011
 Page 2

- 4) Michael Morrissey, Assistant United States Attorney
- 5) Patrick Cunningham, Chief of the Criminal Division
- 6) Robert Sherwood, Spokesperson

The requested documents include e-mails, memoranda, briefing papers, and handwritten notes. They should also include communications between and among the individuals listed above and any ATF or Department of Justice employee regarding Operation Fast and Furious between October 1, 2009 and the present.

In addition, it is imperative that the Committee have an opportunity to discuss the facts above with individuals in your office who are familiar with the details of this operation. It is not our intention to second guess day-to-day decisions of your staff, but rather to make sense of them. The Attorney General has said that “letting guns walk is not something that is acceptable. . . . We cannot have a situation where guns are allowed to walk, and I’ve made that clear to the United States Attorneys as well as the agents in charge of various ATF offices.”¹ Operation Fast and Furious is unique in that guns were allowed to walk with the apparent knowledge of, and authorization by, officials in your office.

Although our staffs spoke two weeks ago with then-U.S. Attorney Dennis Burke, he was unable to answer detailed questions about what his subordinates knew about the case. Given the national and international implications of the Fast and Furious scandal, Congress has an obligation to find out to what extent other individuals in your office were involved. To further that goal, we now request transcribed interviews with the following individuals from your office:

- 1) Emory Hurley, Assistant United States Attorney
- 2) Michael Morrissey, Assistant United States Attorney
- 3) Patrick Cunningham, Chief of the Criminal Division

The Terry Prosecution

Your office’s recent court filing in opposition to the rights asserted by the family of slain Border Patrol Agent Brian Terry under the Crime Victims’ Rights Act (CVRA) is disquieting.² In Mr. Burke’s transcribed interview, he acknowledged that the office had never previously filed such a motion, and he wished he had handled it differently. In the motion, your office asserts: “Defendant Avila’s offenses are too factually and temporally attenuated from the murder – if connected at all.”³ Your office’s filing asked the court to deny the Terry family basic rights as

¹ *Hearing on the FY 12 Dept. of Justice Budget: Hearing Before the Subcomm. on Commerce, Justice, Science, and Related Agencies of the S. Comm. on Appropriations*, 112th Cong. (2011) (testimony of Eric H. Holder, Jr., Att’y Gen. of the United States).

² See 18 U.S.C. § 3771.

³ Pl. Resp. to Mot. to Intervene on Behalf of Victims of a Crime, *U.S. v. Avila, et al.*, No. 11-126 (D. Ariz. Aug. 8, 2011).

Ms. Ann Birmingham Scheel
 September 1, 2011
 Page 3

crime victims due to the lack of a connection between the cases. Yet in Mr. Burke's transcribed interview, he readily admitted the connection and stated that he believed they *should* be extended rights as crime victims under CVRA, although not as intervening parties. This contradicts the basic premise of your office's opposition brief, namely that the Terry family should not be treated as victims of Avila's crimes.

We find it difficult to understand why anyone would oppose the Terry family's motion on the grounds that there is potentially no connection at all between the case against Mr. Avila and the case against Agent Terry's murderers. As you know, two firearms recovered at the Terry murder scene were traced to a purchase by Jaime Avila on January 16, 2010.⁴ Although it is the general practice of your office to obtain indictments prior to arrest, it was obviously imperative to arrest Mr. Avila immediately upon learning that the trace results linked the weapons he purchased to the murder scene. In fact, Jaime Avila was in custody less than four hours after this trace was completed.⁵ The speed of Avila's arrest contradicts the claims that there was not enough evidence to legally arrest straw purchasers earlier in Operation Fast and Furious. It also shows that your office understood the nexus between Mr. Avila and the Terry murder instantly.

Indeed, ATF immediately prepared a criminal complaint for Mr. Avila stemming from the January 16, 2010 purchase.⁶ That charge was ultimately delayed, however, until it appeared in Count 7 of the January 19, 2011 indictment, which alleges that Mr. Avila purchased these weapons illegally.⁷ Instead, Avila was initially charged with other violations. Your subordinate, AUSA Hurley, apparently engaged in communications about that decision in the hours after Agent Terry's death that both contemplated the connection between the two cases and sought to prevent the connection from being disclosed. According to an ATF e-mail documenting communications with Mr. Hurley, the motivation behind initially charging Avila with firearm offenses unrelated to the weapons found at the murder scene was to not "complicate" the FBI's investigation.⁸ Worse yet, AUSA Hurley signed your office's recent motion to the court denying the connection between the two cases despite apparently working with ATF agents to conceal the connection in the days and weeks following the murder of Agent Terry.⁹

Furthermore, AUSA Hurley has since acknowledged this nexus. In a January 28, 2011 memorandum to Mr. Burke, Mr. Hurley clearly demonstrates his understanding of the connection between Mr. Avila's purchase and its connection to the Terry murder: "The two AK-47 type rifles associated with the U.S. Border Patrol shooting, specifically two ROMARM WASR-10 7.62x39mm rifles . . . were purchased by Jaime Avila, Jr., (AVILA) on Friday, January 16, 2010."¹⁰ Moreover, at the time of Avila's straw purchases, he was known to be working with Uriel Patino. Patino previously purchased weapons that had been recovered in Mexico in connection with drug trafficking organizations as early as November 2009.¹¹ He and

⁴ E-mail from George T. Gillett, Jr. to William D. Newell (Dec. 15, 2010) [Attachment 1].

⁵ E-mail from William D. Newell to David J. Voth, et al. (Dec. 15, 2010) [Attachment 2].

⁶ E-mail from George T. Gillett, Jr. to William D. Newell (Dec. 16, 2010) [Attachment 3].

⁷ U.S. v. Jaime Avila, Jr., et al., No. 11-126 (D. Ariz. Jan 19, 2011).

⁸ E-mail from David J. Voth to William D. Newell, et al. (Dec. 16, 2010) [Attachment 4].

⁹ *Id.*

¹⁰ Memorandum from Emory Hurley to Dennis K. Burke re: Jaime Avila, Jr. (Jan. 28, 2011) [Attachment 5].

¹¹ ATF Firearms Trace Summary, Nov. 30, 2009; ATF Firearms Trace Summary, Nov. 30, 2009 [Attachment 6].

Ms. Ann Birmingham Scheel
 September 1, 2011
 Page 4

Avila had visited a cooperating gun dealer together on November 24, 2009; the dealer provided contemporaneous notice to ATF, which dispatched surveillance.¹² Clearly, your office and ATF did not suddenly develop probable cause to arrest Avila in the hours after Agent Terry died. Your office could have done so much earlier, perhaps even before Avila purchased the weapons that were later found at the murder scene. In light of this information, it appears that your office has a direct interest in avoiding or minimizing these facts.

Additionally, given your office's entanglement in Operation Fast and Furious, we remain concerned that the current prosecution team on the Terry murder might be hesitant to develop additional evidence on other potential defendants who may have ties to Operation Fast and Furious. Witnesses in the congressional investigation have related that the suspects in the Terry criminal case told law enforcement officers they obtained the weapons found at the murder scene in backpacks that were stashed in a hiding place near the scene. A thorough prosecution would identify the accomplices who placed the weapons-filled backpacks near the scene and bring appropriate charges against them.

Since your office directed and approved the daily tactical decisions in Operation Fast and Furious, it is hard to avoid the perception that a conflict of interest exists. Your office's unusual intervention in the motion filed by the Terry family heightens that perception.

Please provide the requested documents and information as soon as possible, but no later than noon on September 14, 2011. If you have any questions regarding these requests, please contact Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. We look forward to receiving your response.

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

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

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

¹² ATF Case Management Log, Case 785115-10-[redacted], 11/24/2009; *see also* Testimony of Sen. Charles Grassley before House Oversight and Government Reform Committee, Jun. 15, 2011, at 3.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 1, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 193 pages of documents that we produced to the House Oversight and Government Reform Committee on September 1, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. In addition, we have redacted from multi-subject documents text that is not responsive to your requests. The nature of specific redactions is indicated by a redaction code ("RC") in accordance with the attached index. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 36 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by Committee staff. There are limited redactions of text that would identify investigative targets, sensitive techniques, and sensitive information about pending investigations. In response to Chairman Smith's request, the documents will also be made available for review at the Department by staff of the House Committee on the Judiciary.

We hope this information is helpful and look forward to working with the Committee as this matter continues

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member



PAUL G. CASSELL
 Ronald N. Boyce Presidential Endowed Chair in Criminal Law

September 2, 2011

The Honorable Charles E. Grassley
 Ranking Member, Committee on the Judiciary
 135 Hart Senate Office Building
 United States Senate
 Washington, DC 20510

Dear Ranking Member Grassley:

I am writing in regard to your September 1, 2011, letter to Hon. Ann Birmingham Scheel, Acting U.S. Attorney for the District of Arizona. The letter expresses concern about the Office's opposition to efforts by the family of slain Border Patrol Agent Brian Terry to assert rights under the Crime Victims' Rights Act (CVRA), ostensibly because of "attenuation" between the crime and the Agent Terry's murder. The letter also notes that the Office may be withholding information from the family of Agent Terry.

I am writing to express my concern that the actions of the U.S. Attorney's Office in the *Terry* case are to be part of a larger pattern by the Justice Department to prevent crime victims from receiving their rights under the CVRA. I urge you to investigate whether the Department is withholding evidence from crime victims that might enable them to assert their CVRA rights in court.

I first wanted to call to your attention to a similar effort by the Justice Department to prevent the family of a slain woman to assert her rights under the CVRA several years ago here in Utah. Ken and Sue Antrobus were prevented from obtaining rights under the CVRA to deliver a victim impact statement at the sentencing of the man who illegally sold the murder weapon to the killer. As in the *Terry* case, in the *Antrobus* case the Justice Department alleged that any connection between the illegal fireman sale and the death was too "attenuated" to allow the Antrobuses to have rights. Most troubling, however, it appears that the Justice Department withheld evidence in that case which would have proven the clear and foreseeable connection between the illegal sale and the ultimate death. The details of this suppression of evidence are discussed at length in my law review article, *Protecting Crime Victims in Federal Appellate Courts: The Need to Broadly Construe the Crime Victims' Rights Act's Mandamus Provision*, 87 DENV. U.L. REV. 599, 605-14 (2010).

Another example of Justice Department suppression of evidence is currently taking place in the Southern District of Florida. In *Jane Doe #1 and Jane Doe #2 v. United States*, No. 08-80736-CV-Marra/Johnson, the Justice Department is withholding relevant evidence that would allow two victims of sexual assault to prove that the Government violated their

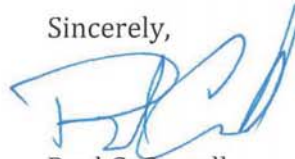
PROFESSOR PAUL G. CASSELL
SEPTEMBER 2, 2011
PAGE 2

CVRA rights by not informing them of a non-prosecution agreement reached with a politically-connected billionaire, Jeffrey Epstein. The victims have repeatedly attempted to work out a resolution of the case with the U.S. Attorney's Office, but the Office has broken off settlement discussions. This has forced the victims to file a motion for enforcement of their rights (copy attached) as well as a motion for an order directing the U.S. Attorney's Office not to withhold relevant evidence (copy attached). As you will see from review of these briefs (which I helped to draft), it is quite clear that the U.S. Attorney's Office is withholding evidence that would help the victims prove their claims. And this withholding of evidence is taking place in clear contravention of the direction in the CVRA that the Justice Department employees "shall make their best efforts to see that crime victims are notified of, and according, the rights described in [the CVRA]." 18 U.S.C. § 3771(c)(1).

I am gravely concerned that a similar suppression of evidence may be occurring in the Terry case. For this reason, I have recently joined the legal team seeking to protect the Terry family's rights. I hope that you will prevent any suppression of evidence from occurring in this case. More generally, I hope that you will investigate ways in which crime victims can obtain information from the Justice Department that is necessary to obtain protection of their rights under the CVRA in all CVRA cases.

I would be glad to discuss these issues at greater length with you or your staff if you would find it helpful. I have been involved in pro bono CVRA litigation around the country and believe that the Government is not meeting its obligation to use its "best efforts" to help crime victims obtain their rights under the CVRA.

Sincerely,



Paul G. Cassell
Ronald N. Boyce Presidential Professor of
Criminal Law

Enclosures (3)

cc: The Honorable Darrell Issa, Chariman
U.S. Senate, Committee on Oversight and Government Reform

GUS M. BILIRAKIS

U.S. House of Representatives

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Congress of the United States
House of Representatives
 Washington, DC 20515-0900

September 06, 2011

Mr. Eric H. Holder, Jr.
 Attorney General
 Department of Justice
 950 Pennsylvania Avenue NW
 Washington, DC 20530

Dear Attorney General Holder:

Earlier this summer, I wrote to share with you my deep concern regarding reports that the Department of Justice (DOJ) and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) had participated in multiple acts of "gun walking," allowing firearms to pass from straw purchasers into the possession of criminal and other dangerous third party organizations. Since that time, further reports and developments have only deepened my concerns regarding the activities and conduct of the leadership within the DOJ and ATF.

As a Member of Congress, I strongly support efforts to disrupt criminal syndicates that traffic firearms and drugs, and conduct other illicit and illegal activities. However, when those efforts serve to fuel the operations of criminal enterprises through the provision of firearms, they must be stopped. It is extremely troubling that the United States government would willfully allow weapons to be acquired by dangerous criminal and drug trafficking organizations, in direct contravention of our strategic and national interests.

When I last wrote to you, I raised a number of concerns regarding reports that DOJ's and ATF's gun walking practices may have extended beyond the area of the southwestern United States and our border with Mexico. Having gone unanswered, many of those questions still stand. I therefore still await your answers to the following questions:

1. Can you confirm whether or not ATF field divisions, other than the Phoenix Field Division, and/or any other Department of Justice office participated in gun walking schemes that allowed weapons to be trafficked outside of the United States?
2. If so, does the DOJ or ATF have knowledge of any of these firearms ending up in the possession of criminal gangs?
3. How many firearms were allowed to pass outside of the United States and how many have since been accounted for?
4. Were trafficked weapons subject to any special monitoring processes once they left the United States?

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2011-09-06 10:00:00

5. Has the DOJ or the ATF established any criteria or guidance pertaining to what is admissible for future operations aimed at preventing firearms from being obtained and used by dangerous foreign criminal organizations in crimes similar to the murder of U.S. Border Patrol Agent Brian Terry?

As I previously noted to you, it is my belief that the ATF and the DOJ operated in an extremely misguided manner in allowing weapons to walk across the border and end up in the possession of dangerous criminal organizations. These actions have resulted in the loss of human life and property. I hope that you would agree that we must not allow flawed programs to continue to operate to the detriment of the safety and security of the United States of America.

It has now been nearly two months since I first expressed my concerns and questions to you regarding these practices and reports. The replacement of ATF leadership and a United States Attorney is a first step towards restoring the public's faith and trust that the DOJ is competently taking actions to ensure the public's safety against foreign and domestic threats and that it will defend the interests of the United States according to the law. However, at its worst, the lack of response and forthrightness to Congressional inquiries regarding troubling reports about the DOJ demonstrates a disconcerting ambivalence towards the representative branch of government. At best, it represents a lost opportunity to put to rest a troubling chapter within the DOJ.

In this regard, I look forward to receiving your response in a timely manner.

Respectfully,



GUS BILIRAKIS
Member of Congress

JOHN MCCAIN

ARIZONA

COMMITTEE ON ARMED SERVICES
 COMMITTEE ON HEALTH,
 EDUCATION, LABOR, AND PENSIONS
 COMMITTEE ON HOMELAND SECURITY
 AND GOVERNMENTAL AFFAIRS
 COMMITTEE ON INDIAN AFFAIRS

United States Senate

September 7, 2011

Senator Joseph Lieberman, Chairman
 Senator Susan Collins, Ranking Member
 U.S. Senate Homeland Security and
 Governmental Affairs Committee
 340 Dirksen Senate Office Building
 Washington, DC 20528

Dear Chairman Lieberman and Ranking Member Collins:

As a member of the Senate Homeland Security and Governmental Affairs Committee, I am writing to request the committee hold a hearing concerning the Southwest Border that is of great importance to the State of Arizona and the nation.

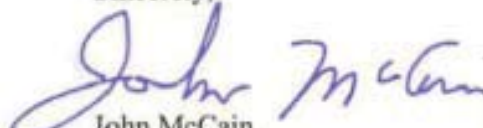
As you are aware, Operation Fast and Furious was created in order to identify Mexican drug cartel leaders and gun-smuggling operations and routes across the border. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) allowed straw purchasers to buy weapons in the U.S. and planned to track the guns to Mexico and drug cartel leaders. Unfortunately this program appears to have been ill conceived and poorly implemented. As a result many of the weapons vanished and turned up at crime scenes in Mexico and the U.S., including at the killing of U.S. Border Patrol agent Brian Terry in Arizona last December.

Last week additional information was released concerning Operation Fast & Furious that raises yet more questions over the decision making process behind the operation. The Committee must exercise its oversight authority to ensure further damage from this operation does not persist. I request the Committee hold a hearing as soon as possible to examine these new revelations and determine what additional measures are needed to help prevent this type of malfeasance from occurring again.

I believe the Committee should hear from the Attorney General of the United States, the Secretary of Homeland Security, and the Acting Director of the ATF. I hope you will schedule this hearing immediately and respectfully request that these witnesses be invited to testify.

Thank you for considering my requests and I look forward to hearing from you.

Sincerely,


 John McCain
 United States Senate

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 (800) 852-0170

**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC 20226

SEP 08 2011

Chairman Darrell Issa
United States House of Representatives
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Chairman Darrell Issa,

On June 28, 2011, I voluntarily appeared before your investigative team for a transcribed interview. On July 26, 2011, I voluntarily testified before the Committee on Oversight and Government Reform. Both of these interactions involved your investigation into the Bureau of Alcohol, Tobacco, Firearms and Explosives' Operation Fast and Furious.

On August 10, 2011, I received a letter from you requesting answers to additional questions. The majority of these questions involve some type of clarification to previous answers I had given both to your investigative team and your committee. Over the past few weeks, I have attempted to answer these questions but I have found that impossible without unfettered access to the transcripts of both my interview and the hearing testimony. I have also conferred with agency counsel and we both believe that to ensure I accurately and thoroughly respond to your questions, I require the official transcripts of both of these events.

I know we both want the review of Operation Fast and Furious to be thorough and complete. For me to do my part, I require copies of the above transcripts. Once I receive these copies, I will be able to completely answer your questions within a two week period.

I thank you for your assistance in this matter.

Sincerely,

William McMahon

Congress of the United States
Washington, DC 20515

September 9, 2011

Via Electronic Transmission

The Honorable Thomas E. Donilon
 Assistant to the President and National Security Advisor
 The White House
 Washington, DC 20500

Dear Mr. Donilon:

For more than six months we have been investigating a case conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) called Operation Fast and Furious. New e-mails provided to the Committee by the Justice Department last week raise additional questions about which White House personnel were apprised of Operation Fast and Furious.

According to the e-mails, William Newell, at the time the Special Agent in Charge of ATF's Phoenix Field Division, provided regular updates to Kevin O'Reilly, Director of North American Affairs on the National Security Council staff, as early as the summer of 2010.¹ In July 2010, Newell wrote to O'Reilly about "the 'large OCEDTF case' I mentioned." Newell had been aware for at least three months that one of the straw purchasers in Fast and Furious who had been allowed to buy nearly 700 firearms while under investigation by ATF was on food stamps,² and pointed out: "When a 22 year old kid on State [sic] financial assistance walks into a gun store and plops down \$12,000 in cash to buy a tripod mounted .50 caliber rifle that's a clue (even for us) that he's involved in trafficking firearms for a Mexican DTO."³ It is therefore clear that the case Mr. Newell and Mr. O'Reilly were communicating about was Fast and Furious.

In addition, the newly produced e-mails indicate that O'Reilly asked to share information about Operation Fast and Furious with others, such as Dan Restrepo, a Special Assistant to the President and a Senior Director for Western Hemisphere Affairs at the National Security Council, and Greg Gatjanis, Director for Terrorist Finance and Counternarcotics. Newell replied, "Sure, just don't want ATF HQ to find out, especially since this is what they should be doing (briefing you)!"⁴

In light of these e-mails, we ask that you provide all records involving the following current or former White House staff members related to: (a) Operation Fast and Furious; (b) any ATF gun trafficking cases in Phoenix, Arizona, and; (c) communications with ATF Phoenix Field Division personnel:

¹ E.g., e-mail from William D. Newell to Kevin M. O'Reilly (Aug. 9, 2010, 9:17 am) (HOGR ATF – 002674).

² "Operation Fast and Furious Exit Strategy," attachment to e-mail from William D. Newell to William G. McMahon (Apr. 27, 2010) (HOGR ATF – 001178).

³ E-mail from William D. Newell to Kevin M. O'Reilly (Jul. 28, 2010, 7:50 pm) (HOGR ATF – 002664).

⁴ *Id.*

The Honorable Thomas E. Donilon
 September 9, 2011
 Page 2

- 1) Kevin O'Reilly, former Director of North American Affairs, National Security Council
- 2) Dan Restrepo, Special Assistant to the President and Senior Director for Western Hemisphere Affairs, National Security Council
- 3) Greg Gatjanis, Director for Terrorist Finance and Counternarcotics, Counterterrorism Policy, National Security Council

The documents we seek include e-mails, memoranda, briefing papers, and handwritten notes. They should also include relevant communications between and among the individuals listed above and any ATF or Department of Justice employee between October 1, 2009 and the present.

We also request a transcribed interview with Kevin O'Reilly by the end of this month. Please inform us by September 14, 2011 when you plan to make Mr. O'Reilly available. His testimony will enable us to begin to determine the extent of the involvement of White House staff in Operation Fast and Furious.

Please provide the requested documents and information as soon as possible, but no later than noon on September 23, 2011. If you have any questions regarding these requests, your staff may contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-██████. We look forward to receiving your response.

Sincerely,



Darrell Issa, Chairman
 Committee on Oversight and
 Government Reform
 United States House of Representatives



Charles E. Grassley, Ranking Member
 Committee on the Judiciary
 United States Senate

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

The Honorable Patrick Leahy, Chairman
 Committee on the Judiciary
 United States Senate



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 9, 2011

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

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

Dear Chairman Issa and Senator Grassley:

This responds further to the Questions for the Record (QFRs) of the Senate Judiciary Committee Hearing on May 4, 2011, and your letter, dated August 16, 2011. We understand that you are interested in details of the circumstances in which firearms associated with Operation Fast and Furious, an investigation by the Bureau of Alcohol, Tobacco, and Firearms (ATF), were recovered in relation to crimes of violence.

For the purposes of responding to this question, we consider a firearm to be associated with Operation Fast and Furious if it was purchased by an individual who is a target of that investigation. It is important to note that many of the purchases described below took place before ATF opened the case that became known as Operation Fast and Furious on November 16, 2009; before the purchaser had been identified as a target of the investigation; or without ATF's knowledge at the time that the firearm was purchased.

ATF has compiled the information below from data provided by the National Tracing Center (NTC) in June 2011 and a review of Reports of Investigation (ROIs) from Operation Fast and Furious. ATF advises that, while it is providing the best information available at this time from these sources, ATF has not conducted a comprehensive, independent investigation into each incident and it is possible that there may be other such recoveries not reflected within this data.

United States Recoveries

Other than the firearms recovered at the scene of the shooting death of Agent Brian Terry, the single incident reflected in NTC trace data in which a firearm purchased by a target in

The Honorable Darrell E. Issa
 The Honorable Charles E. Grassley
 Page 2

Operation Fast and Furious was traced with a violent crime code in the United States was traced on May 26, 2011 by the Arizona Department of Public Safety (DPS). The firearm was a 7.62mm Romarm/Cugir GP WASR 10. The crime code was "Aggravated Assault on a Police Officer – Gun." ATF was not able to glean additional details about this incident from NTC trace data or ROIs. Other information available to ATF indicates that the firearm in question had been purchased in September 2009, before Operation Fast and Furious began, by an individual who has not been indicted in connection with the case. ATF also advises that information from DPS indicates that, after an aggravated assault on a DPS officer, DPS recovered the firearm. Although DPS traced the firearm using the code above, the firearm was not used in the assault on the officer.

The Department's June 22, 2011 response to QFR 49(a) erroneously included a firearm that was not recovered in connection with a violent crime. Rather, the firearm, a .40 caliber Beretta PX4 Storm, was traced by the Phoenix Police Department on September 20, 2009 using a non-violent crime code. The firearm had been purchased on August 1, 2009, before Operation Fast and Furious began, by Francisco Javier Ponce, who was later indicted in the case. The error stemmed from the fact that this firearm appears to have been traced previously in May 2009 in relation to a violent incident, but before the gun was related in any way to Fast and Furious.

Mexico Recoveries

ATF estimates that there have been eight events in which guns purchased by targets in Operation Fast and Furious have been recovered in Mexico in relation to violent crime, although the firearms were traced using violent crime codes in only five of those events. Those events are as follows:

- On January 8, 2010, four firearms purchased by targets in Operation Fast and Furious were recovered in Baja California, Mexico. These were traced with the crime code "Kidnap/Ransom." Three of these firearms were 7.62mm Romarm/Cugir FPK Dragunovs that had been purchased by Sean Christopher Steward on December 14, 2009. One firearm was a 7.62mm Romarm/Cugir GP WASR 10 that had been purchased by Uriel Patino on November 24, 2009.
- On February 25, 2010, three 7.62mm Romarm/Cugir GP WASR 10 firearms purchased by targets in Operation Fast and Furious were recovered in Baja California, Mexico. Two of these firearms were traced with the crime code "Homicide – Attempted." Jacob Wayne Chambers and Joshua David Moore, who were ultimately indicted in Operation Fast and Furious, made these purchases on October 13, 2009 and October 31, 2009, respectively, before the investigation was opened. ATF is also including a third firearm that was traced with the non-violent crime code "Found Firearm," because it was recovered on February 25, 2010 in the same incident. This purchase was made by an individual who was not a target at the time of the purchase, and who has not been indicted in connection with Fast and Furious.

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- On July 1, 2010, two 7.62mm Romarm/Cugir GP WASR 10 firearms purchased by targets in Operation Fast and Furious were recovered in Sonora, Mexico, following a violent exchange between two cartels. One of these firearms was traced twice, once with the code for “Homicide/Willful Kill – Gun” and once with the code for “Firing a Weapon.” The other was traced with the code for “Homicide/Willful Kill – Gun.” The first firearm had been purchased by Joshua David Moore on November 11, 2009, before Fast and Furious was opened. The other firearm was purchased in September 2009, before the investigation was opened, by an individual who has not been indicted in connection with Fast and Furious.
- On July 26, 2010, a .50 caliber Barrett rifle purchased by a target in Operation Fast and Furious was recovered in Durango, Mexico, and traced with the code “Firing a Weapon.” This firearm had been purchased by Uriel Patino on March 19, 2010.
- On May 27, 2011, three 7.62mm Romarm/Cugir GP WASR 10 firearms purchased by targets in Operation Fast and Furious were recovered in Jalisco, Mexico and were traced with the code “Firing a Weapon.” Two of these firearms had been purchased by Jonathan Earvin Fernandez on August 5, 2010 and August 16, 2010, and one by Danny Cruz Morones on August 4, 2010.

ATF is aware of three other incidents in which firearms purchased by targets in Operation Fast and Furious were later traced with non-violent crime codes, but which ATF believes may have been recovered in relation to an incident of a violent nature.

- On November 14, 2009, eleven 7.62mm Romarm/Cugir GP WASR 10 firearms purchased by targets in Operation Fast and Furious were recovered in Atoyac de Alvarez, Mexico, after the Mexican Military rescued a kidnap victim. Ten of these firearms were traced with the code for “Weapons Trafficking.” One of these weapons, purchased before Operation Fast and Furious was opened, was not traced but was listed in the Suspect Gun Database as related to the Fast and Furious investigation. Six of these weapons had been purchased by Jacob Wayne Chambers—one on September 26, 2009, two on October 2, 2009, and three on October 7, 2009—before Operation Fast and Furious was opened. The five others had been purchased in September and October 2009 by individuals who have not been indicted in connection with Fast and Furious.
- On August 13, 2010, two 7.62mm Romarm/Cugir GP WASR 10 firearms purchased by targets in Operation Fast and Furious were recovered in Durango, Mexico, following a confrontation between the Mexican military and an armed group. These firearms were traced with the code for “Found Firearm.” One of these firearms had been purchased by Jacob Wayne Chambers on October 26, 2009, before the case was opened. The other had been purchased in October 2009 by an individual who has not been indicted in connection to Fast and Furious.

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 The Honorable Charles E. Grassley
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- On November 4, 2010, two 7.62mm Romarm/Cugir GP WASR 10 rifles purchased by targets in Operation Fast and Furious were recovered in Chihuahua, Mexico, after the kidnapping of two individuals and the murder of a family member of a Mexican public official. These firearms were traced with the code for "Firearm Under Investigation." One had been purchased by Sean Christopher Steward on December 14, 2009, and the other by Uriel Patino on January 30, 2010.

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide assistance with this or any other matter.

Sincerely,


 Ronald Weich
 Assistant Attorney General

cc:

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

The Honorable Patrick Leahy
 Chairman
 Committee on the Judiciary
 United States Senate



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 19, 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
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letter, dated July 11, 2011, to the Attorney General regarding our efforts to respond to the Committee's requests relating to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigation known as Operation Fast and Furious. Your letter seeks information about a shared network drive that was developed to house documents that may be responsive to inquiries being carried out by both the Committee and the Department's Office of the Inspector General (OIG). We apologize for the delay in responding to your letter.

ATF established the shared network drive referenced in your letter on April 1, 2011, as a mechanism for organizing, reviewing, and processing records collected by ATF employees in response to the inquiries of both the Committee and OIG. It has been an important tool in the effort to preserve records and to provide documents in as timely a manner as possible. In addition and consistent with their management responsibilities, the shared network drive served as a mechanism for senior ATF officials to learn the factual basis of issues the Committee and OIG are exploring. Although the shared network drive contains some pertinent email files, it is separate from a database maintained by a contractor that contains the emails and their attachments of twenty current and former ATF employees in whom Committee staff has indicated a primary interest. This separate database was created to facilitate review of the large volume of email records.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
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Approximately twenty-four employees of the Department (including ATF) have had access to the entire contents of the shared network drive. This access included access to a folder created on June 13, 2011 for the purpose of housing records produced or made available to the Committee. On or about July 1, 2011, in response to concerns raised by Committee staff, ATF removed access to the shared network drive from five ATF officials who had been interviewed or who were scheduled to be interviewed by Committee staff. These ATF officials were Kenneth Melson, William Hoover, William McMahon, William Newell, and Mark Chait. ATF systems did not record which of these individuals, if any, may have accessed the folder containing materials produced or made available to the Committee. On or about July 1, 2011, ATF also removed access to the shared network drive from five other Department employees because their access was not necessary for the performance of their duties. After July 1, 2011, to assist them in preparation for interviews with Committee staff or testimony before the Committee, Messrs. Hoover, McMahon, Newell and Chait were given copies of their own emails that had been produced or made available to the Committee.

In addition, at one time or another during the Department's efforts to respond to the Committee's requests, more than fifty other employees and contractor staff have had access to portions of the shared network drive. These personnel include information technology systems administrators, paralegals, agents, and attorneys who have been assigned tasks relating to preserving, organizing, searching, and reviewing documents that may be responsive to the Committee's subpoena and related document requests. The scope of access given to these individuals was limited to that necessary to fulfill their roles in the review process. The documents produced or made available by the Department from the shared network drive were reviewed by one or more of these individuals during the review process, but most of the individuals never had access to the folder containing records that were produced or made available to the Committee.

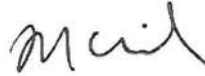
We note that Assistant Special Agent in Charge James Needles, whom Committee staff requested to interview but did not interview, participated in the document review process in this matter and had access to materials related to the inquiry that were not otherwise accessible to him in the normal course of his duties, as well as the folder on the shared network drive containing documents produced or made available to the Committee. Mr. Needles no longer has any access to the shared network drive. Similarly, Mr. Newell participated in the document review process, but not until after his interview with the Committee had taken place.

As of September 6, 2011, for reasons related to ongoing efforts to preserve and provide records related to the pending inquiries, six individuals continue to have access to the shared network drive. Responding to specific questions in your letter, ATF did not record the date particular records were placed onto the shared network drive. Also, other than through participation in the review of records contained in the shared network drive or the aforementioned separate email database, ATF is not able to ascertain what other records relating to the Committee's investigation may have been accessible to individual employees.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
Page 3

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,



Ronald Weich
Assistant Attorney General

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

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

Congress of the United States
Washington, DC 20515

September 20, 2011

VIA ELECTRONIC TRANSMISSION

Cynthia A. Schnedar
 Acting Inspector General
 U.S. Department of Justice
 Office of the Inspector General
 950 Pennsylvania Avenue, NW
 Washington, DC 20530

Dear Acting Inspector General Schnedar:

Thank you for taking the time to meet with members of our staffs last Friday. We wanted to reiterate the deep concerns that we have about your decision to turn over to the U.S. Attorney's Office for the District of Arizona (USAAZ) audio recordings your office obtained in its investigation of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Operation Fast and Furious. These recordings are mostly between a cooperating Federal Firearms Licensee (FFL) and an ATF case agent. The recordings corroborate the cooperating FFL's allegation that personnel at the ATF and the USAAZ sought to recruit him in an effort to obstruct the congressional inquiry and obscure the truth about Operation Fast and Furious from public scrutiny.

We understand that you had not personally reviewed these recordings as of Friday. Nevertheless, you told our staffs that you decided to provide them to the USAAZ before you even obtained them. You cited as your reason for doing so your desire to assist the USAAZ with its discovery obligations in the prosecution of Operation Fast and Furious suspects. However, it is unclear why you did not reconsider that decision after your office obtained the recordings and learned that they corroborate allegations of misconduct on the part of the USAAZ.

For instance, in one tape the FFL describes his concern about statements Assistant U.S. Attorney Emory Hurley made to the FFL's counsel at the time, Christopher Rapp.¹ This tape corroborates what both the FFL and his current attorney have each told our Committees about the USAAZ's initial denials of basic facts surrounding Operation Fast and Furious and the murder of Border Patrol Agent Brian Terry. Specifically, Mr. Hurley allegedly told Mr. Rapp to tell his client, the FFL, that the U.S. Attorney's Office, the ATF and the FFL were "all in the same boat."² On another occasion, the ATF Group Supervisor, David Voth, allegedly told the cooperating FFL, "we are all on the same sheet of music. And if we stay on the same sheet of music, we will be all right."³ These statements were made in the context of discussing our congressional inquiry. As you can imagine, we believe that allegations of USAAZ and

¹ Audio recording, WS600003, 2:00, unidentified date between March 12 and March 17, 2011.

² Interview with Cooperating FFL at 105 (May 18, 2011).

³ *Id.* at 55.

Acting Inspector General Schnedar
September 20, 2011
Page 2 of 3

ATF personnel seeking to influence the testimony of witnesses in a congressional investigation deserve thorough, aggressive, and independent investigation.

There would have been considerable investigative advantages to questioning the USAAZ and ATF personnel about these issues directly before these recordings were disclosed to them. However, the Justice Department delayed Congress's access to these individuals, and you provided them with copies of the recordings on June 22, 2011.

Sometime after you provided the recordings to the U.S. Attorney's Office, someone provided them to both to the ATF Public Information Officer in the Phoenix Field Division as well as to the ATF case agent who can be heard on the recordings. Then, they were leaked to the press.⁴ Each of these disclosures undermines our ability to assess the candor of witnesses in our investigation and thus obstructs it. Moreover, your decision to immediately disclose the recordings to those you are investigating creates at least the appearance, if not more, that your inquiry is not sufficiently objective and independent.

It appears that you did not consider the significant harm that providing these recordings to the very individuals under investigation could cause to either our inquiry or your own. You did not consult with us about the recordings even though the congressional inquiry and reactions to it are discussed at length. The recordings even contain a glib suggestion by an Executive Branch official that a private investigator be used to investigate Members of Congress to make the issue "go away."⁵

Your conclusion that discovery obligations existed once you were in possession of the tapes was premature. Given that the criminal trial of defendants connected to Operation Fast and Furious who were indicted in January 2011 has been postponed until at least next February, it seems unlikely that disclosure would be required at this point. Even if disclosures pursuant to Rule 16 of the Federal Rules of Criminal Procedure might be required at some point in the future, those obligations certainly are not ripe at this early stage.

Therefore, please answer the following questions:

- 1) After obtaining the recordings and realizing that they contained information about misconduct at the USAAZ, why did you not reconsider your decision to provide them directly to the USAAZ?
- 2) What steps, if any, did you take when you provided the recordings to USAAZ to ensure that they wouldn't be further disseminated, either to ATF or to the press?

⁴ Sharyl Attkisson, *Secret recordings raise new questions in ATF 'Gunwalker' operation*, CBS News, Sep. 19, 2011, available at http://www.cbsnews.com/8301-31727_162-20108240-10391695.html.

⁵ Audio recording, WS500007, 1:01:20, February 24, 2011.

Acting Inspector General Schnedar
September 20, 2011
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- 3) How would potential discovery obligations justify the USAAZ providing the tapes to the ATF case agent and numerous other ATF personnel?
- 4) Will you be examining the circumstances of how the recordings made their way from the USAAZ to the ATF to the press as part of your investigation?
- 5) Will the cooperating FFL's allegations of witness tampering or obstruction of the Congressional inquiry by USAAZ personnel be a part of your investigation?

We look forward to your prompt answers on these matters. Furthermore, we request that in the future you notify us immediately if you obtain evidence of obstruction of a congressional inquiry.

Please respond as soon as possible, but by no later than September 26, 2011. Should you have any questions regarding the issues we have raised, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. We look forward to your response.

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

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

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

ONE HUNDRED TWENTY-SEVEN CONGRESS

COMMITTEE ON THE JUDICIARY

2138 ADVANCED POLYMER LETTERS EDITION VOL. 3, NO. 10

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The Honorable Eric Holder, Jr.
Attorney General
U.S. Department of Justice
Washington, DC 20530-0001

Dear Attorney General Holder,

Recent resignations and reassignments at the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and at the United States Attorney's Office that oversaw *Operation Fast and Furious* suggest that there has been, at long last, some accounting for the failed law enforcement operation. I have continuing concerns, however, about the adequacy of these measures and about the appointment of a new acting director who will serve the agency only part-time.

The Department of Justice (Department) recently reassigned the ATF's former Acting Director Kenneth Melson. Dennis Burke, the U.S. Attorney for the District of Arizona, has resigned.

The Department cannot, however, pin this scandal on a few individuals and expect it to be forgotten. *Fast and Furious* was a result of systemic problems at the ATF. Congressional interest will continue until we fully understand who authorized the failed program and how a federal agency could allow such decision-making to occur.

Email exchanges obtained through congressional investigations make clear that the U.S. Attorney's Office in Arizona worked closely with ATF officials. Special agents Bill Newell, Bill McMahon, and David Voth were all intimately involved in a supervisory capacity with the conception, design, and day-to-day operations of *Fast and Furious*. While the lawyers in the U.S. Attorney's Office have been disciplined, the ATF transferred their partners within the bureau to high level positions. The Department insists that these were "lateral transfers," but many observers with knowledge of the ATF characterize them as promotions.

It is similarly difficult to believe that no one at main justice was aware of the long-standing operation. The ATF considered *Fast and Furious* a centerpiece of its enforcement operations. It solicited additional funding from the Department's Organized Crime and Drug

The Honorable Eric Holder, Jr.
 September 23, 2011
 Page 2

Enforcement Task Force, worked with the Department to obtain a wire tap, and briefed the Department and even the White House about the operation. The Department's insistence that the ATF never shared the operational details beyond its Phoenix field division is therefore difficult to believe. Resolution of this matter demands a more upfront accounting of the approval process that allowed the strategy to move forward.

In the wake of this scandal, more than ever, the ATF needs strong leadership. Despite this, the Department recently announced that it would appoint Todd Jones as acting director of the ATF and that Mr. Jones would continue to serve in his current role as U.S. Attorney in Minnesota.

Not only is Mr. Jones' role as U.S. Attorney time-intensive, but it also carries legal restrictions on his residency. 28 U.S.C. 545 states that "[e]ach United States attorney shall reside in the district for which he is appointed." Congress has made clear that the Attorney General cannot exempt a U.S. Attorney from these restrictions. Section 213 of the FY2010 Omnibus Appropriations Act stated that:

Notwithstanding any other provision of law, no funds shall be available for the salary, benefits, or expenses of any United States Attorney assigned dual or additional responsibilities by the Attorney General or his designee that exempt that United States Attorney from the residency requirements of 28 U.S.C. 545.¹

Acting Director Jones will therefore be legally required to maintain his residence in Minnesota for as long as he continues to serve as U.S. Attorney. Minnesota residence requirements likely require that he spend more than half his time in Minnesota.² While U.S. Attorneys have served as acting directors of ATF in the past, the currently embattled agency requires more dedicated leadership.

I would be remiss if I did not express my growing concern with the Department's handling of the *Fast and Furious* investigation. This Committee's initial letter regarding the operation was dated March 9. Of the six questions posed, five were unanswered. My follow-up letter, dated May 3, set a deadline of May 20 for response. I still have not received a response.

More troubling, many of the Department's responses have seemed calculated to obscure the facts of *Fast and Furious* from Congress. The Department's initial response to Senator Grassley, dated February 4, 2011, relied on clever wording to obfuscate the Department's conduct and potentially mislead Congress.³ The Department similarly attempted to distance

¹ FY2010 Omnibus Appropriations Act, P.L. 111-117 (2009)

² Minnesota Administrative Rules, § 8061.0300 Resident and Domicile Defined; Considerations.

³ The Department's response to Senator Grassley's initial oversight letter has several statements that are likely untrue. In a February 4, 2011 letter to Senator Grassley, the Department wrote:

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.

The Honorable Eric Holder, Jr.
 September 23, 2011
 Page 3

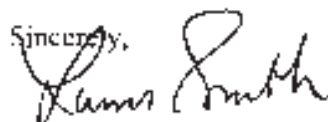
itself from the scandal by arguing that ballistics tests proved that, while two *Fast and Furious* weapons were found at the scene of Agent Brian Terry's murder, neither was used to fire the fatal shot. In fact, the ballistics tests were inconclusive. Further, according to recently released tapes of an ATF agent, it appears that there may have been three *Fast and Furious* guns at the scene, not two.

Following his election in 2008, President Obama promised to usher in a new era of openness and transparency. Despite this promise, the Justice Department has been less than cooperative with this Committee's requests. Moving forward, the Committee expects cooperation in uncovering the facts related to this operation. Please respond to the following questions by October 21, 2011:

1. Is the Department considering additional staff changes at the ATF in response to *Fast and Furious*?
2. How does the Department justify accepting the resignation of the U.S. Attorney while the ATF's managers in charge of *Fast and Furious* appear to have faced no discipline?
3. What role did the Department play in oversight of *Operation Fast and Furious*?
4. Does Todd Jones intend to maintain his residence in Minnesota while serving as acting director of the ATF?
5. Is the Department confident that the ATF can fulfill its mission with a part-time director who is based in Minnesota?
6. Have you issued a waiver of the residency requirement for Todd Jones under 28 U.S.C. § 545? If so, for what period does the waiver extend?

Thank you in advance for your prompt attention.

Sincerely,



Lamar Smith
 Chairman

cc: The Hon. John Conyers, Jr.

border. Thus, technically, the Department argues that its statement is true. In the same letter to Senator Grassley, the Department wrote, "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." This statement does not appear to be defensible. According to numerous agents and several ATF documents, ATF made a strategic decision to not interdict weapons.

⁴ "Pursuant to an order from the Attorney General or his designee, a United States attorney or an assistant United States attorney may be assigned dual or additional responsibilities that exempt such officer from the residency requirement in this subsection for a specific period as established by the order and subject to renewal." 28 U.S.C. § 545(a).

THE WHITE HOUSE

WASHINGTON

THE WHITE HOUSE

Washington

September 23, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Issa and Ranking Member Grassley:

I am writing in response to your letter to the National Security Advisor dated September 9, 2011 seeking information about the extent to which certain members of the National Security Staff were apprised of "Operation Fast and Furious," a criminal investigation conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Your letter specifically expresses interest in certain communications between an ATF agent, William Newell, and Kevin O'Reilly, a former member of the National Security Staff.

It is my understanding that the Department of Justice has produced emails between these two individuals to the Committee and that those emails contain general information about ATF's efforts to combat gun trafficking along the Southwest Border (including non-specific references to a case that was subsequently disclosed as "Operation Fast and Furious" after the indictment was unsealed). It is also my understanding that these emails do not contain information about any decision to allow guns to "walk," which I understand to be the focus of the Committee's investigation. Nonetheless, in an effort to accommodate the Committee's interest in this matter, we are working to identify information related to "Operation Fast and Furious" in the files of the three NSS staff members you identified. I anticipate that we will be able to provide some information to the Committee by the end of next week.

In addition, as I understand my staff has already informed your staff, Mr. O'Reilly, who was on detail to the National Security Staff from the State Department during the time period of the communications you reference in your letter, has since returned to the State Department. We

TOTAL P.003

understand from the State Department that Mr. O'Reilly is currently on a previously scheduled assignment to Iraq.

Sincerely,



Kathryn Ruemmler
Counsel to the President

Cc: The Honorable Elijah E. Cummings
Ranking Member
House Committee on Oversight and Government Reform

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary

P.003

SEP-23-2011 05:01

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September 26, 2011

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

Re: Representation of Dennis Burke

Dear Chairman Issa:

I write to inform you that I represent Dennis Burke in connection with the investigation into Operation Fast and Furious. My co-counsel in this matter is Lee Stein, with the firm of Perkins Cole. Please direct any questions you may have to me or to Mr. Stein. My contact information is below; Lee's number is 802. [REDACTED] We ask, of course, that you and your staff do not contact Mr. Burke directly.

Sincerely,


Chuck Rosenberg
[REDACTED]

cc: Lee Stein

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Congress of the United States
Washington, DC 20515

September 27, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
 Attorney General
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, D.C. 20530

Dear Attorney General Holder:

As our investigation into the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Operation Fast and Furious continues, it is becoming increasingly apparent that there was a serious lack of information-sharing among the major law enforcement agency components of the Department of Justice. With supervisory authority over two principal members of the nation's intelligence community, including the nation's primary federal criminal investigation and enforcement agency, the Department must ensure that all of its components have effective information-sharing procedures in place. Since it appears that critical information may not have been shared with regard to Operation Fast and Furious, serious questions have arisen as to why such procedures did not exist or failed to work properly.

Organized Crime Drug Enforcement Task Force (OCDETF) Strike Force

The Department of Justice's web site states that "OCDETF is the centerpiece of the Attorney General's drug supply reduction strategy."¹ OCDETF cases are reserved for cases of highest importance to the Department. The original Fast and Furious OCDETF proposal from January 26, 2010, states that the "focus of the proposed investigation will be on . . . Manuel CELIS-ACOSTA."² The proposal further states that "CELIS-ACOSTA [is] believed to be supplying firearms to [drug cartel 1], a documented RPOT [Regional Priority Organized Target], and [drug cartel 2], a documented CPOT [Consolidate Priority Organized Target]."³ Given that Acosta was believed to be supplying firearms to an RPOT and a CPOT, it is difficult to understand how the agencies that comprise OCDETF could have failed to share essential information about the main target of an OCDETF Strike Force case.

As Attorney General, you are responsible for ensuring that proper information-sharing takes place, at a minimum, among Department components. Additionally, the Department should share vital, sensitive information with those outside the Department in a responsible manner.

¹ ORGANIZED CRIME AND DRUG ENFORCEMENT TASK FORCES (OCDETF), <http://www.justice.gov/dea/programs/ocdetf.htm> (last visited Sept. 26, 2011).

² OPERATION: THE FAST AND THE FURIOUS at 4 (Jan. 26, 2010).

³ *Id.*

The Honorable Eric H. Holder, Jr.
 September 27, 2011
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Information Sharing

Operation Fast and Furious evolved from a lead on a DEA intercept to an ATF investigation to an OCDETF Strike Force case. Due to this OCDETF Strike Force case designation, multiple federal agencies were supposed to pool resources, share information, and coordinate strategy for the investigation. Certain reporting requirements are also mandatory for OCDETF cases to ensure that designated funds are being properly spent and inter-agency coordination is being properly utilized. Unfortunately, despite this structured coordination among the various agencies, in Fast and Furious, it appears that vital information may not have been shared with those agencies that needed it the most.

The main target in Operation Fast and Furious from its inception as an OCDETF Strike Force case in January 2010 was Manuel Celis-Acosta (Acosta). Acosta was the “biggest fish” of the Fast and Furious January 19, 2011 indictments. We have obtained detailed information from confidential sources that the Drug Enforcement Administration (DEA) was aware of Acosta’s arms trafficking activity as early as late 2009. It is our understanding that DEA knew Acosta was providing hundreds of firearms to members of Mexican drug cartels. We believe DEA shared this information about Acosta with the Federal Bureau of Investigation (FBI) before the OCDETF Strike Force case officially began in January 2010. The FBI and DEA both apparently knew by January 2010 that Acosta was trafficking guns from Phoenix to Juarez, Mexico but that he was uneasy about taking the guns across the border himself.

Moreover, FBI personnel in its Las Cruces, New Mexico office apparently knew that the subject of a separate DEA investigation was ordering weapons from Acosta in January 2010. Yet around the same time, the subject of that investigation received more than \$3,500 in official law enforcement funds as payment for illegal narcotics. That subject—apparently the financier for Acosta’s firearms trafficking ring—later began cooperating with the FBI and may have received additional government payments as a confidential informant (CI #1).

These facts raise some important questions:

1. Why was a transfer of more than \$3,500 in official law enforcement funds authorized to CI #1 around the same time that Acosta was known to be selling weapons to CI #1?
2. Was CI #1 ever charged with any violation in connection with the sale of illegal narcotics to another government informant? If not, why not?
3. What is the total amount in official law enforcement funds transferred to CI #1 before that individual became a confidential informant? What is the total amount afterward?
4. When was the first payment transmitted?

The Honorable Eric H. Holder, Jr.
 September 27, 2011
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5. Approximately how much money did CI #1 spend ordering weapons from Acosta and his straw purchasing ring in Phoenix from January 2010 to August 2010?
6. Was the information about Acosta supplying weapons to CI #1 shared with the ATF sometime between January 2010 and August 2010? If so, when and in what manner was it shared? If not, why not?
7. Was this information shared with DEA or FBI personnel assigned to the OCDETF strike force handling Operation Fast and Furious? If so, when and in what manner was it shared? If not, why not?
8. Was this information shared with the DEA or FBI representative on the OCDETF Southwest Border Regional Committee, which oversaw and approved Operation Fast and Furious? If so, when and in what manner was it shared? If not, why not?
9. What information regarding CI #1 was shared with ATF and when?
10. What information about CI #1 was shared with the FBI representative to the OCDETF Southwest Border Regional Committee and when?
11. What processes are in place for information sharing within the Department of Justice among ATF, FBI, and DEA for OCDETF cases?
12. Was information properly shared in Operation Fast and Furious according to these processes?
13. What is the purpose of an OCDETF Strike Force if information-sharing between agencies does not occur regarding targets of the OCDETF investigation?
14. What is the purpose of a multi-agency OCDETF Strike Force if the representatives to the Strike Force are unable to use the information at the full disposal of their particular agency?

If ATF had known in January 2010, as the DEA and FBI apparently knew, that the straw purchasing ring was procuring weapons for CI #1, then Operation Fast and Furious may have ended as many as ten months sooner than it did. This would have prevented hundreds of assault-type weapons from being illegally straw purchased on behalf of Mexican drug cartels.

According to confidential sources, over a two-year period CI #1 had contacted several DEA Agents, including Juarez, Mexico Resident Agent-in-Charge Jim Roberts, and passed information to these agents about Mexican drug cartels. If the information we have obtained is accurate, DEA had knowledge of CI #1's activities going back to at least early 2009. Apparently, CI #1 was initially frustrated with the United States government because he could not get its full attention when he was providing good information.

The Honorable Eric H. Holder, Jr.
 September 27, 2011
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Due to the failure to exploit this source of information earlier and the apparent failure to share information about the source, ATF was allegedly unaware that DEA and FBI knew CI #1 was ordering weapons from Acosta, the target of its Operation Fast and Furious. This failure to share vital information may have extended the use of gunwalking during Operation Fast and Furious, which sought to identify the higher-ups, like CI #1, who were paying for the weapons being obtained through straw purchasers.

We have also learned from confidential sources that ATF knew Acosta was orchestrating both narcotics and firearms transactions with the intent to sell narcotics, purchase firearms with the proceeds, and transport the firearms from the United States into Mexico. It is our understanding that as of February 2010, it was well known within the Department that Acosta intended to acquire heavy-duty firearms for the purpose of supplying them to the Mexican cartels. Sources have indicated that this information was communicated to numerous senior people in the Criminal Division, including Assistant Attorney General Lanny Breuer and several of his top deputies, including Jason Weinstein, Kenneth Blanco, and John Keeney.

Confidential sources have also indicated that law enforcement officers pulled over a vehicle in which Acosta was a passenger in early April 2010. One of the weapons recovered from this vehicle was bought by Acosta's most prolific straw purchaser, Uriel Patino, less than one week earlier. Yet Acosta was not arrested. He was allowed to leave the scene. We believe that ATF also knew that by July 1, 2010, Acosta made *fifteen* documented crossings into the United States from Mexico. These activities surely constituted the probable cause necessary to apprehend Acosta. Still, he was not arrested until late January 2011.

Cooperation with the Committees

Moreover, as we seek to learn who at the senior levels of the Department knew what and when regarding Operation Fast and Furious, the Department's recent lack of cooperation is distressing. Since the House Committee's last hearing on July 26, 2011, the Department has produced only 221 pages of documents pursuant to the March 31, 2011 subpoena. Of these 221 pages, several are in Spanish, several contain full redactions of the text, many contain nothing more than pictures from a presentation, and dozens are duplicates of material that had already been provided.

Further, we wrote to you on July 11, 2011 requesting communications regarding Operation Fast and Furious between and among twelve current and former senior-level Department employees, including Senate-confirmed presidential appointees. According to Department staff, the failure to produce these documents is due to technical difficulties. However, since it has been 11 weeks since our initial request and we have yet to receive any such documents, we now reiterate that request.

We also wrote to FBI Director Robert Mueller on that same date, requesting documents and communications of specific FBI officials, requesting information about possible paid FBI informants in contact with Operation Fast and Furious targets, and requesting information about the murder of Immigration and Customs Enforcement (ICE) Agent Jaime Zapata. On July 15,

The Honorable Eric H. Holder, Jr.
 September 27, 2011
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2011, we wrote to DEA Administrator Michele Leonhart requesting documents and communications of specific DEA officials and information about Manuel Celis-Acosta and possible informants from other agencies. While we have yet to receive any documents from FBI or DEA pursuant to these requests, the Bureau has offered a confidential staff briefing with FBI, DEA, and ATF officials. We have scheduled the briefing and hope it will be productive.

FBI 302s

In a transcribed interview, ATF Deputy Director William Hoover discussed certain Reports of Investigation, commonly known as 302s, that relate to Operation Fast and Furious. We asked the FBI for these documents in our July 11, 2011 letter to Director Mueller. As Deputy Director Hoover recalled:

Q: [The ATF Special Agent] sent some 302s. Do you remember how many, how many pages it was?

A: Ultimately that she sent? I believe five 302s. I don't remember how many pages, but I believe there were a total of five 302s.

Q: And did you read them?

A: I did.⁴

* * *

Q: In your evaluation of the 302s, do you think the FBI has problems of their own?

A: I would just hope -- a different word than hope -- I would just suggest that everyone completely gather the facts before they cast judgments and just make sure you understand what folks knew, when they knew, that kind of thing, that's all I'm asking.⁵

Multiple agencies are reportedly in possession of these 302s, but the Department has yet to produce them to the Committees, despite a request to the FBI more than two months ago.

Without full cooperation from all Department components, we are left to draw conclusions from incomplete information. We lack confidence that these components are cooperating with us fully. This lack of cooperation is not fair to the DOJ employees who are caught in the crosshairs of this investigation, or to the American public, which has a right to know how this operation was conceived and authorized. Therefore, please direct these components to comply with our document requests in addition to providing briefings on these serious issues.

⁴ Transcribed Interview of ATF Deputy Director William Hoover at 31-32.

⁵ *Id.* at 32-33.

The Honorable Eric H. Holder, Jr.
September 27, 2011
Page 6 of 6

Please provide the requested documents and information as soon as possible, but no later than noon on October 4, 2011. If you have any questions regarding these requests, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. We look forward to receiving your response.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight and
Government Reform
United States House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

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

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

Congress of the United States
Washington, DC 20515

September 28, 2011

Via Electronic Transmission

Colonel Michael A. Bills
 Commander
 Joint Task Force North
 U.S. Department of Defense
 Biggs Army Air Field
 Fort Bliss, Texas

Dear Colonel Bills:

For more than six months, we have been investigating a case conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) called Operation Fast and Furious. According to several agents, ATF leadership encouraged gun dealers to engage in sales of multiple semi-automatic firearms to individuals suspected of illegally purchasing the guns for Mexican drug cartels.

We understand that Joint Task Force North (JTF North) is a Department of Defense (DOD) organization tasked to support federal law enforcement agencies in the identification and interdiction of suspected threats along the approaches to the continental United States. Furthermore, we understand that JTF North may have been aware of Operation Fast and Furious, which was an Organized Crime Drug Enforcement Task Force (OCDETF) case, or similar operations involving other agencies in which weapons may have been transferred south of the border.

Accordingly, please provide all JTF North records relating to the following:

- (1) Operation Fast and Furious.
- (2) Facts and circumstances connected to the March 2011 indictment of Columbus, New Mexico Mayor Eddie Espinoza, Blas Gutierrez, and others on charges that they bought firearms in the U.S. for illegal export to Mexico.
- (3) Any other instance in which a U.S. government entity may have allowed firearms to be trafficked to Mexico.

The documents we seek include, but are not limited to, briefing papers, meeting minutes, briefing notes, all relevant records from Secret Internet Protocol Router Network (SIPRNet) and Non-Secure Internet Protocol Router Network (NIPRNet), e-mails, memoranda, and cables.

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. An attachment to this letter provides additional information about responding to this request. The House Committee can properly receive and store information up

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Colonel Michael A. Bills
September 28, 2011
Page 2

to the TS/SCI level. A complete response to this request should include the provision of any material with that or a lesser classification. The Senate Committee on the Judiciary provides oversight of the Department of Justice and the agencies under it, including the FBI, DEA, and ATF. The Judiciary Committee can also properly receive and store information up to the TS/SCI level, and all classified documents should be delivered to the Office of Senate Security. All responsive, unclassified material should be segregated from any classified material and should be delivered directly to the Committee offices.

Please provide the requested documents and information as soon as possible, but by no later than noon on October 12, 2011. If you have any questions regarding these requests, please contact Brian Downey in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. Thank you for your prompt attention to this important matter.

Sincerely,

A blue ink signature of Darrell Issa, written in a cursive style.

Darrell Issa, Chairman
Committee on Oversight and
Government Reform
United States House of Representatives

A blue ink signature of Charles E. Grassley, written in a cursive style.

Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

Enclosure

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

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

**U.S. Department of Justice**

Office of the Inspector General

September 28, 2011

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

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20515

Dear Congressman Issa and Senator Grassley:

I write in response to your letter dated September 20, 2011, in which you questioned the Department of Justice Office of the Inspector General's (OIG) decision to provide to the United States Attorney's Office for the District of Arizona (USAO) copies of certain audio recordings made by a witness.

As we explained to members of your staffs at a meeting on September 16, 2011, the OIG first learned of the existence of the recordings during an interview the OIG conducted of a witness. The witness, who was represented by counsel, told OIG investigators that he had recorded certain conversations between the witness and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) case agent for the Fast and Furious investigation.

Prior to making a formal request after the interview for the recordings, the OIG first determined that one-party consent recordings were legal in Arizona. In addition, because the OIG is a component of the Department of Justice, the investigative team and senior OIG management discussed whether OIG's obtaining the recordings would affect the USAO's disclosure obligations in the pending criminal cases arising from the Fast and Furious investigation. As you know, prosecutors are obligated under the U.S. Constitution, statutes, and rules of procedure to disclose certain information to defendants in criminal cases. Among other things, prosecutors must disclose to defendants information in the prosecutors' custody that may be

exculpatory, including material that may be used to impeach witness credibility, prior statements of witnesses relevant to their expected testimony, and any recorded statement of a defendant. Information known by any part of the Department of Justice, including the Office of the Inspector General, is deemed to be within the prosecutor's custody. Because the recordings involved interaction between two individuals who we understood were likely to be important witnesses in the pending criminal cases, and in one instance a discussion between a witness and a defendant in a criminal case, we determined that if the OIG obtained the recordings, we would be required to promptly provide them to the USAO so that it could appropriately consider them in the ongoing assessment of the criminal cases and satisfy its legal disclosure obligations to the defendants in those cases.

Subsequent to the interview, OIG investigators called the witness's counsel and formally asked for the recordings. During the telephone call the OIG investigators informed the witness's counsel that if the OIG received the recordings, we would have to give the recordings to the USAO because the prosecutors are required to review the material to satisfy their legal disclosure obligations in the pending prosecutions of defendants arrested as a result of the Fast and Furious investigation. In an e-mail to the witness's attorney on the same day, the OIG confirmed its request for the recordings and the condition that if the OIG received the recordings we would have to provide them to the USAO.

The next day, the OIG received from the witness's attorney a CD containing a total of 12 recordings: two in-person conversations between the witness and the ATF case agent; nine telephone calls between the witness and the ATF case agent; and one telephone call between the witness and a defendant in a criminal case resulting from the Fast and Furious investigation. Several days later, after members of the investigative team listened to the recordings, the OIG provided a copy of the recordings to the USAO with a memorandum stating how the OIG obtained the recordings and that we were providing them to the USAO so that the USAO could satisfy its legal disclosure obligations in the pending criminal cases. Because the USAO was the entity with the necessary information to assess the recordings in view of its disclosure obligations, the OIG believed it should provide the recording to it without delay.

Your September 20, 2011, letter requests that the OIG respond to five questions related to the OIG's decision to provide a copy of the recordings to the USAO. Each question is quoted below and followed by a response.

- 1) *"After obtaining the recordings and realizing that they contained information about misconduct at the USAO, why did you not reconsider your decision to provide them directly to the USAO?"*

The OIG investigative team listened to the recordings prior to providing the recordings to the USAO. Because they contained statements of the case agent, another anticipated trial witness, and a defendant in a pending criminal case, we believed the OIG had an obligation to provide a copy of the recordings to the USAO promptly so that it could consider them in connection with the government's legal disclosure obligations described above.

- 2) *"What steps, if any, did you take when you provided the recordings to the USAO to ensure that they wouldn't be further disseminated, either to ATF or to the press?"*

In our memorandum transmitting the recordings to the USAO, we explained that we believed the USAO should be aware of these recordings so that it could consider them in connection with the government's discovery obligations in the pending investigations and prosecutions. Because the USAO was responsible for the cases arising from the Fast and Furious investigation, we concluded that the USAO was the entity most capable of reviewing the recordings for discovery and evidentiary purposes in the pending criminal cases. We expected that in discharging this obligation, the USAO would disseminate the recordings responsibly and properly.

- 3) *"How would potential discovery obligations justify the USAO providing the tapes to the ATF case agent and numerous other ATF personnel?"*

We believe this question should be directed to the USAO as it is the entity with the necessary information to evaluate the government's discovery obligations in this instance.

- 4) *"Will you be examining the circumstances of how the recordings made their way from the USAO to the ATF to the press as part of your investigation?"*

We are still gathering preliminary information and evaluating whether any issues arising from dissemination of the recordings should be made part of the OIG's Fast and Furious review.

- 5) *"Will the cooperating FFL's allegations of witness tampering or obstruction of the Congressional inquiry by USAO personnel be a part of your investigation?"*

We take allegations of witness tampering and obstruction of an investigation very seriously. We will evaluate the information from the recordings and other sources as our review continues and will make a determination about how to address any such allegations at the appropriate time.

If you have any further questions, please feel free to contact me or Senior Counsel Jay Lerner [REDACTED]

Sincerely,



Cynthia A. Schnedar
Acting Inspector General

cc: The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
United State House of Representatives

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

THE WHITE HOUSE
WASHINGTON

September 30, 2011

The Honorable Darrell E. Issa
Chairman
House Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Member
Senate Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Issa and Ranking Member Grassley:

I am writing in further response to your letter to National Security Advisor Tom Donilon dated September 9, 2011 seeking information about the extent to which certain members of the National Security Staff (NSS) were apprised of "Operation Fast and Furious," a criminal investigation conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

Enclosed with this letter are documents bearing bates numbers NSS F&F 000001 through NSS F&F 000102. These documents contain records from the three NSS members you identified relating to "Operation Fast and Furious" from October 2009 through the end of January 2011, when the indictment in *United States v. Avila* was unsealed and Senator Grassley began his inquiry into this matter. The vast majority of these documents were previously provided to you by the Department of Justice and almost all of them are communications between Mr. O'Reilly and ATF agent Newell. For the sake of completeness, we have included some communications that relate to emails previously produced by the Department of Justice, even though they do not appear to relate directly to "Operation Fast & Furious." Email addresses and phone numbers have been redacted from these documents, along with certain sensitive law enforcement information identified for us by the Department of Justice.

Within the timeframe noted above, there are additional communications between Mr. O'Reilly and Mr. Restrepo and/or Mr. Gatjanis, which forward certain of Mr. Newell's emails. These internal NSS emails are not included in the enclosed documents because the EOP has significant confidentiality interests in its internal communications. For the same reason, one

Letter to Chairman Issa and Ranking Member Grassley
Page 2

internal White House email and attachment, which references the unsealed indicted case *United States v. Avila* is also not included in the enclosed documents.

At the request of the Department of Justice, one email attachment, bates numbered WH F&F 000103 through WH F&F 000121, is not included with the enclosed documents except for the cover page, because it contains sensitive law enforcement information. We understand that the Department of Justice has previously provided your Committees with access to this document, which is titled "2009 Project Gunrunner Assessment." We can arrange to provide access again, if requested.

As today's production makes clear, none of the communications between ATF and the White House revealed the investigative law enforcement tactics at issue in your inquiry, let alone any decision to allow guns to "walk." I trust that the information provided today resolves your inquiry to Mr. Donilon.

Sincerely,



Kathryn H. Ruemmler
Counsel to the President

Cc: The Honorable Elijah E. Cummings
Ranking Member
House Committee on Oversight and Government Reform

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 30, 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
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letter dated July 11, 2011, to the Attorney General requesting records relating to communications between and among twelve Department of Justice officials regarding ATF Operation Fast and Furious.

We are delivering today to your office 97 pages of material responsive to your request. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. In addition, we have redacted from multi-subject documents text that is not responsive to your request. The nature of specific redactions is indicated by a redaction code ("RC") in accordance with the enclosed list. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure. In response to a request from Chairman Smith, we also will provide these documents to the House Committee on the Judiciary.

We have also located an additional page of law-enforcement sensitive material that we are prepared to make available at the Department for review by staff of your respective Committees, as well as staff of the House Committee on the Judiciary. There are limited redactions of text that would identify law enforcement sensitive techniques.

Our search for records responsive to your request is ongoing, and we will supplement this response when we process additional responsive records.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
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We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in dark ink, appearing to read 'm w', likely representing Ronald Weich.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary

October 2011

October 2011

中国矿业大学北京 地质工程研究所
北京 100083

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DATE - 16.08.2017 FILE NO. CONGR553

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 KAYEUBH HOLST GEFEST BUNN 2 B.V.

WASHINGTON, DC 20515-6736

(2021) 225:3951

Address: 1000 E. 9th St., Suite 100, Denver, CO 80202

[illegible]

October 4, 2011

President Barack Obama
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear Mr. President,

I write to urge you to instruct the Department of Justice to appoint a special counsel to determine whether Members of Congress were misled by the Attorney General during his recent testimony before the House Judiciary Committee regarding what information he knew about the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Operation Fast and Furious, which allowed straw buyers to purchase guns in the United States and transfer them across the border to Mexico. The guns were used for illegal activity and ultimately were used in the shooting death of Customs and Border Patrol Agent Brian Terry.

At a hearing before the House Judiciary Committee on May 3, 2011, Attorney General Holder testified that he first heard of "Fast and Furious" in April, 2011. Congressman Issa asked, "When did you first know about the program, officially. I believe, known as Fast and Furious? Best of your knowledge, what date?" The Attorney General responded "I'm not sure of the exact date, but I probably heard about Fast and Furious for the first time over the last few weeks."

In response to ongoing Judiciary Committee oversight of Operation Fast and Furious, the Department of Justice recently provided to the Committee documents that raise significant questions about the truthfulness of the Attorney General's testimony.

Weekly updates from the National Drug Intelligence Center began briefing the Attorney General on Fast and Furious beginning, at the latest, on July 5, 2010. These updates mentioned, not only the name of the operation, but also specific details about guns being trafficked to Mexico.

An additional memo dated October 18, 2010 from Lanny Breuer to Attorney General Holder also discussed Operation Fast and Furious.

President Barack Obama
October 4, 2011
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The Department's consistent response to Congress has been that Operation Fast and Furious was a discrete law enforcement effort largely isolated to the ATF office in Phoenix. These documents appear to undermine this claim and bring into question statements made by Attorney General Holder to this Committee.

Allegations that senior Justice Department officials may have intentionally misled Members of Congress are extremely troubling and must be addressed by an independent and objective special counsel.

I urge you to appoint a special counsel who will investigate these allegations as soon as possible.

Respectfully,

A handwritten signature in black ink that reads "Lamar Smith". The signature is written in a cursive, flowing style.

Lamar Smith
Chairman

cc: The Honorable John Conyers, Jr.



The Attorney General

Washington, D.C.

October 7, 2011

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

The Honorable Elijah Cummings
Ranking Minority Member
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20515

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lamar S. Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Messrs. Chairmen and Senator Grassley, Congressman Conyers, and
Congressman Cummings:

I have watched for some months now as the facts surrounding Operation Fast and Furious have been developed on the public record. I have not spoken at length on this subject out of deference to the review being conducted, at my request, by our Department's Inspector General. However, in the past few days, the public discourse concerning these issues has become so base and so harmful to interests that I hope we all share that I must now address these issues notwithstanding the Inspector General's ongoing review.

For example, I simply cannot sit idly by as a Majority Member of the House Committee on Oversight and Government Reform suggests, as happened this week, that law enforcement and government employees who devote their lives to protecting our citizens be considered "accessories to murder." Such irresponsible and inflammatory rhetoric must be repudiated in the strongest possible terms. Those who serve in the ranks of law enforcement are our Nation's heroes and deserve our Nation's thanks, not the disrespect that is being heaped on them by those who seek political advantage. I trust you feel similarly and I call on you to denounce these statements.

I also want to be very clear that protecting American citizens from the devastating effects of gun violence is among the most important responsibilities of the Department of Justice. Likewise, ensuring that weapons sold here do not flow south to Mexico is of paramount importance. We are committed to disrupting and dismantling the organizations that traffic weapons across our borders and I am proud to

The Honorable Darrell E. Issa, The Honorable Patrick J. Leahy,
 The Honorable Lamar S. Smith, The Honorable Elijah Cummings,
 The Honorable Charles E. Grassley, The Honorable John Conyers, Jr.
 Page Two

stand with our brave law enforcement officers who fight every day to protect our citizens and those of Mexico from the effects of gun violence and illegal gun trafficking.

A. Fast and Furious was a Flawed Response to a Serious Problem on the Southwest Border

According to ATF, it took into evidence nationwide approximately 35,000 firearms in FY 2011. In FY 2010, the number was approximately 37,500. During that same period, ATF reports that it took into evidence nationwide over 5 million rounds of ammunition. Still, the Southwest Border remains the front line in the battle against illegal gun trafficking. ATF and our prosecutors struggle mightily to make cases against gun smugglers and do outstanding work on a daily basis in an effort to stop the flow of guns across our borders.

Notwithstanding the seriousness of the problem faced on the Southwest Border, there is no doubt that Operation Fast and Furious was fundamentally flawed. Regrettably, its effects will be felt for years to come as weapons that should have been interdicted but were not continue to show up at crime scenes in this country and in Mexico. This is both tragic and completely unacceptable. I want to be very clear that we must aim to disrupt and dismantle the dangerous cartels that operate south of our border. That said, in our pursuit of that goal we must take all steps possible to prevent guns from crossing our border and the desire to bring cartel leaders to justice does not and cannot justify losing track of dangerous weapons.

For that very reason, in 2011, after the controversy about this matter arose, I took decisive action to ensure that such operations are never again undertaken. First, I referred the matter to the Department's Inspector General for review so the facts underlying it could come out. Second, I instructed the Deputy Attorney General to reiterate to our prosecutors and law enforcement components that Department policy prohibits the design or conduct of undercover operations which include the uncontrolled crossing of guns across the border. In addition, new leadership is now in place both at ATF and in the United States Attorney's Office in Arizona. It has become clear that the flawed tactics employed in Fast and Furious were not limited to that operation and were actually employed in an investigation conducted during the prior Administration. Regardless, those tactics should never again be adopted in any investigation.

B. No Knowledge of Fast and Furious' Misguided Tactics

Much has been made in the past few days about my congressional testimony earlier this year regarding Fast and Furious. My testimony was truthful and accurate and I have been consistent on this point throughout. I have no recollection of knowing about Fast and Furious or of hearing its name prior to the public controversy about it. Prior to early 2011, I certainly never knew about the tactics employed in the operation and it is my understanding that the former United States Attorney for the District of Arizona and the former Acting Director and Deputy Director of ATF have told Congress that they, themselves, were unaware of the tactics employed. I understand that they have also told Congress that they never briefed me or other Department leadership on the misguided tactics that were used in Fast and Furious. Of course, that is not surprising for, as Chairman Issa made clear in an interview on CNN just this week, even the former Acting Director of ATF "has said he didn't know about" the tactics being used in the field by his agency.

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 The Honorable Lamar S. Smith, The Honorable Elijah Cummings,
 The Honorable Charles E. Grassley, The Honorable John Conyers, Jr.
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In the past few days, some have pointed to documents that we provided to Congress as evidence that I was familiar with Fast and Furious earlier than I have testified. That simply is not the case and those suggestions mischaracterize the process by which I receive information concerning the activities of the Department's many components. On a weekly basis, my office typically receives over a hundred pages of so-called "weekly reports" that, while addressed to me, actually are provided to and reviewed by members of my staff and the staff of the Office of the Deputy Attorney General. The weekly reports contain short summaries of matters that the agencies deem of interest that week. Sometimes, the summaries are simply a sentence-long and other times they consist of a paragraph. In some cases, the summaries are of policy-related issues or upcoming events. In other cases, the summaries are brief, high-level reviews of pending matters or investigations. It is important to look at the documents supposedly at issue here and, for that reason, I have attached them to this letter and am making them public in the form they previously were provided by us to Congress. Please note that none of these summaries say anything about the unacceptable tactics employed by ATF.

Attorneys in my office and in the Office of the Deputy Attorney General review these weekly reports and bring to my attention only those matters deemed to require my consideration or action; given the volume of material to which I must devote my attention, I do not and cannot read them cover-to-cover. Here, no issues concerning Fast and Furious were brought to my attention because the information presented in the reports did not suggest a problem. Rather, the entries suggest active law enforcement action being taken to combat a firearms-trafficking organization that was moving weapons to Mexico. For example, the ATF weekly report for July 19-23, 2010 briefly described the seizure in Phoenix of 73 firearms and 250 AK-47 drum magazines from a local business as part of Operation Fast and Furious, again with no mention of any unacceptable tactics.

If a component of the Department has concerns about a particular matter, there are established avenues for raising them with my office or that of the Deputy Attorney General and a weekly report is not one of them. As Attorney General, I am not and cannot be familiar with the operational details of any particular investigation being conducted in an ATF field office unless those details are brought to my attention. That did not happen with Fast and Furious until the public controversy arose in 2011.

Senator Grassley has suggested that I was aware of Operation Fast and Furious from letters he provided to me on or about January 31, 2011 that were addressed to the former Acting Director of ATF. However, those letters referred only to an ATF umbrella initiative on the Southwest Border that started under the prior Administration -- Project Gunrunner -- and not to Operation Fast and Furious.

To be sure, during 2010 I knew generally that ATF was conducting gun trafficking operations along the Southwest Border and elsewhere in the country since that is a core part of its mission given the large number of firearms flowing to Mexico each year from the United States. I also was aware of the existence of Project Gunrunner. More specifically, however, I now understand some senior officials within the Department were aware at the time that there was an operation called Fast and Furious although they were not advised of the unacceptable operational tactics being used in it. For example, I understand that we have provided to Congress materials from a March 2010 monthly meeting between the then-Acting Deputy Attorney General and senior ATF officials that included discussion of Fast and

The Honorable Darrell E. Issa, The Honorable Patrick J. Leahy,
 The Honorable Lamar S. Smith, The Honorable Elijah Cummings,
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 Page Four

Furious. That meeting, of course, occurred shortly before Chairman Issa received his own briefing regarding Fast and Furious from some of the same ATF officials. I am aware that Chairman Issa has said that he was not briefed on the unacceptable details of Fast and Furious. Like Chairman Issa, the then-Acting Deputy Attorney General was not told of the unacceptable tactics employed in the operation in his regular monthly meetings with ATF to discuss its activities throughout the United States and abroad.

C. Congress Has Failed to Consider Whether Additional Tools Are Needed to Stem the Flow of Guns into Mexico

ATF witnesses testified before the House Committee on Oversight and Government Reform that the agency's ability to stem the flow of guns from the United States into Mexico is severely impaired by a lack of effective law enforcement tools. For example, a number of witnesses indicated that current penalties for illegal straw purchases are inadequate to deter such activity or to induce cooperation with law enforcement authorities after a violation is detected. Likewise, the lack of reporting requirements for multiple long gun purchases in a short period of time hindered law enforcement efforts to combat gun trafficking. Yet, the House of Representatives has voted to block a rule that requires such reporting on the Southwest Border.

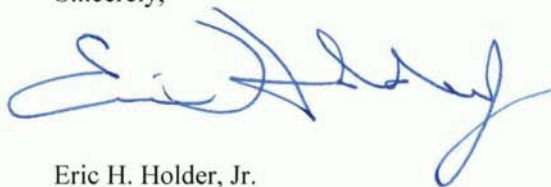
As I have said, the fact that even a single gun was not interdicted in this operation and found its way to Mexico is unacceptable. Equally unacceptable, however, is the fact that too many in Congress are opposed to any discussion of fixing loopholes in our laws that facilitate the staggering flow of guns each year across our border to the south. I cannot help but note that at the same time that some members of Congress understandably criticize the Fast and Furious operation, they vehemently refuse to consider whether ATF has the resources and legal tools it needs to do its job -- tools that would be entirely consistent with the constitutional rights of law-abiding citizens.

A telling moment in this regard came during one of the Fast and Furious hearings held by the House Committee on Oversight and Government Reform when Representative Maloney sought to question an ATF witness about potential reforms to our laws that would help stem the flow of illegal weapons. Representative Maloney was cut-off in mid-sentence by Chairman Issa, who then "cautioned" the witness that it would not be "valid testimony" to respond to such questions because the Committee was not interested in "proposed legislation and the like[.]" While failing to interdict weapons is an unacceptable tactic to stop the flow of illegal weapons, it seems clear that some in Congress are more interested in using this regrettable incident to score political points than in addressing the underlying problem. Even in the face of an unprecedented flow of guns across the border, too many in Congress still oppose every effort to reform our gun laws in ways that would make the United States and our Mexican neighbors safer.

The Honorable Darrell E. Issa, The Honorable Patrick J. Leahy,
The Honorable Lamar S. Smith, The Honorable Elijah Cummings,
The Honorable Charles E. Grassley, The Honorable John Conyers, Jr.
Page Five

Until we move beyond the current political climate -- where real solutions take a back seat to both political posturing and making headlines on cable news programs, and is deemed more important than actually solving our country's difficult challenges -- nothing is going to change. I hope we can engage in a more responsible dialogue on this subject in the future. There is much we all need to do together to stop gun violence on both sides of the border and make our Nation safer.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric Holder", with a stylized flourish at the end.

Eric H. Holder, Jr.

Enclosures

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPEIER, CALIFORNIA

October 9, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

From the beginning of the congressional investigation into Operation Fast and Furious, the Department of Justice has offered a roving set of ever-changing explanations to justify its involvement in this reckless and deadly program. These defenses have been aimed at undermining the investigation. From the start, the Department insisted that no wrongdoing had occurred and asked Senator Grassley and me to defer our oversight responsibilities over its concerns about our purported interference with its ongoing criminal investigations. Additionally, the Department steadfastly insisted that gunwalking did not occur.

Once documentary and testimonial evidence strongly contradicted these claims, the Department attempted to limit the fallout from Fast and Furious to the Phoenix Field Division of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). When that effort also proved unsuccessful, the Department next argued that Fast and Furious resided only within ATF itself, before eventually also assigning blame to the U.S. Attorney's Office in Arizona. All of these efforts were designed to circle the wagons around DOJ and its political appointees.

To that end, just last month, you claimed that Fast and Furious did not reach the upper levels of the Justice Department. Documents discovered through the course of the investigation, however, have proved each and every one of these claims advanced by the Department to be untrue. It appears your latest defense has reached a new low. Incredibly, in your letter from Friday you now claim that you were unaware of Fast and Furious because your staff failed to inform you of information contained in memos that were specifically addressed to you. At best, this indicates negligence and incompetence in your duties as Attorney General. At worst, it places your credibility into serious doubt.

The Honorable Eric H. Holder, Jr.
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 Page 2

Following the Committee's issuance of a subpoena over six months ago, I strongly believed that the Department would fully cooperate with Congress and support this investigation with all the means at its disposal. The American people deserve no less. Unfortunately, the Department's cooperation to date has been minimal. Hundreds of pages of documents that have been produced to my Committee are duplicative, and hundreds more contain substantial redactions, rendering them virtually worthless. The Department has actively engaged in retaliation against multiple whistleblowers, and has, on numerous occasions, attempted to disseminate false and misleading information to the press in an attempt to discredit this investigation.

Your letter dated October 7 is deeply disappointing. Instead of pledging all necessary resources to assist the congressional investigation in discovering the truth behind the fundamentally flawed Operation Fast and Furious, your letter instead did little but obfuscate, shift blame, berate, and attempt to change the topic away from the Department's responsibility in the creation, implementation, and authorization of this reckless program. You claim that, after months of silence, you "must now address these issues" over Fast and Furious because of the harmful discourse of the past few days.¹ Yet, the only major development of these past few days has been the release of multiple documents showing that you and your senior staff had been briefed, on numerous occasions, about Fast and Furious.

The Mexican Cartels

A month after you became Attorney General, you spoke of the danger of the Mexican drug cartels, and the Sinaloa cartel in particular. The cartels, you said, "are lucrative, they are violent, and they are operated with stunning planning and precision."² You promised that under your leadership "these cartels will be destroyed."³ You vowed that the Department of Justice would "continue to work with [its] counterparts in Mexico, through information sharing, training and mutual cooperation to jointly fight these cartels, both in Mexico and the United States."⁴

Under your leadership, however, Operation Fast and Furious has proven these promises hollow. According to one agent, Operation Fast and Furious "armed the cartel. It is disgusting."⁵ Fast and Furious simply served as a convenient means for dangerous cartels to acquire upwards of 2,000 assault-style weapons. On top of that, the Government of Mexico was not informed about Fast and Furious. In fact, DOJ and ATF officials actively engaged in hiding information about Fast and Furious from not only Mexican officials, but also U.S. law enforcement officials operating in Mexico for fear that they would inform their Mexican

¹ Letter from Att'y Gen. Eric Holder to Chairman Darrell Issa et al. (Oct. 7, 2011) [hereinafter Holder Letter].

² Statement by U.S. Att'y Gen. Eric Holder, Attorney General Eric Holder at the Xcellerator Press Conference (Feb. 25, 2009), available at <http://www.justice.gov/ag/speeches/2009/ag-speech-090225.html> [hereinafter Holder Statement].

³ Associated Press, Mexican cartels' drugs, mayhem hit U.S. cities, Feb. 26, 2009, available at http://www.msnbc.msn.com/id/29389404/ns/world_news-americas/t/mexican-cartels-drugs-mayhem-hit-us-cities/.

⁴ Holder Statement, *supra* note 2.

⁵ Transcribed Interview of ATF Acting Attaché to Mexico Carlos Canino at 25.

The Honorable Eric H. Holder, Jr.
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counterparts. This strategy is inapposite and contradicts the promises you made to the American people.

Your September 7, 2011 Statement

On September 7, 2011, you said that “[t]he notion that [Fast and Furious] reaches into the upper levels of the Justice Department is something that at this point I don’t think is supported by the facts and I think once we examine it and once the facts are revealed we’ll see that’s not the case.” Unfortunately, the facts directly contradict this statement.

Lanny Breuer, the Assistant Attorney General for the Criminal Division, clearly a member of the Department’s senior leadership, knew about Fast and Furious as early as March 2010. In fact, I have learned that the amount of detail shared with Breuer’s top deputies about Fast and Furious is simply astounding.

For example, Manuel Celis-Acosta was the “biggest fish” of the straw purchasing ring in Phoenix. From the time the investigation started in September 2009 until March 15, 2010, Manuel Celis-Acosta acquired at least 852 firearms valued at around \$500,000 through straw purchasers. Yet in 2009, Celis-Acosta reported an Arizona taxable income of only \$15,475. Between September 2009 and late January 2010, 139 of these firearms were recovered, 81 in Mexico alone. Some of these firearms were recovered *less than 24 hours after they were bought*.

This information, and hundreds of pages worth of additional information, was included in highly detailed wiretap applications sent for authorization to Breuer’s top deputies. It is my understanding, the Department applied to the United States District Court for the District of Arizona for numerous wire taps from March 2010 to July 2010. These wire tap applications were reviewed and approved by several Deputy Assistant Attorney Generals, including Kenneth A. Blanco, John C. Keeney, and Jason M. Weinstein. Breuer’s top deputies approved these wiretap applications to be used against individuals associated with the known drug cartels. As I understand it, the wire tap applications contain rich detail of the reckless operational tactics being employed by your agents in Phoenix. Although Breuer and his top deputies were informed of the operational details and tactics of Fast and Furious, they did nothing to stop the program. In fact, on a trip to Mexico Breuer trumpeted Fast and Furious as a promising investigation.⁶

Gary Grindler, the then-Deputy Attorney General and currently your Chief of Staff, received an extremely detailed briefing on Operation Fast and Furious on March 12, 2010. In this briefing, Grindler learned such minutiae as the number of times that Uriel Patino, a straw purchaser on food stamps who ultimately acquired 720 firearms, went in to a cooperating gun store and the amount of guns that he had bought. When former Acting ATF Director Ken Melson, a career federal prosecutor, learned similar information, he became sick to his stomach:

⁶ *Id.*, at 22-23.

The Honorable Eric H. Holder, Jr.
 October 9, 2011
 Page 4

I had pulled out all Patino's -- and ROIs is, I'm sorry, report of investigation -- and you know, my stomach being in knots reading the number of times he went in and the amount of guns that he bought.⁷

At the time of his briefing in March of last year, Grindler knew that Patino had purchased 313 weapons and paid for all of them in cash. Unlike Melson, Grindler clearly saw nothing wrong with this. If Grindler had had the sense to shut this investigation down right then, he could have prevented the purchase of an additional 407 weapons by Patino alone. Instead, Grindler did nothing to stop the program.

Following this briefing, it is clear that Grindler did one of two things. Either, he alerted you to the name and operational details of Fast and Furious, in which case your May 3, 2011 testimony in front of Congress was false; or, he failed to inform you of the name and the operational details of Fast and Furious, in which case Grindler engaged in gross dereliction of his duties as Acting Deputy Attorney General. It is fair to infer from the fact that Grindler remains as your Chief of Staff that he did not engage in gross dereliction of his duties and told you about the program as far back as March of 2010.

In the summer of 2010, at the latest, you were undoubtedly informed about Fast and Furious. On at least five occasions you were told of the connection between Fast and Furious and a specific Mexican cartel – the very cartel that you had vowed to destroy. You were informed that Manuel Celis-Acosta and his straw purchasers were responsible for the purchase of 1,500 firearms that were then supplied to Mexican drug trafficking cartels. Yet, you did nothing to stop this program.

You failed to own up to your responsibility to safeguard the American public by hiding behind “[a]ttorneys in [your] office and the Office of the Deputy Attorney General,” who you now claim did not bring this information to your attention.⁸ As a result of your failure to act on these memos sent to you, nearly 500 additional firearms were purchased under Fast and Furious.

The facts simply do not support any claim that Fast and Furious did not reach the highest levels of the Justice Department. Actually, Fast and Furious did reach the ultimate authority in the Department – you.

Your May 3, 2011 Statement

On May 3, 2011, I asked you directly when you first knew about the operation known as Fast and Furious. You responded directly, and to the point, that you weren't “sure of the exact date, but [you] probably heard about Fast and Furious for the first time over the last few weeks.” This statement, made before Congress, has proven to be patently untrue. Documents released by the Department just last week showed that you received at least seven memos about Fast and Furious starting as early as July 2010.

⁷ Transcribed interview of Acting ATF Director Kenneth Melson at 42.

⁸ Holder Letter, *supra* note 1.

The Honorable Eric H. Holder, Jr.
 October 9, 2011
 Page 5

In your letter Friday, you blamed your staff for failing to inform you about Operation Fast and Furious when they reviewed the memos sent to you last summer. Your staff, therefore, was certainly aware of Fast and Furious over a year ago. Lanny Breuer was aware of Fast and Furious as early as March 2010, and Gary Grindler was also aware of Fast and Furious as early as March 2010. Given this frequency of high level involvement with Fast and Furious as much as a year prior to your May 3, 2011 testimony, it simply is not believable that you were not briefed on Fast and Furious until a few weeks before your testimony. At the very least, you should have known about Fast and Furious well before then. The current paper trail, which will only grow more robust as additional documents are discovered, creates the strong perception that your statement in front of Congress was less than truthful.

The February 4, 2011 Letter

Perhaps the most disturbing aspect of this intransigence is that the Department of Justice has been lying to Congress ever since the inquiry into Fast and Furious began. On February 4, 2011, Assistant Attorney General Ronald Weich wrote that "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transport into Mexico."⁹ This letter, vetted by both the senior ranks of ATF as well as the Office of the Deputy Attorney General, is a flat-out lie.

As we understand it, in March 2010, top deputies to Lanny Breuer were informed that law enforcement officers intercepted calls that demonstrated that Manuel Celis-Acosta was conspiring to purchase and transport firearms for the purpose of trafficking the firearms from the United States into Mexico. Not only was ATF aware of this information, but so was the Drug Enforcement Administration and the Federal Bureau of Investigation. This information was shared with the Criminal Division. All of these organizations are components of the Department of Justice, and they were all aware of the illegal purchase of firearms and their eventual transportation into Mexico.

These firearms were not interdicted. They were not stopped. Your agents allowed these firearms purchases to continue, sometimes even monitoring them in person, and within days some of these weapons were being recovered in Mexico. Despite widespread knowledge within its senior ranks that this practice was occurring, when asked on numerous occasions about the veracity of this letter, the Department has shockingly continued to stand by its false statement of February 4, 2011.

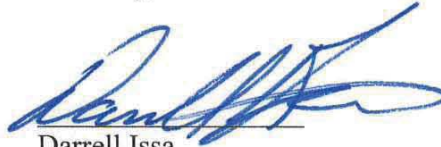
Mr. Attorney General, you have made numerous statements about Fast and Furious that have eventually been proven to be untrue. Your lack of trustworthiness while speaking about Fast and Furious has called into question your overall credibility as Attorney General. The time for deflecting blame and obstructing our investigation is over. The time has come for you to come clean to the American public about what you knew about Fast and Furious, when you knew it, and who is going to be held accountable for failing to shut down a program that has already had deadly consequences, and will likely cause more casualties for years to come.

⁹ Letter from Ass't Att'y Gen. Ronald Weich to Senator Charles Grassley (Feb. 4, 2011).

The Honorable Eric H. Holder, Jr.
October 9, 2011
Page 6

Operation Fast and Furious was the Department's most significant gun trafficking case. It related to two of your major initiatives – destroying the Mexican cartels and reducing gun violence on both sides of the border. On your watch, it went spectacularly wrong. Whether you realize yet or not, you own Fast and Furious. It is your responsibility.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform

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



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 11, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This responds to your letters, dated March 4, 2011 and March 28, 2011, to then Acting Director Kenneth E. Melson, of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, regarding the investigation into the death of U.S. Immigration and Customs Enforcement (ICE) Agent Jamie Zapata in Mexico. We apologize for the delay in responding to your letters.

We take seriously your concerns about the murder of Agent Zapata and gun trafficking more generally. That said, we have active, ongoing criminal investigations regarding those matters, which limits the information that we are in a position to disclose in response to your questions. We can advise you that, as indicated in our press release of March 1, 2011, one of the firearms used in the deadly assault on Agent Zapata was purchased by Otilio Osorio on or about October 10, 2010. We understand that ATF was not aware of the firearm's purchase at the time it occurred. We further understand that ATF was first made aware of the purchase on or about February 25, 2011, some ten days after the murder of Agent Zapata.

As you may know, Otilio Osorio, Ranferi Osorio, Kelvin Morrison and others have been charged with various federal offenses and are scheduled for trial in the near future. Our disclosure of additional information requested by your letters would be inconsistent with the Department's strong interest in successfully prosecuting this matter, as well as with our longstanding policy regarding the confidentiality of ongoing criminal investigations. We will continue to provide you and Chairman Leahy with other information responsive to your requests, as appropriate.

Please do not hesitate to contact this office if we may be of additional assistance on this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 11, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated April 14, 2011, requesting that the Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 56 pages of materials that we produced to the House Committee on Oversight and Government Reform Committee on October 11, 2011. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. In addition, we have redacted from multi-subject documents text that is not responsive to requests by the Committee. The nature of specific redactions is indicated by a redaction code ("RC") in accordance with the attached index.

We have also located an additional 60 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by Judiciary Committee staff. There are limited redactions of text that would identify law enforcement sensitive techniques, targets or subjects, and investigative details.

We believe that we have now substantially concluded our efforts to respond to requests by the Committee on Oversight and Government Reform for records from ATF. Our search for records requested by that Committee from other Department components is ongoing, and we anticipate that additional records will be processed and produced or made available to the House and Senate Judiciary Committees.

In the course of responding to Chairman Issa's subpoena and June 8th letter, we have described the reasons for redactions in the documents we have produced or made available for review. Other documents have not been produced or made available for these same reasons because neither redacting them nor making them available for review (as opposed to production) was sufficient to address our concerns. Our disclosure of the vast majority of the withheld material is prohibited by statute. These records pertain to matters occurring before a grand jury,

The Honorable Patrick Leahy
Page Two

as well as investigative activities under seal or the disclosure of which is prohibited by law. Consistent with my testimony before the Committee on Oversight and Government Reform on June 15, 2011, we also have not disclosed certain confidential investigative and prosecutorial documents, the disclosure of which would, in our judgment, compromise the pending criminal investigations and prosecution. These include core investigative and prosecutorial material, such as Reports of Investigation and drafts of court filings.

Finally, we have also withheld internal communications that were generated in the course of the Department's effort to respond to congressional and media inquiries about Operation Fast and Furious. These records were created in 2011, well after the completion of the investigative portion of Operation Fast and Furious that the House Committee on Oversight and Government Reform has been reviewing and after the charging decisions reflected in the January 25, 2011 indictments. Thus, they were not part of the communications regarding the development and implementation of the strategy decisions that have been the focus of congressional inquiries. It is longstanding Executive Branch practice not to disclose documents falling into this category because disclosure would implicate substantial Executive Branch confidentiality interests and separation of powers principles. Disclosure would have a chilling effect on agency officials' deliberations about how to respond to inquiries from Congress or the media. Such a chill on internal communications would interfere with our ability to respond as effectively and efficiently as possible to congressional oversight requests.

We hope that this information is helpful. Please do not hesitate to contact this office if we can provide additional assistance regarding this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member

Congress of the United States
Washington, DC 20515

October 12, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Mr. Attorney General:

We write to request your assurance that neither the Department of Justice nor any of its subordinate agencies will retaliate against any witnesses who have provided information or cooperated with our investigation of Operation Fast and Furious. We ask you to reiterate this commitment in light of recent reports of apparently retaliatory measures taken against Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Group Supervisor Peter Forcelli.

As you may be aware, Special Agent Forcelli, pursuant to a subpoena, testified at the June 15, 2011, hearing, entitled "Operation Fast and Furious: Reckless Decisions, Tragic Outcomes." During his testimony, Special Agent Forcelli criticized certain decisions and actions of the United States Attorney's Office for the District of Arizona (USA-AZ), and in particular those of Assistant United States Attorney (AUSA) Emory Hurley. Special Agent Forcelli testified candidly about the difficulties he encountered in getting USA-AZ to prosecute certain cases conducted by ATF.

Recent actions by the Department confirm Special Agent Forcelli's concern about the handling of cases by AUSA Hurley and the USA-AZ. The Department made the rare decision to ask the U.S. Attorney's Offices for the Central and Southern Districts of California to step in and prosecute three high-profile cases that originated in USA-AZ. The Jean Baptiste Kingery case, on which Special Agent Forcelli served as the Group Supervisor, was one of these cases, having been recently reassigned from USA-AZ to the U.S. Attorney's Office for the Central District of California.

Mr. Kingery had purchased and transported hundreds of inert grenade hulls, grenade pins, and other grenade materials across the border into Mexico. Once in Mexico, he assembled the grenades, instructed individuals on how to build machine guns for drug cartels, and also trafficked heavy-duty weapons to the cartels. After being taken into custody by U.S. law enforcement agents, Mr. Kingery made a full and detailed confession. Yet USA-AZ, after having previously discussed the facts of this case with the Department's National Security

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The Honorable Eric H. Holder, Jr.
 October 12, 2011
 Page 2

Division – and over vigorous objections from Agent Forcelli – decided not to charge Mr. Kingery. Instead, USA-AZ ordered Mr. Kingery’s release, allowing him to return to Mexico to continue arming the Sinaloa and La Familia drug cartels with military-type weapons and grenades.

ATF Group Supervisor Forcelli had been highly critical of the USA-AZ’s failure to obtain an indictment against Mr. Kingery. Rather than offering an explanation of its decision based on relevant facts of the case, the Department has instead attempted to denigrate Special Agent Forcelli. On August 10, 2011, representatives from the Office of the Deputy Attorney General (ODAG) interrogated Special Agent Forcelli in Phoenix about the Kingery case. It is our understanding that the Department’s Office of the Inspector General is also looking into USA-AZ’s conduct of the Kingery case.

During Special Agent Forcelli’s appearance at the June 15, 2011, hearing, Patrick Cunningham, Chief of the Criminal Division at USA-AZ, was at ATF Headquarters in Washington, D.C., simultaneously parsing and analyzing his testimony, especially regarding the “X-Caliber Arms” case.¹ As outlined in a letter to us last month, Special Agent Forcelli highlighted how USA-AZ suddenly found fault in his handling of the “X-Caliber Arms” case, which had concluded several years earlier.²

Even more disturbingly, last month, Michael Morrissey, Chief of the National Security Division at USA-AZ, informed Special Agent Forcelli that “he had been instructed to report **any** contact with [Agent] Forcelli to his chain of command because his office viewed [Agent] Forcelli as a ‘Whistleblower.’”³ When Special Agent Forcelli inquired whether former U.S. Attorney Dennis Burke, or even the Deputy Attorney General or Attorney General, would receive these reports of any contact with Forcelli, Mr. Morrissey replied only “that he needed to notify his local chain of command.”⁴

Special Agent Forcelli has also discovered a memo written by USA-AZ dated August 10, 2011, regarding a May 5, 2011, meeting about the Kingery case. This memo – dated three months after the meeting, and the day before ODAG interviewed USA-AZ staff – apparently aimed to tar Special Agent Forcelli by improperly characterizing his demeanor as “visibly angry.”⁵ Taken together, the ODAG and USA-AZ’s actions appear to be an attempt to retaliate against Agent Forcelli. The Department’s decision to retaliate against Agent Forcelli is particularly egregious given that William Newell, Mr. Forcelli’s former supervisor and Special Agent in Charge in Phoenix, said that “[Pete] had a lot of experience. He was new to Phoenix but he had a lot of experience and highly respected, and I respect Pete. And based on his years of street knowledge, and he is a good supervisor.”⁶

¹ Letter from Luciano Cerasi to Charles Grassley, Ranking Member, S. Jud. Comm., and Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, at 2 (Aug. 31, 2011).

² *Id.*

³ *Id.* at 3 (emphasis in original).

⁴ *Id.* at 4.

⁵ *Id.*

⁶ Transcribed interview of Special Agent in Charge William Newell, at 202 (Jun. 8, 2011).

The Honorable Eric H. Holder, Jr.
 October 12, 2011
 Page 3

This is not the first time that the Department actively sought to smear an agent who has testified pursuant to a congressional subpoena. Indeed, on a prior occasion, the Department provided false and incomplete information to a reporter about Special Agent John Dodson in apparent violation of the Privacy Act as well as whistleblower protections. That matter is also currently under investigation by the OIG.

During the June 15 hearing, Ranking Member Cummings made an unequivocal statement:

To the ATF officers, I thank you. As I said earlier, this has got to be very, very difficult. And I make a commitment to you, and it is what Senator Grassley said, and I want the word to go out, let it go forth, **that we want absolutely no retaliation against you.** You are simply standing up for what you believe in. You are simply carrying out your oath of office. You simply have been great Americans and continue to be, and we thank you. We thank you so very, very much. We thank you for your bravery; we thank you for what you are doing.⁷

We fully support the strong sentiments expressed by Ranking Member Cummings and ask you lend your support to them as well.

Additionally, in his testimony at the June 15 hearing before Chairman Issa's Committee, Assistant Attorney General Ronald Weich made a firm promise: "I want to assure the committee – I think a number of Members raised this – **that the Department of Justice will not, would never, retaliate against whistleblowers.**"⁸ Mr. Weich's clear and unambiguous pledge makes the Department's actions with regard to Agent Forcelli especially disheartening.

For some time, ATF has also been aware of allegations of retaliation. Chairman Issa sent a letter following the aforementioned hearing to Deputy ATF Director William Hoover, noting that "no other ATF employees who cooperate with Congress should face retaliation either."⁹ In his response, Mr. Hoover assured Chairman Issa that "ATF will not engage in any reprisal against any ATF employee because of his or her having testified before the Committee on Oversight and Government Reform, and will in all respects act towards such employees exactly as they would have had such employee not so testified."¹⁰ This letter reflected the same promise Mr. Hoover made in person to Oversight Committee staff on May 5, 2011, and again at his transcribed interview on July 21, 2011.

In spite of prior commitments by the Department and ATF, retaliation still persists. Therefore, we now request your assurance that no one in the Department of Justice will act in a

⁷ *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes: Hearing before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. 50 (emphasis added).

⁸ *Id.* at 153-4 (testimony of Hon. Ronald Weich) (emphasis added).

⁹ Letter from Chairman Darrell E. Issa to William J. Hoover, Deputy Director, ATF (June 21, 2011).

¹⁰ Letter from William J. Hoover to Chairman Darrell E. Issa (June 28, 2011).

The Honorable Eric H. Holder, Jr.
 October 12, 2011
 Page 4

retaliatory manner towards anyone who is cooperating with our investigation in any way. Any denial of or interference with employees' rights to furnish information to Congress is against the law.¹¹

Thank to for your attention to this important matter.

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

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

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

Cynthia A. Schnedar, Acting Inspector General
 Department of Justice

¹¹ 5 U.S.C. § 7211 provides in pertinent part:

The rights 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.

Congress of the United States
Washington, DC 20515

October 12, 2011

The Honorable R. Gil Kerlikowske
Director
Office of National Drug Control Policy
Executive Office of the President
Washington, D.C. 20503

Dear Director Kerlikowske:

Recently, it has come to our attention that you may have received regular briefings from William D. Newell, former Special Agent in Charge of the Phoenix Field Division of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regarding the progress of an Organized Crime Drug Enforcement Task Force (OCDETF) case that has come to be known as Operation Fast and Furious. This surprising revelation has prompted us to explore further the exact details of these communications. To that end, we request that you please provide to the Committees the following information:

- 1) Documents, including e-mails, memoranda, briefing papers, and handwritten notes, regarding Operation Fast and Furious or a major Organized Crime Drug Enforcement Task Force case based out of ATF's Phoenix Field Division.
- 2) E-mails between William Newell and any member of the ONDCP staff, including yourself, sent or received between October 1, 2009 and August 31, 2011.
- 3) A list of meetings or teleconferences with William Newell, or any ATF official, and any member of the ONDCP staff, including yourself, between October 1, 2009 and August 31, 2011. Please include the dates, times, locations, and attendees for each meeting or teleconference.

Please provide the requested documents and information as soon as possible, but by no later than noon on October 21, 2011. If you have any questions regarding these requests, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. We look forward to receiving your response.


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The Honorable R. Gil Kerlikowske
October 12, 2011
Page 2



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

Sincerely,



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

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

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



DEPARTMENT OF DEFENSE
JOINT TASK FORCE NORTH
 Bldg 11603, Old Ironsides Rd.
 FORT BLISS, TEXAS 79918-0058

REPLY TO
 ATTENTION OF

11 October 2011

Colonel Mark R. Stammer
 Commander, Joint Task Force North
 Building 11603
 Old Ironsides Drive
 Fort Bliss, TX 79918-0058

The Honorable Charles Grassley
 United States Senate
 Washington, DC 20515-0001

Dear Senator Grassley:

In response to your request dated September 28th, we conducted and completed a diligent search of all documents in this command's possession, custody, and control which could contain responsive documents. We found no documents related to the planning or execution of Operation Fast and Furious.

Our investigation included individual and system-wide key word searches of documents on our SIPRNet and NIPRNet, search of our support request database, director certification of electronic and hardcopy files, and additional reviews and follow-up interviews as required by my Inspector General.

While we did not locate any internal or external records or communication in the areas you requested, we did discover that many members of this command received news reports on the subject after the fact, which I believe are not pertinent to your investigation.

In the interest of full disclosure, I also want to convey that my command occasionally coordinates engineering construction projects in the vicinity of Columbus, NM in order to increase the mobility of U.S. Border Patrol agents in the area. In the performance of their duties, two members of my command met with former Mayor Eddie Espinoza and former Chief of Police A.I. Vega in June 2009 and September 2010. I have determined that neither service member had any prior knowledge of Operation Fast and Furious or firearms trafficking. Additionally, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has not submitted any support requests to this command since at least January 1, 2009.

If you have any additional questions or requests, please feel free to contact me. A similar letter has also been sent to Chairman Issa's office.

Sincerely,

MARK R. STAMMER
 Colonel, U.S. Army
 Commanding

OCT-14-2011 10:34

TREV GOWDY

4th District of South Carolina

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORMU.S. HOUSE OF REPRESENTATIVES
HEARINGS, COMMITTEES, CAUCUSES
LEGISLATION AND NATIONAL AFFAIRS
OFFICECOMMITTEE ON
THE JUDICIARYU.S. HOUSE OF REPRESENTATIVES
LEGISLATION, COURTS, AND
JUDICIAL AFFAIRS
OFFICECOMMITTEE ON EDUCATION
AND THE WORKFORCEU.S. HOUSE OF REPRESENTATIVES
LEGISLATION, COURTS, AND
JUDICIAL AFFAIRS
OFFICE

Rep. Trey Gowdy

P.02

1002 JASON CHAFFETZ - Rep. Jason Chaffetz, 3rd District of Utah
WEEK 500000, 10/11/2011
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LEGISLATION, COURTS, AND
JUDICIAL AFFAIRS
OFFICEU.S. HOUSE OF REPRESENTATIVES
LEGISLATION, COURTS, AND
JUDICIAL AFFAIRS
OFFICE

Congress of the United States
House of Representatives
 Washington, DC 20515-4004

To that end, if you knew the Attorney General did not authorize "Fast and Furious" how did you learn that and when did you learn that? If you knew Attorney General Holder did not authorize it, inherent in that response is knowledge of who did authorize it. That information would be most helpful to the committee as we seek answers to this tragically ill-conceived and tragically ill-executed investigation.

Reporter:

THE MEXICAN GOVERNMENT COMPLAINS THAT THEY WERE NOT INFORMED ABOUT THE "FAST AND FURIOUS" OPERATION. DID YOU AUTHORIZE THIS OPERATION AND WAS PRESIDENT CALDERON PROPERLY INFORMED ABOUT IT?

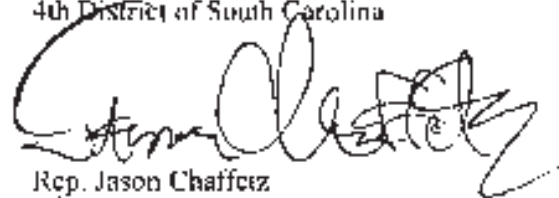
President Obama:

Well, first of all I did not authorize it. Eric Holder, the Attorney General, did not authorize it. He's been very clear that our policy is to catch gunrunners and put them into jail. So what he's done is he's assigned an I.G., an inspector general, to investigate what exactly happened . . .

Sincerely,



Rep. Trey Gowdy
4th District of South Carolina



Rep. Jason Chaffetz
3rd District of Utah

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PATRICK MEEHAN
7th District, Pennsylvania

HOMELAND SECURITY COMMITTEE
CHAIRMAN, SUBCOMMITTEE ON
CYBERTEHRREING AND INTELLIGENCE
SUBCOMMITTEE ON CYBERSECURITY,
INFRASTRUCTURE PROTECTION AND
SECURITY TECHNOLOGIES



Congress of the United States
House of Representatives
Washington, DC 20515-3807

October 18, 2011

OVERSIGHT AND GOVERNMENT
REFORM COMMITTEE
SUBCOMMITTEE ON TARP AND
FINANCIAL SERVICES
SUBCOMMITTEE ON TECHNOLOGY,
INFORMATION POLICY, INTERGOVERNMENTAL
RELATIONS AND PROCEDURAL REFORM

TRANSPORTATION AND
INFRASTRUCTURE COMMITTEE
SUBCOMMITTEE ON AVIATION
SUBCOMMITTEE ON RAILROADS, PIPELINES
AND HAZARDOUS MATERIALS
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT,
PUBLIC BUILDINGS AND
EMERGENCY MANAGEMENT

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

I am writing to respectfully urge you to appear before the U.S. House Committee on Oversight and Government Reform to answer important questions on the "Fast and the Furious" operation. As a former U.S. Attorney from the Eastern District of Pennsylvania, I believe your testimony can provide critical insight into this matter and help ensure that this never happens again.

Unfortunately, the public – and the Committee – has more questions than answers about this ill-fated anti-gun-trafficking program. When senior officers of the Bureau of Alcohol, Tobacco, Firearms and Explosives appeared before the Committee in July, they were asked repeatedly how this operation was instigated and who along the chain of command approved it. No serious answers were forthcoming, and that is unacceptable. If it is true, as some believe, that this controversial program was conducted by local agents without the knowledge of senior Justice Department officials, then surely we need to know how such an ill-conceived and wide-ranging operation was allowed in the first place. And for that, we need your insight.

I agree with the Committee's ranking member Rep. Elijah Cummings (D-MD), who said on CBS's "Face the Nation" program Sunday that Democrats "want a responsible and balanced investigation because we are the Oversight and Government Reform committee ... You cannot reform anything unless you have all the information ... You look at the entire picture. That simply has not happened yet."

While the Committee has done important work on this issue, I believe only through your testimony can we conclude a "responsible and balanced investigation" that collects "all the information" that Ranking Member Cummings seeks.

As a former U.S. Attorney, I urge you to appear because in this serious and tragic case, we do owe it to the American people to conduct a thorough investigation and conduct responsible, proper oversight – not engage in a partisan witch hunt. Our shared goal is to uncover the truth and identify the right lessons-learned so this never happens again – not in scoring political points.

Sincerely,


Pat Meehan
Member of Congress

WASHINGTON, DC OFFICE
513 CAPITOL HILL NORTH OFFICE BUILDING, WASHINGTON, DC 20515
PHONE: (202) 223-2011 FAX: (202) 226-8286

email via website
<http://meehan.house.gov>

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DISTRICT OFFICE
940 W. SPRING ROAD, SUITE 202, SPRINGDALE, PA 19064
PHONE: (610) 690-7323 FAX: (610) 690-7329

Congress of the United States
Washington, DC 20515

October 20, 2011

The Honorable Robert S. Mueller, III
 Director
 Federal Bureau of Investigation
 953 Pennsylvania Avenue, NW
 Washington, D.C. 20004

Dear Mr. Mueller:

The murder of Border Patrol Agent Brian Terry on December 14, 2010, is what motivated brave law enforcement agents from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to risk their careers and blow the whistle on Operation Fast and Furious. The Justice Department's false denials to Congress are what motivated them to speak out and testify publicly. A growing collection of documents and credible testimony has put the lie to those denials. It is in this context and because of this obstruction of our previous inquiries that we are now asking you to provide more than just conclusory statements by your Office of Congressional Affairs regarding the state of the evidence in the investigation of Agent Terry's murder.

Out of deference to the FBI's ongoing criminal inquiry, we have delayed asking the Bureau direct questions about the case for nearly ten months. However, Congress has a right and a duty to conduct oversight of federal law enforcement operations. It is a fundamental aspect of our Constitutional system of checks and balances. Agencies like the FBI can wield tremendous power and influence over individual citizens. With that power and influence comes responsibility, and nothing exempts the Bureau from accountability to Congress as well as to the courts.

While we are sensitive to the issues raised by asking questions about an ongoing case, Congress has frequently judged it necessary and has been successful in obtaining such information. The September 11th attacks, the Anthrax attacks, the sieges at Ruby Ridge and Waco, and ABSCAM are just a few of the most high-profile examples in modern times where Congress sought and obtained information related to ongoing criminal matters.¹ We are not required to wait years for lengthy court proceedings to gather information that we deem necessary to carry out our duties under the Constitution.

As you know, two weapons recovered at the scene of Agent Terry's murder have been traced to Fast and Furious. Yet the FBI has released very little information about the

¹ For additional examples, see generally, CRS Report RL34197, *Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice* (2008).

The Honorable Robert S. Mueller, III
October 20, 2011
Page 2

circumstances surrounding the fatal shooting. Anonymous Justice Department sources initially told the press that the two Fast and Furious guns had been ballistically excluded as the murder weapon and that the murder weapon had not been recovered. However, we obtained a copy of the report, and in actuality, it does not exclude the Fast and Furious guns. Rather, it is inconclusive. So, apparently someone from the Justice Department attempted to deceive the press.

The lack of answers being given to Agent Terry's family about the circumstances surrounding his death and the delay in bringing his murderers to justice only compounds their anguish. After ten months of FBI investigation, Agent Terry's family and the American public deserve to know more about the status of the inquiry, the state of the evidence, and any connections to Operation Fast and Furious.

Although the Justice Department eventually released limited details about the two Fast and Furious weapons at the crime scene through the unsealing of a search warrant affidavit and the indictment, it only did so after the public controversy had erupted and documents describing the weapons and their serial numbers had been attached to Senator Grassley's initial letters asking about Fast and Furious.

Yet neither the search warrant affidavit nor the unsealed indictment describes the total number of weapons recovered at the scene.² The search warrant affidavit merely indicates that "one of the Border Patrol Agents, utilizing thermal binoculars, observed *at least two* of the suspected aliens carrying rifles."³ It further states that when the one defendant in custody was interviewed, he "stated that he was traveling with four individuals" and that "all of the individuals were armed."⁴ As for the indictment, it merely alleges that the defendants "did knowingly use and carry two" assault rifles.⁵ It does not describe how many weapons were recovered by either Border Patrol or FBI authorities who arrived later at the scene.

So, from the limited information officially released about the circumstances, it appears that the illegal aliens who shot at Agent Terry may have been armed with a total of five rifles. And until recent public statements, it was unclear how many guns the FBI had recovered at the scene. According to documents we have obtained, we know that the two Fast and Furious rifles were part of a lot of three, all purchased at the same time over a year earlier. These circumstances naturally raise questions regarding the whereabouts of that third Fast and Furious

² Application and Affidavit for Search Warrant, Dec. 29, 2010, Case Number 10-10251M, D. Ariz. (Attachment 1); Superseding Indictment, Unsealed Apr. 20, 2011, Case Number 10-10251M, D. Ariz. (Attachment 2).

³ Affidavit for Search Warrant, *supra* note 2 (emphasis added).

⁴ *Id.*

⁵ Superseding Indictment, *supra* note 2.

The Honorable Robert S. Mueller, III
October 20, 2011
Page 3

gun, whether the other firearms were also connected to Fast and Furious, and the current location of all the firearms involved.

At Agent Terry's funeral, border patrol agents told his mother that three weapons were recovered at the scene. Recent news reports about taped conversations also indicated there were three weapons involved, although only two appeared to be connected to Fast and Furious.⁶ The conversation between an ATF agent and a cooperating gun dealer is as follows:

Agent: Well, there were two—

Dealer: There were three weapons.

Agent: There was actually three weapons.

Dealer: I know that. Three weapons recovered.

Agent: And, yes, they had the serial numbers for all three.

Dealer: So, that is correct. Is that—

Agent: And two of them came from this store.

Dealer: I understand that, yeah.

Agent: There's an SKS that I don't think came from — it was something else, from Texas or something.

Dealer: No, we're talking about the AKs.

Agent: No, the two AKs came from the store.⁷

On another portion of the recording, the agent claims that neither of the Fast and Furious guns from the cooperating dealer's store was the one that shot Agent Terry. This exchange also suggests the presence of other guns at the scene:

Dealer: [My attorney] was told in no uncertain terms the statement that DoJ said was false because guns [from my store] were part of it. I mean, I didn't even want to go —

⁶ Recording between ATF agent and federal firearms licensee, Mar. 17, 2011.

⁷ *Id.*

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 October 20, 2011
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Agent: That's true. That's true, and I can tell you that's why he made the statement. The guns from your store were at the scene.

Dealer: Yeah.

Agent: They were not the gun, to the best of anybody's knowledge, that shot the Border Patrol agent.⁸

Additionally, several internal emails between ATF personnel initially indicated confusion over whether there were two or three weapons being traced. Given all these circumstances, it is reasonable to ask the FBI to clarify what it has learned about how many guns were possessed by the illegal aliens shooting at our Border Patrol agents and the current location of each of those firearms.

The FBI briefed our staff on October 5, 2011, on other matters potentially related to Fast and Furious. That briefing was the first time to our knowledge that the FBI asserted that it recovered two, and only two, guns. The Department's public statement on Monday evening that the FBI lab item labeled "K-1" was a blood sample was the first such explanation that we were aware of.

However, given that the ballistics report is inconclusive as to whether or not either Specimen K-2 or K-3 (the Fast and Furious weapons recovered from the scene) killed Agent Terry, we have the following questions:

- 1) Please explain why the ballistics test was inconclusive.
- 2) Despite the inconclusive ballistics test, are there other indications from the evidence or circumstances that would suggest that one of the Fast and Furious guns recovered at the scene was likely the murder weapon?
- 3) Despite the inconclusive ballistics test, are there other indications from the evidence or circumstances that would suggest that one of the Fast and Furious guns recovered at the scene was *not* likely the murder weapon?
- 4) Can the FBI conclusively rule out the possibility that Specimens K-2 or K-3 killed Agent Terry?
- 5) Does the FBI believe that a third weapon killed Agent Terry? If so, what steps has the FBI taken to locate that weapon and what is the status of the FBI's search?

⁸ *Id.*

The Honorable Robert S. Mueller, III
 October 20, 2011
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- 6) How many total weapons does the evidence indicate were in the possession those encountered by Agent Terry's Border Patrol unit?
- 7) How many total shots and of what type does the evidence indicate were fired by those encountered by Agent Terry's Border Patrol unit? How many and of what type were fired?
- 8) What time did the FBI arrive on the scene?
- 9) Which other state, local, or federal agencies were already present when the FBI arrived?
- 10) What time did the first ATF personnel arrive at the scene?
- 11) When and how were the trace requests for weapons recovered at the scene submitted to ATF?
- 12) Has the FBI submitted any other trace requests to ATF in connection with the Terry murder case? If so, please describe the circumstances in detail, providing the serial number and date of each request.
- 13) Has the FBI submitted any trace requests to ATF in any of its other cases where the gun was connected to Fast and Furious? If so, please describe the circumstances in detail, providing the serial number and date of each request.
- 14) How many total suspects does the evidence indicate were encountered by Agent Terry's Border Patrol unit?
- 15) How many of those suspects are currently at large? What steps has the FBI taken to apprehend them and what is the status of the FBI's search?
- 16) According to press reports, three illegal immigrants were taken into custody "near the scene of the shootout" but were later "cleared by federal authorities," released, and deported to Mexico.⁹ Please explain the circumstances of their arrest and why they were released.

In order to fully understand the context and meaning of the ballistics report and the circumstances surrounding the collection of forensic evidence related to Agent Terry's untimely demise, the House Committee subpoena requires production of all documents and communications between and among FBI employees in Arizona and the FBI Laboratory,

⁹ Amanda Lee Myers and Jacques Billeaud, *Man Indicted in Arizona Border Agent's Killing*, ASSOCIATED PRESS, May 6, 2011.

The Honorable Robert S. Mueller, III
 October 20, 2011
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including but not limited to employees in the Firearms/Toolmark Unit, referring or relating to the firearms recovered during the course of the investigation of Brian Terry's death.

Additionally, we now reiterate our previous request made more than three months ago on July 11, 2011, for all documents and communications between and among the following officials relating to Operation Fast and Furious and the investigation into Brian Terry's murder:

- 1) Nathan Gray, Former Special Agent in Charge, Phoenix Field Division
- 2) Annette Bartlett, Assistant Special Agent in Charge, Phoenix Field Division
- 3) Stephen Cocco, Acting Special Agent in Charge, Phoenix Field Division
- 4) Steven Hooper, Assistant Special Agent in Charge, Phoenix Field Division
- 5) John Iannarelli, Assistant Special Agent in Charge, Phoenix Field Division
- 6) John Strong, Assistant Special Agent in Charge, Phoenix Field Division
- 7) David Cuthbertson, Special Agent in Charge, El Paso Field Division
- 8) The Case Agent from the Tucson office in charge of the Brian Terry murder investigation
- 9) Erich Smith, Firearms/Toolmarks Unit

We request that you provide these documents as soon as possible, but by no later than noon on November 2, 2011.

Finally, this investigation will be more productive and beneficial for both the Bureau and Congress if there is mutual respect for the legitimate roles and responsibilities of both institutions, consistent with the principle of comity between our separate branches of government. That sort of respect is not fostered by the presumption that every question or document request is equivalent to an "accusation."

It is not our goal, intent, or Constitutional function to make accusations or attempt to prove them. Yet that presumption has been implicit in interactions with your staff and in official public statements from the Justice Department. For example, a spokesperson earlier this week dismissed any questions about these matters as a "false accusation" that "maligins the dedicated agents investigating the murder of Agent Terry." Nothing could be further from the truth. Our oversight efforts seek to ensure public confidence in federal law enforcement by providing an independent check on its operations in a matter of great controversy, such as this one. So, rather

The Honorable Robert S. Mueller, III
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than presuming the worst about our motives and interpreting our questions as accusations, it would be more productive to simply answer them.

If you have any questions regarding these requests, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. We look forward to receiving your response.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight and
Government Reform
United States House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

Enclosure

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

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20503

October 20, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

We are in receipt of your letter to Director Kerlikowske dated October 12, 2011, inquiring about information that ONDCP might have received regarding "Operation Fast and Furious." While we do not believe it is accurate that the Director received "regular briefings from William D. Newell," we have begun the process of reviewing records to determine if ONDCP has relevant information. ONDCP is proceeding expeditiously to complete its review and provide an appropriate response.

If you have any questions, please contact me at (202) [REDACTED]

Sincerely,

A handwritten signature in purple ink that reads "Jeffrey Teitz".

Jeffrey Teitz
General Counsel

Cc: The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

GALLAGHER & KENNEDY

P.A.
LAW OFFICES

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E-MAIL: [REDACTED]

2575 EAST CAMELBACK ROAD
PHOENIX, ARIZONA 85016-9225
PHONE: (602) 530-8000
FAX: (602) 530-8500
WWW.GKNET.COM

October 21, 2011

The Honorable Darrell Issa, Chairman
The Honorable Elijah E. Cummings, Ranking Member
House Committee on Oversight and Government Reform
Washington D.C. 20515

Re: *Brian Terry*

Dear Congressmen Issa and Cummings:

I represent the family of slain Border Patrol Agent Brian Terry in furtherance of a potential wrongful death action against those who ultimately will be held responsible for his death.

On behalf of the family, we want to thank you, as well as Senator Grassley, for your unfaltering commitment to reach the truth of the ATF/U.S. Attorney's operation "Fast and Furious."

The Terry family remains unsatisfied with the answers provided by government officials to date, not only about the genesis and operation of Fast and Furious, but what actually occurred precipitating Brian's death.

Ultimately the Terry family seeks full justice, both criminally and civilly, for those responsible for Brian's death.

Thank you for the support that you have shown the Terry family and, hopefully, through your continued efforts the totality of the truth will become known.

Thank you very much.

Yours truly,

GALLAGHER & KENNEDY, P.A.

Patrick J. McGroder III

PJM/jh

cc: Stephen Castor – via email only

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JOHN CORNYN

TEXAS

United States Senate

WASHINGTON, DC 20510-4305

October 24, 2011

The Honorable Darrell Issa
Chairman
House Committee on Oversight and Government Reform
2347 Rayburn House Office Building
Washington, DC 20515

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
135 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Issa and Ranking Member Grassley:

I am writing to commend your oversight efforts and to express my hope that you will use your authority to investigate allegations that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) conducted a “gun-walking” program similar to Operation Fast and Furious in the State of Texas. Clearly, ATF “gun-walking” schemes have had significant spillover effects in Texas—in two separate incidents in January and April of 2010, a total of 60 rifles that were “walked” during Operation Fast and Furious were recovered from the hands of criminals in El Paso.

As you know, the attorney for a federal firearms licensee (FFL) in Houston has alleged that its employees were ordered by the ATF to conduct suspicious sales of firearms to purchasers who may have been working on behalf of Mexican drug cartels. Last December, the Department of Justice convened a grand jury to investigate whether several of the Houston FFL’s salespeople were criminally liable for selling weapons to straw purchasers. This investigation was dropped only after the FFL revealed that the illicit sales were carried out at the behest of the ATF. I fear that ATF may have pressured other FFLs in Texas to conduct illegal activities, and that many of these weapons may have ended up in the hands of cartels and at the scene of multiple violent crimes in Mexico.

I also respectfully request that you investigate whether a Texas-based “gun-walking” program may have been responsible for the murder of US Immigration and Customs Enforcement agent Jaime Zapata on February 15, 2011 in Mexico. One of the weapons used to murder agent Zapata was purchased by Texas resident Otilio Osorio in October, 2010 and subsequently trafficked to Mexico through Laredo, Texas. Osorio and two co-conspirators were arrested by the Department of Justice on unrelated weapons charges in March 2011, and evidence uncovered by Senator Grassley suggests that the ATF was aware of Osorio’s weapons trafficking activities long before that date. The delay in his arrest raises concerns that the ATF knowingly allowed Osorio to continue trafficking weapons through Texas as part of a broader “gun-walking” program.

I wrote to Attorney General Holder in August asking him to promptly disclose the details of any past or present Texas-based ATF “gun-walking” programs similar to Operation Fast and Furious. I have not received any response from the Department of Justice. Though their failure to respond

is not direct evidence of malfeasance, the Department's reluctance to address allegations of additional "gun-walking" schemes in my state raises serious questions, and Texans deserve a full accounting of the Department's role in this matter.

I support your efforts to hold the Department of Justice accountable for their involvement in the Operation Fast and Furious tragedy. American tax dollars should never again be spent to arm Mexican drug cartels.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Cornyn". The signature is fluid and cursive, with the first name "John" and last name "Cornyn" clearly distinguishable.

JOHN CORNYN
United State Senator

Cc: The Honorable Elijah Cummings
Ranking Member
House Committee on Oversight and Government Reform

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee

Congress of the United States
Washington, DC 20515

October 25, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
 Attorney General
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, D.C. 20530

Dear Attorney General Holder:

On October 11, your Department (DOJ) sent Senator Grassley a letter regarding murdered Immigration and Customs Enforcement (ICE) Agent Jaime Zapata. Not only was the response more than *six months* late, it completely failed to answer the key questions.¹

In a March 1, 2011, press release, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) stated it was unaware of Otilio Osorio's purchase on October 10, 2010, of the weapon used to murder Agent Zapata.² According to ATF documents, however, the agency had reason to believe as early as September 17, 2010, that Otilio's brother and co-habitant Ranferi Osorio and their next-door neighbor Kelvin Morrison were straw purchasers.³ Yet the ATF apparently made no effort to contact Ranferi Osorio or Kelvin Morrison and inquire about how their weapons came to be trafficked to Mexico within 2 weeks of their purchase.

Moreover, it appears that the ATF had an opportunity to arrest the Osorio brothers and Kelvin Morrison during a staged operation on November 9, 2010. According to a DOJ press release, "a Dallas ATF confidential informant (CI) arranged a meeting" at which the Osorio brothers, arriving at the meeting with Morrison as a passenger in their vehicle, "unloaded several large bags containing firearms into the CI's vehicle, which was kept under surveillance..."⁴ The DOJ press release says all 40 firearms had obliterated serial numbers, which made simple possession of them a prosecutable offense.⁵ Local law enforcement officials stopped the vehicle later in the day—presumably in concert with ATF and for the purpose of identifying the vehicle's inhabitants.⁶ Inexplicably, none of the suspects were arrested.

¹ Letter from Senator Charles Grassley to Acting Director Kenneth Melson (Mar. 4, 2011) (Attachment 1); Letter from Senator Charles Grassley to Acting Director Kenneth Melson (Mar. 28, 2011) (Attachment 2).

² Department of Justice Press Release (Mar. 1, 2011), available at <http://www.fbi.gov/dallas/press-releases/2011/dlo30111.htm>.

³ Attachments 2.2 and 2.3, attached to Letter from Senator Charles Grassley to Acting Director Kenneth Melson (Mar. 28, 2011).

⁴ Department of Justice Press Release (Mar. 1, 2011).

⁵ *Id.*

⁶ *Id.*

The Honorable Eric H. Holder, Jr.
 October 25, 2011
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Finally, documents in our possession indicate that the ATF did not create a Report of Investigation (ROI) on the November 9 transfer of firearms until over *three months* later, on February 25, 2011—the same day ATF received the report tracing the Zapata murder weapon back to the purchase by Otilio Osorio.⁷ Documenting investigative steps three months after the fact and only after a trace returned to the murder of a federal agent raises red flags about the nature of ATF's investigation.

Yesterday, another member of the Senate Judiciary Committee, Senator John Cornyn, also raised questions about issues surrounding the Osorio brothers and Morrison and urged us to look into the matter.⁸ Accordingly, please provide detailed responses to the following questions:

- (1) Did ATF make any effort to question Ranferi Osorio or Kelvin Morrison after trafficked firearms were traced back to them on September 17? If not, why not?
- (2) Why weren't any of these individuals arrested in November in connection with the undercover drop-off of weapons on November 9?
- (3) Was any surveillance maintained on the Osorio brothers or Morrison by any DOJ component, including ATF and DEA, after the November 9 operation?
- (4) If not, did personnel from any DOJ component raise concerns about the wisdom of allowing individuals like the Osorio brothers or Morrison to continue their activities after the November weapons transfer? If so, how were those concerns addressed?
- (5) Given that the likely recipients of any trafficked guns were so close to the border, did personnel from any DOJ component raise concerns about the possibility of those guns being used against U.S. border agents? If so, how were those concerns addressed?
- (6) Does any component of DOJ know when or how the firearm used in the deadly assault on Agent Zapata was trafficked to Mexico?
- (7) Does the ATF have policies about creating ROIs at the time that events take place?
- (8) Why was the ROI regarding events in November 2010 not created until immediately after the ATF received the trace results on the Zapata murder weapon?

⁷ Delivery of Firearms to ATF Confidential informant (created Feb. 25, 2011, 14:53).

⁸ Letter from Senator John Cornyn to Senator Charles Grassley and Chairman Darryl Issa (Oct. 24, 2011).

The Honorable Eric H. Holder, Jr.
 October 25, 2011
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In addition to answering those questions, please provide all records relating to the following:

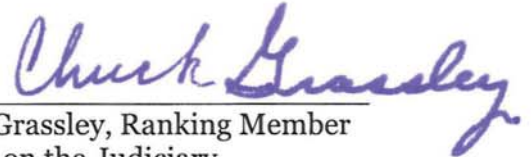
- (9) When any component of the DOJ first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison;
- (10) Surveillance that may have been conducted on the Osorio brothers or Morrison prior to the November 9 transfer of weapons;
- (11) The November 9 transfer; and
- (12) Any surveillance that any component of the DOJ continued to conduct on the Osorio brothers or Morrison between the November 9, 2010, transfer and their arrest on February 28, 2011.

We look forward to receiving your response as soon as possible, but by no later than noon on November 8, 2011. Should you have any questions regarding any of these letters, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074.

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

cc: Mr. B. Todd Jones, Acting Director
 U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives

The Honorable Michele M. Leonhart, Administrator
 U.S. Drug Enforcement Administration

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

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

Congress of the United States
Washington, DC 20515

October 31, 2011

Mr. Robert Halliday
 Director
 Arizona Department of Public Safety
 PO Box 6638
 Phoenix, Arizona 85005-6638

Dear Mr. Halliday:

Pursuant to the Arizona Public Records Law,¹ we write to request records related to our investigation into Operation Fast and Furious, conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF allowed straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's murder near Rio Rico, Arizona.

Specifically, we seek the following records:

- 1) Records relating to Operation Fast and Furious.
- 2) Serial numbers related to firearms recovered attendant to investigations into homicide, aggravated assault, kidnapping, home invasion, or other violent crimes that occurred from September 2009 to the present.

Furthermore, we have a particular interest in records relating to a firearm seized when Angel Hernandez-Diaz allegedly committed an aggravated assault against Officer Mike Ruiz on March 4, 2010, as reported by various news sources.²

If you have any questions regarding this request, please contact Henry Kerner in Chairman Issa's Committee office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. The Committees prefer to receive documents and records in electronic format. As such, please e-mail copies of the records in PDF format to both [REDACTED] and [REDACTED]

¹ Arizona Public Records Law, A.R.S. § 39-101-161 (2011).

² *E.g.*, Robert Anglen, *2nd crime scene yields guns from ATF sting*, ARIZ. REPUBLIC, Sep. 20, 2011, available at <http://www.azcentral.com/arizonarepublic/news/articles/2011/09/10/20110910guns0910.html>.

Mr. Robert Halliday
October 31, 2011
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██████████ They may also be faxed to both ██████████ and
██████████. Thank you for your assistance in this matter.



Darrell Issa, Chairman
Committee on Oversight and
Government Reform
United States House of Representatives

Sincerely,



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

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

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 31, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed on CD please find 652 pages of documents that we produced to the House Oversight and Government Reform Committee on October 31, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques or disclose prosecutorial deliberations, plus limited information relating to line employees, such as their cellular phone numbers. We also have withheld text that implicates individual privacy interests, including information about individuals who have been investigated but not prosecuted. In addition, we have redacted text from multi-subject documents that is not responsive to your requests. In some substantial multi-subject documents, such as weekly reports, we have not included pages that contained text that was either not responsive or contained details of particular investigations other than Fast and Furious. The nature of specific redactions is indicated by a redaction code ("RC") set forth in the enclosed list.

We have also located an additional 47 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by Committee staff. There are limited redactions of text that would identify law-enforcement sensitive details and techniques as well as information implicating individual privacy interests. In response to Chairman Smith's request, the documents will also be made available for review at the Department by staff of the House Committee on the Judiciary.

The Honorable Patrick Leahy
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To assist the Committee in its oversight duties, we also appreciate the opportunity to provide you with relevant and necessary context for several of the documents in today's production.

Documents from the U.S. Attorney's Office for the District of Arizona

The documents stamped HOCR USAO 002960-61 reflect communications in January 2010 among then U.S. Attorney Dennis Burke and his staff regarding the Fast and Furious investigation. The communications to Mr. Burke recount a division between ATF's Phoenix Field Division and ATF Headquarters over how to proceed in the investigation. They also demonstrate that the U.S. Attorney's Office's view at that time was that there was insufficient evidence to charge any of the suspects, and thus the office adopted the approach preferred by ATF's Phoenix Field Division to pursue a longer-term investigation.

In assessing the January exchange, you may wish to refer to HOCR USAO 003026-27 and 003046-47. These are memoranda regarding the Fast and Furious matter that were prepared by the U.S. Attorney's Office in August 2010, which state that "[t]hus far the investigation has interdicted approximately 200 firearms, including two .50 caliber rifles. Investigating agents have pursued interdiction of the firearms transferred to the conspirators where possible. Agents have not purposely let guns 'walk.' Interdiction in some cases has been hampered by counter-surveillance used by the targets." An OCDETF-related memorandum written in October 2010 used the same language and added that "ATF has undertaken a very aggressive approach to seizing firearms tied to this conspiracy whenever a legal theory for seizure can be developed."

We are also producing documents relating to a March 2010 visit by the Attorney General to Arizona. The Attorney General's schedule during the brief trip was extremely busy. Among other meetings and events there, he attended a conference of U.S. Attorneys, a session with tribal leaders, and a mortgage fraud press conference. He also met with the Mexican Attorney General and visited the U.S. Attorney's Office for the District of Arizona and with a broad range of U.S. law enforcement personnel. In addition, he was scheduled for a ten-minute meeting with then U.S. Attorney Burke. In anticipation of that visit, officials in the Arizona U.S. Attorney's Office solicited and collected "[s]ignificant case summaries" regarding matters being handled in the office. One of the initial summaries prepared by the office in anticipation of the Attorney General's visit related to Operation Fast and Furious. However, a review of the Attorney General's briefing materials for that trip (HOCR HRNDZ 003245-48) demonstrates that the "significant case list" actually transmitted by prosecutors in Arizona to the Attorney General's Office did not include any reference to Fast and Furious. Indeed, the criminal cases that were listed had already been formally charged by the office. The Fast and Furious investigation had not yet resulted in charges.

Nor have we located any evidence suggesting that then U.S. Attorney Burke briefed the Attorney General on Fast and Furious either during their ten-minute meeting or at another time during the visit. According to Mr. Burke's private counsel, with whom we have conferred, Mr. Burke does not recall having briefed the Attorney General about Fast and Furious at any time. The Attorney General similarly has no recollection of having been briefed on the investigation.

The Honorable Patrick Leahy
Page 3

His staff member's notes from other meetings during the trip reflect general discussions about challenges on the Southwest border and the demand for firearms in Mexico but no mention of Fast and Furious, much less of any of the inappropriate operational tactics employed in that investigation.

Today's production also contains e-mail communications (HOCR USAO 003070, 3073-74, 3085-86, 3087) reflecting an interest on the part of the Arizona U.S. Attorney's Office in late December 2010 and early January 2011 in having first the Attorney General and then the Deputy Attorney General participate in the late-January press conference announcing the Fast and Furious indictments. As you know, neither the Attorney General nor the Deputy Attorney General attended that press conference. The staff member in the Attorney General's office with whom Mr. Burke raised the possibility has no recollection of speaking to the Attorney General about it, and we note that Mr. Burke's email to the staff member does not refer to Fast and Furious by name, let alone discuss any operational tactics. Moreover, according to Mr. Burke's counsel, Mr. Burke does not recall ever having discussed this matter with either the Attorney General or Deputy Attorney General.

Documents from Main Justice

With this letter, we are also producing additional weekly reports to the Office of the Attorney General that either relate to gun trafficking issues generally, or to Fast and Furious in language already included in reports made available to you in a prior production, or relate generally to developments in a separate investigation, Operation Wide Receiver. Many of those entries do not refer specifically to Fast and Furious by name and none of them contain references to any inappropriate investigative tactics. The Attorney General provided important context for weekly reports like those produced today in his October 7, 2011 letter to you and other members of Congress.

Documents from ATF

We are producing as well a January 2011 e-mail (HOCR ATF 003600-03) showing that, in response to an Office of the Attorney General request on January 7, 2011 for anticipated policy announcements and initiatives from each Department component, ATF submitted information about three items, including a short summary of the expected Fast and Furious indictments and press event to occur less than two weeks later. The information was requested so that the Office of the Attorney General could decide what items to include in a periodic report to the White House's Office of Cabinet Affairs. Although ATF submitted information about Fast and Furious, that information was not provided to the Office of Cabinet Affairs as part of the Department's policy update, because the information provided by ATF related to a specific case and not a policy initiative, as requested.

Documents Related to the Wide Receiver Matter

In addition, we are producing documents that reflect the involvement of the Gang Unit of the Justice Department's Criminal Division in a pair of gun trafficking cases referred to

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separately as "Wide Receiver 1" and "Wide Receiver 2." These cases originated in the Arizona U.S. Attorney's Office and were investigated by ATF in 2006 and 2007, prior to Operation Fast and Furious. These documents also reflect the Gang Unit's involvement in a third gun trafficking case that also originated out of the Arizona U.S. Attorney's Office, *United States v. Raul Flores Lopez, et al.* ("Flores"). The documents further reflect a Gang Unit prosecutor's attempts to become involved in several additional gun trafficking cases in Arizona, including the Fast and Furious case.

According to these documents, in the summer of 2009 the Gang Unit offered to assist several U.S. Attorneys' Offices along the Southwest Border in their efforts to combat gun trafficking to Mexico. Shortly thereafter, in response to the Gang Unit's offer, the Arizona U.S. Attorney's Office sought assistance on the Wide Receiver cases, which had been languishing in that Office's Tucson branch at least since ATF had completed its investigation and presented the case for prosecution close to two years earlier. The Arizona U.S. Attorney's Office had been involved in the underlying ATF investigation.

As of the fall of 2009, when the Gang Unit was asked to prosecute the Wide Receiver cases (HOCR WR 003371), none of the Wide Receiver defendants had been indicted notwithstanding that the case had long since been presented for prosecution. A prosecutor in the Gang Unit began to analyze the results of ATF's completed investigation and reached the conclusion that the Wide Receiver cases would likely need to involve two indictments against multiple defendants. In an early review of the case, the prosecutor wrote that "it appears that the biggest problem with the case is its [sic] old [and] should have been taken down last year AND a lot of guns seem to have gone to Mexico." HOCR WR 003383. Despite this, the prosecutor recommended to her supervisors that "we get our feet wet and take the case." *Id.* In the fall of 2009, she wrote a draft memorandum setting forth her preliminary analysis. HOCR WR 003391-93. She addressed this memorandum to Deputy Assistant Attorney General ("DAAG") Jason Weinstein but emailed it only to her immediate supervisors (HOCR WR 003390); we have found no indication that the draft memorandum was subsequently finalized or that it was sent to DAAG Weinstein. At the same time that the prosecutor assigned to the Wide Receiver cases was analyzing the completed Wide Receiver investigation, she was also preparing to try a death penalty case in Maryland against a member of the MS-13 gang who had ordered the murder of a juvenile. That trial began in January 2010 and concluded in March 2010.

While she was trying the MS-13 case, ATF headquarters asked the Gang Unit to assist with the Fast and Furious matter. In response to that request, on March 5, 2010, a different Gang Unit prosecutor attended a briefing on the case. Within two weeks, however, the Gang Unit prosecutor learned that the U.S. Attorney's Office in Arizona would be handling Fast and Furious by itself, and, consequently, he had no substantive involvement with the matter.

Following the conclusion of the MS-13 trial in Maryland, the Gang Unit prosecutor handling the Wide Receiver cases completed a prosecution memorandum for Wide Receiver 1. Upon reading that memorandum in April 2010, DAAG Weinstein became aware that in 2006 and 2007, as part of the Wide Receiver investigation, ATF had failed to interdict guns despite having the ability and legal authority to do so and that, as a result, guns had crossed the border into Mexico. HOCR WR 003442. According to an e-mail he sent in April 2010, DAAG

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Weinstein was “stunned” to learn these facts. Mr. Weinstein and others in the Gang Unit quickly alerted Assistant Attorney General Lanny Breuer, who directed Weinstein to meet with ATF senior leadership. HOCR WR 003442, 003451. On April 28, 2010, DAAG Weinstein met with two senior ATF officials to alert them that the Criminal Division was planning soon to indict the Wide Receiver cases, but that ATF’s 2006 and 2007 investigation had been problematic, both because ATF had failed to interdict a significant number of guns despite having the ability and legal authority to do so and some of those guns had crossed the border into Mexico, and because of certain allegations involving the ATF agent who had conducted the investigation. HOCR WR 003442, 003485. According to contemporaneous notes taken by a participant in the meeting, the fact that guns had “walk[ed]” in Wide Receiver was explicitly discussed with the ATF officials. HOCRWR 003478a.

The documents produced today reflect that the Gang Unit prosecutor was ready to indict the Wide Receiver cases and unseal them beginning in the spring of 2010, but that the Assistant U.S. Attorney in the U.S. Attorney’s Office in Arizona handling Fast and Furious believed that if the Wide Receiver indictments became public at that time they would negatively impact his case. The Assistant U.S. Attorney therefore requested that the indictments and/or the unsealing of the indictments in Wide Receiver be delayed. HOCR WR 003480, 003489. As a result of that request, Wide Receiver 1 was indicted under seal in May 2010, Wide Receiver 2 was indicted under seal in October 2010, and both cases were unsealed in November 2010. HOCR DOJ 003260, 63.

Over the course of the next several months, the Gang Unit prosecutor handling the Wide Receiver cases sought to become involved in other gun trafficking cases in Arizona. Thus, in approximately July 2010, she was asked to assist with several additional cases, including Fast and Furious. She was informed at that time, however, that the Assistant U.S. Attorney handling Fast and Furious was unlikely to need much help on the case until it was indicted; and, ultimately, she did not become closely involved with any of the cases that she had been asked to help on that summer. HOCR WR 003517, 003518, 003534. In September 2010, she expressed to her immediate supervisors her increasing “frustrat[ion]” with her lack of involvement on Arizona gun trafficking cases, noting that despite having been “ostensibly assigned” to Fast and Furious she had had “little to no involvement” with the case, and did not think there would be enough work for her in Arizona to keep her busy. HOCR WR 003517-19.

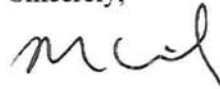
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Today, the Gang Unit (now part of the Criminal Division’s Organized Crime and Gang Section) continues to prosecute Wide Receiver 2 and *Flores*. To date, in both Wide Receiver cases, six defendants have pleaded guilty, and two remain fugitives. In *Flores*, seven defendants have pleaded guilty, and one is scheduled to go on trial next month.

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We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in black ink, appearing to read 'mcl' or similar, written in a cursive style.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
 Washington, D.C. 20503

October 31, 2011

The Honorable Darrell Issa
 Chairman
 House Committee on Oversight and Government Reform
 United States House of Representatives
 2157 Rayburn House Office Building
 Washington, D.C. 20515

The Honorable Charles E. Grassley
 Ranking Member
 Senate Committee on the Judiciary
 United States Senate
 135 Hart Senate Office Building
 Washington, D.C. 20510

Dear Chairman Issa and Ranking Member Grassley:

I am writing in further response to your letter to Director Gil Kerlikowske dated October 12, 2011 requesting from the Office of National Drug Control Policy (ONDCP): 1) documents regarding "Operation Fast and Furious," an Organized Crime Drug Enforcement Task Force (OCDETF) criminal investigation led by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) office in Phoenix, Arizona; 2) email communications between ONDCP and ATF agent William Newell; and 3) information about meetings or teleconferences between any ATF official and any member of the ONDCP staff.

Enclosed are documents responsive to your first two requests from October 2009 through the end of January 2011, when the indictment in *United States v. Avila* was unsealed and Senator Grassley began his inquiry into this matter. For identification purposes, these documents bear bates numbers ONDCP F&F 000001 to ONDCP F&F 000303. Email addresses and phone numbers have been redacted from these documents, along with certain sensitive law enforcement information identified for us by the Department of Justice.

By way of background, ONDCP was created during the Reagan Administration by the Anti-Drug Abuse Act of 1988. ONDCP advises the President on drug-control issues; coordinates drug-control policies and related funding across the Federal government; and produces the annual National Drug Control Strategy, which outlines Administration efforts to reduce illicit drug use and its consequences. In connection with its policy functions and grant programs, ONDCP frequently communicates with federal, state, and local law enforcement agencies. ONDCP has no authority to initiate, conduct, manage, or supervise law enforcement investigations, however.

Documents bearing bates numbers ONDCP F&F 000105 through ONDCP F&F 000303 are responsive to your request for documents regarding ATF's "Operation Fast and Furious." ONDCP receives copies of weekly reports from the National Drug Intelligence Center (NDIC) that summarize the Center's activities. Seven of these weekly reports, which we believe the Committee has already received from the Department of Justice, include a summary reference to "Operation Fast and Furious." In addition, in March 2010, in advance of the Director's participation in a U.S. Attorneys' Conference that took place in Phoenix, Arizona on March 24th and 25th, the U.S. Attorney's Office in Arizona provided ONDCP with an eight page summary overview of its significant law enforcement activities that included one paragraph on "Operation Fast and Furious." At the request of the Department of Justice, we have redacted from this document any references to investigations other than "Operation Fast and Furious" because the information is law enforcement sensitive and does not relate to the subject of your letter. The Department of Justice has also requested that we redact limited information from the paragraph regarding "Operation Fast and Furious," in order to comply with certain statutory provisions related to law enforcement. The brief references in those documents to "Operation Fast and Furious" contain no information indicating that ATF was not closely monitoring firearms or that ATF was letting guns "walk."

Documents bearing bates numbers ONDCP F&F 000001 through ONDCP F&F 000106 are responsive to your request for emails between William Newell and any member of the ONDCP staff. There is no reference to "Operation Fast and Furious" in any of these emails, with the exception of the last two that allude to the public disclosure of the indictment in late January 2011. Most of the enclosed emails relate to arrangements for a single briefing Mr. Newell provided to the Director and relevant staff. This overview briefing occurred on May 13, 2010 in ONDCP's Washington, D.C. offices and generally covered ATF's efforts to combat gun trafficking on the Southwest border. Included in the emails is a power point presentation Mr. Newell intended to use at the meeting. There was no mention of "Operation Fast and Furious" at the briefing.

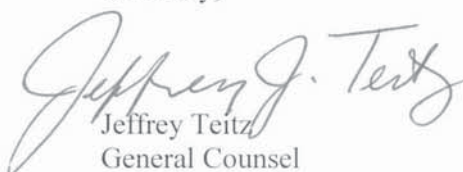
Please note that we have not included with today's production certain broadly distributed emails from the time frame noted above that both Mr. Newell and various members of the ONDCP staff received relating to the national High Intensity Drug Trafficking Areas (HIDTA) program and certain broad policy working groups. These emails involved a large number of recipients, including federal, state, local, and tribal officials.

You also requested a list of ONDCP meetings or teleconferences with William Newell or any ATF official. This is an extremely broad request. With respect to Mr. Newell, it appears that he conducted just one briefing for the Director and relevant staff – the May 13, 2010 briefing discussed above. Otherwise, the Director and other ONDCP staff members encountered Mr. Newell and other ATF officials periodically at meetings and conferences of law enforcement and policy officials in the course of ONDCP's work on national drug control policy, including, for example, the U.S. Attorneys' Conference in Arizona on March 24-25, 2010 and a trip to Arizona in September 1-2, 2010 to consult with federal, state, local, and tribal law enforcement officials. It is not possible to determine with any certainty, however, every occasion where any member of the ONDCP staff attended a meeting or teleconference where Mr. Newell or any other ATF official was also present.

As you can see from the documents produced today, none of the limited information provided to ONDCP about “Operation Fast and Furious” informed ONDCP about any decision by ATF to let guns “walk.” Furthermore, Director Kerlikowske was never briefed about “Operation Fast and Furious” by William Newell or any other ATF official. Of course, ONDCP is not a law enforcement agency and has no supervisory authority over ATF.

The Director looks forward to a continued constructive relationship with your Committees, and I trust that the information provided today satisfies the instant oversight interests.

Sincerely,



Jeffrey Teitz
General Counsel

Cc: The Honorable Elijah E. Cummings
Ranking Member
House Committee on Oversight and Government Reform

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 31, 2011

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

Dear Mr. Chairman:

This responds to your subpoena dated October 11, 2011, which requested documents regarding the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigation known as Operation Fast and Furious and related matters. It also responds to both your letter dated July 11, 2011, requesting communications of twelve named Department employees, and your letter dated September 1, 2011, requesting documents and communications of six current or former employees in the United States Attorney's Office for the District of Arizona.

We are delivering today to your office 652 pages of material responsive to your subpoena and letters. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques or disclose prosecutorial deliberations, plus limited information relating to line employees, such as their cellular phone numbers. We also have withheld text that implicates individual privacy interests, including information about individuals who have been investigated but not prosecuted. In addition, we have redacted text from multi-subject documents that is not responsive to your requests. In some substantial multi-subject documents, such as weekly reports, we have not included pages that contained text that was either not responsive or contained details of particular investigations other than Fast and Furious. The nature of specific redactions is indicated by a redaction code ("RC") set forth in the enclosed list. In some instances, we have included text that is not responsive to your subpoena or letters because it provides context that may be helpful to your understanding of the enclosed documents. In response to requests from Chairman Smith and Chairman Leahy, we will deliver to the House and Senate Committees on the Judiciary the same documents that we deliver to you.

Further, we have identified an additional 47 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by staff of your Committee, as well as staff of the Senate and House Committees on the Judiciary. There are limited redactions of text that would identify law-enforcement sensitive details and techniques as well as information implicating individual privacy interests.

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These records are responsive to items 1, 4, 5, 10, 14, and 21 of the Schedule attached to the Committee's subpoena. Our search for records responsive to the subpoena and your letters is continuing, and we will supplement this response when we have processed additional responsive records. In addition, and consistent with established third-agency practice, we are consulting with the Departments of Homeland Security and State regarding documents that implicate their equities. We will advise you when we have completed those consultations. We appreciate the opportunity to confer with Committee staff to obtain additional guidance about your particular priorities and other interests in connection with the subpoena.

To assist the Committee in its oversight duties, we also appreciate the opportunity to provide you with relevant and necessary context for several of the documents in today's production.

Documents from the U.S. Attorney's Office for the District of Arizona

The documents stamped HOCR USAO 002960-61 reflect communications in January 2010 among then U.S. Attorney Dennis Burke and his staff regarding the Fast and Furious investigation. The communications to Mr. Burke recount a division between ATF's Phoenix Field Division and ATF Headquarters over how to proceed in the investigation. They also demonstrate that the U.S. Attorney's Office's view at that time was that there was insufficient evidence to charge any of the suspects, and thus the office adopted the approach preferred by ATF's Phoenix Field Division to pursue a longer-term investigation.

In assessing the January exchange, you may wish to refer to HOCR USAO 003026-27 and 003046-47. These are memoranda regarding the Fast and Furious matter that were prepared by the U.S. Attorney's Office in August 2010, which state that "[t]hus far the investigation has interdicted approximately 200 firearms, including two .50 caliber rifles. Investigating agents have pursued interdiction of the firearms transferred to the conspirators where possible. Agents have not purposely let guns 'walk.' Interdiction in some cases has been hampered by counter-surveillance used by the targets." An OCDETF-related memorandum written in October 2010 used the same language and added that "ATF has undertaken a very aggressive approach to seizing firearms tied to this conspiracy whenever a legal theory for seizure can be developed."

We are also producing documents relating to a March 2010 visit by the Attorney General to Arizona. The Attorney General's schedule during the brief trip was extremely busy. Among other meetings and events there, he attended a conference of U.S. Attorneys, a session with tribal leaders, and a mortgage fraud press conference. He also met with the Mexican Attorney General and visited the U.S. Attorney's Office for the District of Arizona and with a broad range of U.S. law enforcement personnel. In addition, he was scheduled for a ten-minute meeting with then U.S. Attorney Burke. In anticipation of that visit, officials in the Arizona U.S. Attorney's Office solicited and collected "[s]ignificant case summaries" regarding matters being handled in the office. One of the initial summaries prepared by the office in anticipation of the Attorney General's visit related to Operation Fast and Furious. However, a review of the Attorney General's briefing materials for that trip (HOCR HRNDZ 003245-48) demonstrates that the

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"significant case list" actually transmitted by prosecutors in Arizona to the Attorney General's Office did not include any reference to Fast and Furious. Indeed, the criminal cases that were listed had already been formally charged by the office. The Fast and Furious investigation had not yet resulted in charges.

Nor have we located any evidence suggesting that then U.S. Attorney Burke briefed the Attorney General on Fast and Furious either during their ten-minute meeting or at another time during the visit. According to Mr. Burke's private counsel, with whom we have conferred, Mr. Burke does not recall having briefed the Attorney General about Fast and Furious at any time. The Attorney General similarly has no recollection of having been briefed on the investigation. His staff member's notes from other meetings during the trip reflect general discussions about challenges on the Southwest border and the demand for firearms in Mexico but no mention of Fast and Furious, much less of any of the inappropriate operational tactics employed in that investigation.

Today's production also contains e-mail communications (HOCR USAO 003070, 3073-74, 3085-86, 3087) reflecting an interest on the part of the Arizona U.S. Attorney's Office in late December 2010 and early January 2011 in having first the Attorney General and then the Deputy Attorney General participate in the late-January press conference announcing the Fast and Furious indictments. As you know, neither the Attorney General nor the Deputy Attorney General attended that press conference. The staff member in the Attorney General's office with whom Mr. Burke raised the possibility has no recollection of speaking to the Attorney General about it, and we note that Mr. Burke's email to the staff member does not refer to Fast and Furious by name, let alone discuss any operational tactics. Moreover, according to Mr. Burke's counsel, Mr. Burke does not recall ever having discussed this matter with either the Attorney General or Deputy Attorney General.

Documents from Main Justice

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The Honorable Darrell E. Issa
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The Honorable Darrell E. Issa
Page 5

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We hope this information is helpful. Please do not hesitate to contact us if we may provide additional assistance regarding this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

The Honorable Darrell E. Issa
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Index to Redaction Codes

- RC-1: Redaction of text for privacy purposes.**
- RC-2: Redaction of text that is non-responsive.**
- RC-3: Redaction of text that relates to law enforcement sensitive investigative techniques.**
- RC-4: Redaction of text that relates to investigative targets or subjects.**
- RC-5: Redaction of text that discloses law enforcement sensitive investigative details.**
- RC-6: Redaction of text that discloses prosecutorial or internal executive branch deliberative information.**
- RC-7: Redaction of text that implicates equities of another agency. Pursuant to established third agency practice, DOJ will consult the affected agency and respond further to the Committee.**

November 2011

November 2011

DARRELL E. ISSA, CALIFORNIA
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STAFF DIRECTOR

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Congress of the United States

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COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPEIER, CALIFORNIA

November 1, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Mr. Attorney General:

Documents produced by the Department in response to our investigation into Operation Fast and Furious, conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), make clear that the ATF placed surveillance cameras within the premises of a cooperating gun dealer. These surveillance cameras recorded straw purchasers as they entered the gun store and illegally bought heavy duty weapons. According to the documents, any ATF agent or Department of Justice employee with the appropriate password was able to log on to a web site and witness these straw purchases – in real time – as they happened.

Senator John Cornyn wrote to us on October 24, 2011, urging us to investigate additional federal law enforcement operations in Texas which may have employed gun-walking as an investigational tactic. Senator Cornyn noted a particular instance in which ATF ordered a Texas gun dealer to go through with sales of firearms to likely straw purchasers that the gun dealer found suspicious. He also expressed concern that law enforcement was aware that the buyer of the gun that killed Immigration and Customs Enforcement Agent Jaime Zapata was a straw purchaser for the drug cartels and should have been arrested shortly after the purchase of the murder weapon.

The prospect that ATF conducted multiple operations – not all of them yet known – in which it maintained surveillance on straw purchasers only to let them walk guns into Mexico is disturbing. Therefore, we now request a comprehensive schedule of records of all government surveillances of suspected straw purchases in the United States. These records shall include all video and audio tapes, Reports of Investigation, handwritten notes, e-mails and memoranda. Furthermore, these records shall not be limited to transactions inside of gun stores, but also include gun shows and any other places where straw purchases may have been watched by ATF officials. Please provide a log of all these surveillances over the past four years by any Department component that are in the possession of the government.

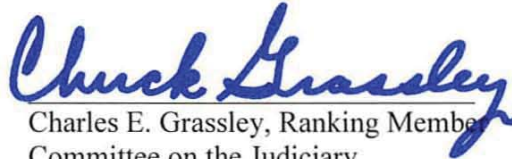
The Honorable Eric H. Holder, Jr.
November 1, 2011
Page 2

Please provide the requested information by November 10, 2011, at noon. Should you have any questions regarding any of these letters, please contact Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. I look forward to receiving your response.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Darrell Issa', written over a horizontal line.

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

A handwritten signature in blue ink, appearing to read 'Chuck Grassley', written over a horizontal line.

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

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

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

The Honorable John Cornyn
U.S. Senate, Committee on the Judiciary

Congress of the United States
Washington, DC 20510

November 3, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

Thank you for the response to our letter of July 11, 2011, regarding the shared network drive developed to house documents from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

In its response, the Department acknowledged that twenty-four of its employees, including six ATF employees, had access to the entire contents of the shared network drive. The Department's letter of September 19, 2011 also stated that over fifty other employees and contractor staff had access to portions of the shared network drive at various times, though most of these individuals never had access to the folder containing records that were produced or made available to the Committees. The letter, however, failed to answer a number of the specific questions posed in our July 11 letter.

As you are aware, the Office of Inspector General (OIG) is investigating the unauthorized disclosure to the press of a document that may have been accessible from this shared drive. The leaked document contained information protected under the Privacy Act regarding ATF whistleblower John Dodson's participation in an undercover law enforcement operation. This document, given to the press, was not even produced to the Committees, instead being made available only for *in camera* review. This leaked document was also accompanied by a set of talking points designed to undermine Agent Dodson's credibility as a whistleblower. This egregious violation of the Privacy Act, and attempted retaliation for protected disclosures to Congress, is unacceptable.

Accordingly, please provide full and complete responses to the following requests for information:

- 1) Please identify, by name, all DOJ and ATF employees who had access to this shared drive. This should include, by name, all employees who had access to the entire contents of the shared network drive, including which individuals still had access after July 1, 2011.

The Honorable Eric H. Holder, Jr.
 November 3, 2011
 Page 2 of 3

- 2) Please identify, by name, the more than fifty individuals who had partial access to the folder containing records that were produced or made available to the Committees, and the dates on which these employees had access.
- 3) Please identify, by name, each employee who had access to the portion of the shared drive containing the leaked documents that were only made available to the Committee *in camera*, and the dates on which these employees had access.
- 4) For the eight individuals who had access to the shared drive after July 1, 2011, but were removed some time before September 6, 2011, please identify, by name, these employees, and the dates on which these employees had their access terminated.
- 5) Please identify, by name, the six employees who continued to have access to the shared network drive as of September 6, 2011.
- 6) If any of the six employees who continued to have access to the shared network drive as of September 6, 2011 have since had their access terminated, please identify, by name, these employees, and the dates on which these employees had their access terminated.

As a result of this shared drive, the number of individuals who had access to internal ATF and DOJ materials multiplied significantly. Many people were given access to sensitive information, thus increasing the likelihood that documents might be leaked. Not surprisingly, as mentioned above, documents in fact were leaked, with the intention of smearing one of the ATF whistleblowers.

During phone conversations last week with Senator Grassley's staff, the Justice Department indicated that someone had resigned, in part, due to actions related to the leaking of this document. Senator Grassley's staff discussed this with OIG staff, who reported knowing an individual had left the Department, but being unaware the departure was related to the leak of the document. When pressed for the name of the individual fired, the Department cited, ironically, privacy concerns related to personnel matters, despite the fact that disclosures to Congress are explicitly exempt from the Privacy Act. Moreover, the Congressional interest in inquiring into retaliation against a witness for his testimony before one of its committees outweighs the Department's interest in protecting the privacy of an official responsible for leaking a Privacy Act-protected document to the press.

With that in mind, please answer the following questions:

- 7) What is the name of the individual who resigned, or was asked to resign, as a result of the leaked documents?


The Honorable Eric H. Holder, Jr.
 November 3, 2011
 Page 3 of 3

- 8) On what date was this individual's employment terminated?
- 9) Was this matter self-reported to the OIG? If so, when was this matter self-reported to the OIG?
- 10) What evidence supports the conclusion that the employee was responsible for the leak?
- 11) According to the Department, its Office of Professional Responsibility (OPR) is investigating other leaks of information related to Fast and Furious. What evidence led to the opening of these additional leak investigations?
- 12) Why are these investigations being handled by OPR rather than by the OIG?
- 13) Who are the targets of the OPR's leak investigations?
- 14) Are the targets of OPR's investigation any of the whistleblower known to the Department to have testified or communicated with Congress regarding Operation Fast and Furious?

Please provide responses to the foregoing no later than November 9, 2011, at noon. If you have any questions regarding these requests, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. Thank you for your attention to this important matter.

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

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

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

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 4, 2011

The Honorable John Cornyn
United States Senate
Washington, DC 20510

Dear Senator Cornyn:

This responds to your letter to the Attorney General dated August 11, 2011, regarding press reports of an ATF "gun-walking" program that allegedly operated in the State of Texas. We apologize for our delay in responding to your letter.

We understand from your staff that the matter to which your letter refers was an investigation initiated by ATF's Houston Field Division in January 2007 that resulted in arrests in 2008. We are currently engaged in a review of the allegations you have brought to our attention and will provide you with additional information as soon as possible. As you know, in March 2011, at the direction of the Attorney General, the Deputy Attorney General issued a Department-wide directive making clear that the flawed tactics used in Operation Fast and Furious are impermissible.

While we are unable to provide more information at this time, we look forward to communicating with you about this matter in the near future. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "m w", is located below the word "Sincerely,".

Ronald Weich
Assistant Attorney General

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

November 7, 2011

Cynthia A. Schnedar
Acting Inspector General
United States Department of Justice
950 Pennsylvania Ave, N.W.
Washington, DC 20001

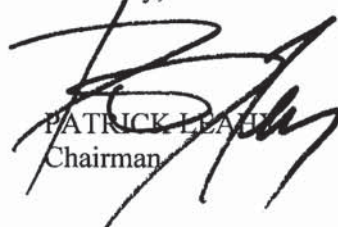
Dear Acting Inspector General Schnedar:

On April 18, the Department of Justice informed me that your office is investigating allegations that have been raised about the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Operation Fast and Furious. I understand that your office initiated this review at the request of Attorney General Holder on February 28 and that it is ongoing.

Recent documents provided by the Department of Justice to Congress show that the ATF utilized similar investigative techniques years earlier. For instance, in connection with Operation Wide Receiver in 2006, hundreds of weapons apparently moved beyond the custody and control of the ATF and possibly into Mexico and Arizona. Recent documents also show that Attorney General Mukasey may have been briefed in 2007 on the ATF's operations on the southern border, including an indication that guns may have entered Mexico out of the control of law enforcement officials.

I am writing to ask whether your office's investigation includes a review of the tactics developed and used earlier in these prior ATF operations. I appreciate your efforts to conduct a thorough investigation in a manner that does not hamper the efforts of law enforcement agents to fight against violent drug cartels in Mexico. I hope that your investigation can also be concluded as quickly as possible.

Sincerely,



PATRICK LEAHY
Chairman



2901 N. Central Avenue, Suite 2000
 Phoenix, AZ 85012-2788
 PHONE: 602.351.8000
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 www.perkinscoie.com

Lee Stein
 PHONE: (602) 351-8190
 FAX: (602) 648-7175
 EMAIL: LStein@perkinscoie.com

November 8, 2011

**VIA EMAIL (cynthia.schnedar@usdoj.gov)
 AND U.S. MAIL**

Cynthia A. Schnedar
 Acting Inspector General
 U.S. Department of Justice
 950 Pennsylvania Avenue, N.W.
 Suite 4706
 Washington, D.C. 20530-0001

Re: Dennis Burke

Dear Ms. Schnedar:

Chuck Rosenberg of the Hogan Lovells law firm and I represent Dennis Burke in connection with issues that arise out of his service as the United States Attorney for the District of Arizona. We write to address questions relating to the disclosure of a memorandum written by ATF Special Agent John Dodson.

As Dennis told your office on August 16, 2011, he provided the memo to a reporter he had known for some time in response to the reporter's request. The reporter, who initiated the contact with Dennis, was working on several stories involving Operation Fast and Furious. It was clear to Dennis from their conversation that the reporter had either seen the memo or had it read to him.

Dennis's intention was to give context to information that the reporter already had to explain that investigations similar to Operation Fast and Furious had been previously proposed by ATF. The investigation proposed by Agent Dodson was closed, and the memo did not contain any Grand Jury or otherwise classified information. Congress had already released to the public other reports from this investigation. Considering the

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Perkins Coie LLP

Cynthia A. Schnedar
November 8, 2011
Page 2

contents of the memo and the closed nature of the investigation to which it referred, the memo was not subject to any limitations on disclosure under the Freedom of Information Act.

We trust that this puts an end to any speculation regarding the disclosure of the memo, which we understand was never even used by the reporter. Please let us know if you would like to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Stein', written over the word 'Sincerely,'.

Lee Stein

LS:lm

cc: Chuck Rosenberg
Hon. Charles Grassley
Hon. Darrell Issa
Hon. Patrick Leahy
Hon. Elijah Cummings
Steven Reich

09901-0735/LEGAL22088833.2

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STAFF DIRECTOR

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Congress of the United States

House of Representatives

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November 9, 2011

The Honorable Ronald Weich
Assistant Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Mr. Weich:

On January 27, 2011, Senator Grassley wrote to request information related to allegations that the ATF sanctioned the sale of hundreds of assault weapons to suspected straw purchasers who transported the weapons into Mexico.¹ In a February 4, 2011, response to Senator Grassley, you stated "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."²

Documents obtained in the course of the congressional investigation of Operation Fast and Furious have shown this statement to be false. When pressed to explain the false statement, you have repeatedly claimed that the Department of Justice (DOJ) was responding to Senator Grassley with the best information that it had at the time. This, too, is false.

Last Tuesday, the head of the Criminal Division admitted in testimony before the Senate Judiciary Committee not only that the statement was false, but that *he knew* it was false, though he could not recall whether he had reviewed the letter:

Senator Grassley: That statement is absolutely false. And you admitted as much last night, that you knew by April, 2010, that ATF walked guns in Operation Wide Receiver. That is that correct, yes?

Lanny Breuer: Yes, senator. What I...

Senator Grassley: That's all I need to know, if that's correct. Did you review that letter before it was sent to me?

¹ Letter from Sen. Charles E. Grassley to ATF Acting Director Kenneth E. Melson, Jan. 27, 2011.

² Letter from Ass't AG Ronald Weich to Sen. Charles E. Grassley, Feb. 4, 2011 at 1.

The Honorable Ronald Weich
November 9, 2011
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Lanny Breuer: Senator, again, I just want to be clear that, as I told you a moment ago, I regret that in April of 2010 that I did not draw the connection between Wide Receiver and Fast and Furious. Moreover, I regret that -- that even in earlier this year that I didn't draw that connection. In direct answer to your question, senator, I can say -- I cannot say for sure whether I saw a draft of the letter that was sent to you. What I can tell you, senator, is at that time, I was in Mexico dealing with a very real issues that we are all so committed to.

But I also regret, as I've said, that I didn't draw that connection earlier.³

On June 15, 2011, you testified at a House Committee on Oversight and Government Reform hearing on Operation Fast and Furious. At that hearing, I inquired about the individuals who assisted in drafting your February 4, 2011, letter. Your responses were incomplete and unsatisfactory. You refused to provide names of the individuals responsible for the drafting and preparation of that letter, which you signed, and for which you accepted ultimate responsibility.

On October 31, 2011, you arranged a briefing through the Democratic staff of the Senate Judiciary Committee to describe documents being produced in response to a subpoena issued by this Committee. Despite that peculiar arrangement, my staff attended and again asked for information about the individuals who assisted in drafting your February 4, 2011, letter. You answered by reiterating your refusal to divulge those names. You were also given the opportunity to retract or amend the false statements contained therein. Rather than doing so, you restated the untenable position that those statements were based on the best information available to you at the time. That position is belied by documents and witness testimony and becomes less believable with every document that DOJ releases.

Documents released pursuant to a Freedom of Information Act request and other materials obtained by the Committee show that high-level ATF and DOJ officials were involved with the preparation and drafting of your February 4, 2011, letter. Multiple offices within DOJ were consulted during the drafting process, including offices known to have had reams of evidence that showed ATF did not make every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico. In fact, the evidence available to you -- or to those who were supplying you with talking points -- showed that in many cases, ATF encouraged illegal weapons purchases and made no effort to interdict those weapons as they were trafficked throughout the southwest border region. Still, the statement was included in your letter to Senator Grassley, and you have repeatedly refused to disavow it.

³ Testimony of Ass't AG Lanny Breuer before the S. Comm. on the Judiciary, Nov. 1, 2011.

The Honorable Ronald Weich
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Mr. Weich, as you are well aware, it is a crime to knowingly make false statements to Congress.⁴ As the Department's principal liaison to Congress, we rely on you to be straight with the facts. You have not been, and so your credibility on this issue has been seriously eroded. Whether it is the case that you were fed a lie and faithfully repeated it in a letter to Congress, or whether it is the case that you took the initiative to lie to Congress yourself, you are responsible for the contents of letters that bear your signature. The buck stops with you.

I ask once again that you provide a complete list of individuals who helped you prepare the February 4, 2011, letter to Senator Grassley. Produce all documents relating to the preparation of that letter, including draft versions. Also produce all communications, including e-mails, referring or relating to the development of DOJ's response to Senator Grassley's January 27, 2011, request for information.

Over the past six months, Senator Grassley and I have asked for this information on many occasions, and each time we have been told it would not be produced. This information is covered by the subpoena served on the Attorney General on October 12, 2011, and I expect it to be produced no later than Wednesday, November 16, at 5:00 p.m. Failure to comply with this request will leave me with no other alternative than the use of compulsory process to obtain your testimony under oath.


Your refusal to fully comply with the Committee's subpoena in this regard is unfortunately consistent with the Department's posture toward legitimate congressional oversight. Last week, lawyers for the Department reiterated that documents created on or after the day the Fast and Furious indictments were unsealed will not be produced, even if they are covered by the subpoena. That limitation is wholly inconsistent with the intent of the congressional investigation of Fast and Furious and represents a willful failure to comply with a lawfully issued subpoena. The Department's stance is clearly meant to prevent a full and transparent understanding of decision-making by senior DOJ officials during the pendency of Fast and Furious, which also encompasses the Department's ongoing response to congressional inquiries about the botched program.

Understanding the Department's actions after Congress started asking questions about Fast and Furious is crucial. As you know, substantial effort was expended to hide the actions of the Department from Congress. This is not some deep-sea fishing expedition, but rather a foray into the shallow and murky waters of deception and obstruction. I expect nothing less than full compliance with all aspects of the subpoena, including complete production of documents created after the indictments were unsealed on January 25, 2011.

⁴ 18 U.S.C. § 1001. Statements or Entries Generally. (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years ... or both. (emphasis added)

The Honorable Ronald Weich
November 9, 2011
Page 4

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Charles E. Grassley, Ranking Member
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 Patrick Leahy, Chairman
U.S. Senate Committee on the Judiciary

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United States Senate

COMMITTEE ON ARMED SERVICES

WASHINGTON, DC 20510-6050

November 10, 2011

RICHARD D. DUBOIS, STAFF DIRECTOR
DAVID M. MORRIS, MINORITY STAFF DIRECTOR

Mr. Kevin A. Ohlson
c/o Ms. Kathryn Ruemmler
Assistant to the President and Counsel
The White House
Washington, DC 20500

Dear Mr. Ohlson:

On September 15, 2011, you were nominated by the President to be a judge on the United States Court of Appeals for the Armed Forces. Your biographical information indicates that you served as Chief of Staff and Counselor to Attorney General Eric Holder from January 2009 to January 2011.

In evaluating your nomination, the Committee must be provided with comprehensive information about your involvement with respect to Operation Fast and Furious. Operation Fast and Furious was conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives as part of its investigation into illegal gun trafficking. The Operation started in the fall of 2009 and ended in late 2010 after the slayings of U.S. Border Patrol Agent Brian Terry, who was murdered in Rio Rico, Arizona, and U.S. Immigration and Customs Enforcement Special Agent Jaime Zapata who was killed in the Mexican state of San Luis Potosi on February 15, 2011. As Mr. Holder's Chief of Staff and Counselor from January 2009 until January 2011, you were in a position to be informed about the Operation, to make decisions regarding the operation, and to know what information about it was and was not provided to the Attorney General.

Please respond to the following questions and requests for documents with respect to Operation Fast and Furious ("the Operation"):

1. Describe in detail your actions, knowledge, advice, and involvement as Chief of Staff and Counselor to the Attorney General regarding the Operation.
2. Were you aware of the Operation at any time prior to your departure in January 2011 to become Chief of the Professional Misconduct Review Unit?
3. What recommendations or assistance, if any, regarding the Operation have you provided to Attorney General Holder since first learning of its existence? Please provide the Committee with any written memoranda or other briefing materials you drafted or reviewed in connection with your duties as Chief of Staff and Counselor to the Attorney General regarding the Operation.

4. To your knowledge, what information about the Operation was provided to you or to Attorney General Holder about its concept, purpose, progress, and methods while you served as Chief of Staff and Counselor to the Attorney General?

5. Media reports have indicated that internal Department of Justice emails showed that Attorney General Holder was provided with information about the Operation as early as July 2010. As Attorney General Holder's Chief of Staff and Counselor, when did you personally learn of the existence of the Operation and what was the extent of your knowledge in December 2010? Do you believe your transfer in January 2011 was in any way related to the Operation or the slaying of Agent Brian Terry? If so, how?

6. Since moving to the Professional Misconduct Review Unit, what has been your involvement, if any, in responding to questions sent to Attorney General Holder or the Department of Justice about the Operation?

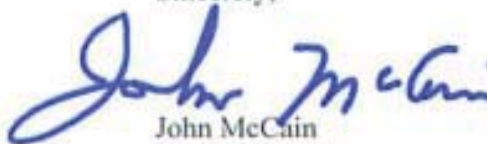
7. Have you been subpoenaed or interviewed in connection with ongoing investigations into the Operation? If so, please provide the Armed Services Committee with copies of the subpoena and any documents, copies of emails, or other responses you have provided to other congressional committees or any other investigative bodies.

8. The Administration's Office of National Drug Control Policy, the National Southwest Border Counternarcotics Strategy, the General Accountability Office in its report on combating firearms trafficking of June 2009, and the U.S. Department of Justice Inspector General Review on Project Gun Runner of November 2010, all cited inter-agency and Department of Justice information sharing and coordination as a priority in order to making Project Gun Runner, of which Operation Fast and Furious was a part, successful.

Following the release of these reports, what actions, if any, were taken by the Attorney General, and what role did you play in initiating action in the Department of Justice to increase coordination and information sharing between the Department of Justice, the Bureau of Alcohol, Tobacco, Firearms and Explosives, Immigration Customs Enforcement, and Customs and Border Protection? Please describe in detail what actions, if any, you took or directed be taken, to comply with the inter-agency information sharing priority of the Department.

Thank you for your cooperation in this matter.

Sincerely,



John McCain
Ranking Member



U.S. Department of Justice
Office of the Deputy Attorney General

Professional Misconduct Review Unit
Kevin A. Ohlson
Chief

November 14, 2011
Direct: 703-762-3607
kevin.ohlson@usdoj.gov

The Honorable Carl Levin
Chairman
Committee on Armed Services
United States Senate
Washington, D.C. 20510-6050

The Honorable John S. McCain III
Ranking Member
Committee on Armed Services
United States Senate
Washington, D.C. 20510-6050

Dear Chairman Levin and Senator McCain,

This correspondence is in response to the November 10, 2011, letter sent to Kathryn Ruemmler, Counsel to the President, by Senator McCain asking about my knowledge of, and involvement in, Operation Fast and Furious. I am pleased to provide you with the following responses.

1. Describe in detail your actions, knowledge, advice, and involvement as Chief of Staff and Counselor to the Attorney General regarding the Operation.

During my tenure as Chief of Staff and Counselor to the Attorney General, I took no actions in regard to, had no knowledge of, provided no advice about, and had no involvement in Operation Fast and Furious.

2. Were you aware of the Operation at any time prior to your departure in January 2011 to become Chief of the Professional Misconduct Review Unit?

No.

3. What recommendations or assistance, if any, regarding the Operation have you provided to Attorney General Holder since first learning of its existence? Please provide the Committee with any written memoranda or other briefing materials you drafted or reviewed in connection with your duties as Chief of Staff and Counselor to the Attorney General regarding the Operation.

On Sunday, November 5, 2011, I participated in a moot session in preparation for the Attorney General's appearance before the Senate Judiciary Committee hearing two days later, and approximately one month ago I made a recommendation to the Attorney General about press outreach in regard to this matter. During my tenure as Chief of Staff and Counselor to the Attorney General, I did not draft any material related to Operation Fast and Furious. I have been informed that routine courtesy copies of weekly reports were forwarded to me that referred to the operation by name, but that did not provide any operational details and did not refer to gun walking or anything similar. There was nothing on the cover sheets of these routine weekly reports indicating that important or sensitive material was included in them, and I did not review them.

4. To your knowledge, what information about the Operation was provided to you or to Attorney General Holder about its concept, purpose, progress, and methods while you served as Chief of Staff and Counselor to the Attorney General?

During my tenure as Chief of Staff and Counselor to the Attorney General, I did not review or hear about any information that pertained to the concept, purpose, progress, or methods of Operation Fast and Furious. I have been informed that routine courtesy copies of weekly reports were forwarded to me that referred to the operation by name, but that did not provide any operational details and did not refer to gun walking or anything similar. There was nothing on the cover sheets of these routine weekly reports indicating that important or sensitive material was included in them, and I did not review them.

5. Media reports have indicated that internal Department of Justice emails showed that Attorney General Holder was provided with information about the Operation as early as July 2010. As Attorney General Holder's Chief of Staff and Counselor, when did you personally learn of the existence of the Operation and what was the extent of your knowledge in December 2010? Do you believe your transfer in January 2011 was in any way related to the Operation or the slaying of Agent Brian Terry? If so, how?

I did not have any knowledge of Operation Fast and Furious in December 2010. I learned of the existence of the Operation in February 2011 from press reports. My assignment to serve as Chief of the Professional Misconduct Review Unit was in no way related to the Operation or to the slaying of Agent Brian Terry.

6. Since moving to the Professional Misconduct Review Unit, what has been your involvement, if any, in responding to questions sent to Attorney General Holder or the Department of Justice about the Operation?

I have not had any involvement in preparing written responses to questions posed by Members of Congress and sent to the Attorney General or the Department of Justice about the Operation. As noted above, on Sunday, November 5, 2011, I participated in a moot session in preparation for the Attorney General's appearance before the Senate Judiciary Committee.

7. Have you been subpoenaed or interviewed in connection with ongoing investigations into the Operation?

No.

8. What actions, if any, were taken by the Attorney General and what role did you play in initiating action in the Department of Justice to increase coordination and information sharing between the Department of Justice, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Immigration Customs Enforcement, and Customs and Border Protection?

I did not play any role in initiating action in the Department of Justice in regard to this issue.

I hope these responses are of assistance to you.

Very Respectfully,



Kevin A. Ohlson



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

November 16, 2011

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

Dear Mr. Chairman:

This responds to your letter dated November 9, 2011 which seeks documents and other information regarding the preparation of the Department's letter to Senator Grassley dated February 4, 2011.

We understand your concerns regarding the development of the letter and are attempting to accommodate your oversight interests. We are reviewing the matter in order to determine what materials can be provided to you on this topic and will communicate further with you on this subject soon.

In addition, because the Committee desires to hear from Assistant Attorney General Weich, I want to assure you that he is prepared to testify on a voluntary basis and without need for a subpoena. He is a dedicated public servant of unquestioned personal integrity, and he and his staff have worked diligently and in good faith with the Committee to provide information that has been requested and answer questions as they have arisen. Together with the rest of the Department, he and his staff remain fully committed to addressing the Committee's questions and concerns.

Hon. Darrell E. Issa
November 16, 2011
Page 2

Please do not hesitate to contact the Office of Legislative Affairs if you would like additional assistance regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Cole", written over a horizontal line.

James M. Cole
Deputy Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Member

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate



ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

"Courteous Vigilance"

JANICE K. BREWER ROBERT C. HALLIDAY
Governor Director

November 17, 2011

Congress of the United States
Committee on the Judiciary
Attn: Darrell Issa, Chairman and Charles E. Grassley, Ranking Member
Washington, DC 20515
Emailed to: [REDACTED]

Re: Letter to Director Robert Halliday, Arizona Department of Public Safety

Dear Sirs:

I am the Documents Custodian for the Arizona Department of Public Safety ("AZDPS") and am responding on behalf of Director Robert Halliday to your correspondence dated October 31, 2011. In your letter you are requesting 1) Records relating to Operation Fast and Furious and 2) Serial numbers related to firearms recovered attendant to investigations into homicide, aggravated assault, kidnapping, home invasion, or other violent crimes that occurred from September 2009 to the present. Additionally, you request records pertaining to AZDPS Officer Mike Ruiz's shooting on March 4, 2010.

I would like to address each of your requests individually. Regarding request item number #1, AZDPS has no records relating to Operation Fast and Furious. Regarding request item number #2, AZDPS has no means with which to extract firearms data from crime reports without knowing the incident or report number and cannot extract data from narratives of reports. Finally, regarding records relating to a firearm seized in the March 4, 2010, shooting of Officer Mike Ruiz, the investigative report for this incident is quite lengthy and may require some redactions. However, there are still supplemental and laboratory reports pending in this case, which will give you more specific information regarding any weapons seized as a result of this incident. The supplemental reports should be available before the end of December 2011, after the case officer has completed his investigation and received information from the laboratory.

I am able to send you via CD the large portion of the report that is currently available within the next 2 weeks or I can wait and send you the report in its entirety. Since your request was received at the end of October, the Department did not want to wait any longer to respond although the entire investigative file is not yet available.

I have included my email address in this correspondence. Please let me know if you would like the portion of the report that is available at this time. Otherwise, I will send you the entirety of the requested documents once the case officer has completed his investigation and supplemental reports.

Please call me at [REDACTED] or email: [REDACTED]

Sincerely,

Teresa Fuentes, Documents Custodian
Arizona Department of Public Safety



U.S. Department of Justice

Office of the Inspector General

November 21, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy:

I write in response to your letter dated November 7, 2011, concerning the Department of Justice Office of the Inspector General's (OIG) ongoing review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) investigation known as Operation Fast and Furious. In your letter you asked whether the OIG's review would include an examination of ATF operations that preceded Operation Fast and Furious.

We have previously described the scope of our review as examining Operation Fast and Furious, and other investigations with similar objectives, methods, and strategies. Operation Wide Receiver, which you refer to in your November 7 letter, will be included within the scope of our review.

If you have any further questions, please feel free to contact me or Senior Counsel Jay Lerner at [REDACTED]

Sincerely,

A handwritten signature in blue ink, reading "Cynthia A. Schnedar", is positioned above the typed name.

Cynthia A. Schnedar
Acting Inspector General

December 2011

December 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.

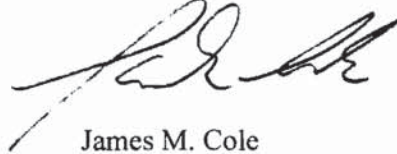
The documents produced today also reflect that the drafters of the February 4 letter were focused on how much should be said about the open Fast and Furious investigation and the investigation into the murder of Agent Terry. One view was that the "[g]oal would [be] to put on the record whatever we can 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:

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.

HOGH 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,



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

Congress of the United States
Washington, DC 20515

December 6, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
301 7th Street, NW
Washington, D.C. 20528

Dear Madam Secretary:

In your testimony before the Senate Judiciary Committee on October 19, 2011, you told Senator Grassley that you had asked U.S. Immigration and Customs Enforcement (ICE) to look into its involvement with Operation Fast and Furious, an Organized Crime Drug Enforcement Task Force (OCDETF) case. You also referenced the fact that your Department had provided information the day before the Judiciary Committee hearing with respect to its involvement.

The information provided by your Department is very important to us. Specifically, your Department told us on two separate occasions that near the end of 2009, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) requested that ICE cease investigations into weapons cases in deference to a pending ATF investigation. Your Department also informed us that the ATF investigation in question was Operation Fast and Furious. Apparently this request culminated in a meeting among ICE, an ATF Assistant Special Agent in Charge (ASAC), and the Assistant U.S. Attorney (AUSA) responsible for prosecution of gun trafficking cases in Phoenix, Emory Hurley.

At that meeting, Mr. Hurley reportedly requested that ICE coordinate with ATF before taking any enforcement actions against targets that might be associated with Fast and Furious. Presumably, this was part of the reason that in early 2010, an ICE agent was added to ATF's Phoenix Group VII and became a co-case agent for Operation Fast and Furious. Nevertheless, this meeting and the events leading up to it raise a number of questions. Therefore, we request that you make arrangements to brief our respective staffs on these issues by no later than Tuesday, December 13, 2011. We also request a copy of the ICE case file on Operation Fast and Furious.

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The Honorable Janet Napolitano
December 6, 2011
Page 2

Should you have any questions regarding the issues we have raised, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. We look forward to your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", with a large, sweeping flourish above the name.

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

A handwritten signature in blue ink, appearing to read "Chuck Grassley", with a large, sweeping flourish above the name.

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

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

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



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 6, 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
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Grassley:

This responds to the requests set forth in your letter dated September 1, 2011, for transcribed interviews of three prosecutors in the United States Attorney's Office for the District of Arizona (the "USAO") and the requests communicated to us by Committee staff for transcribed interviews of eight additional Department of Justice attorneys concerning ongoing firearms trafficking investigations and related pending prosecutions. Although we are prepared to make several attorneys available for interviews, your request for interviews of some line and lower level supervisory prosecutors raises grave concerns for the Department. In addition, the Committee's need for interviews of several others is unclear because of their limited connection with the firearms trafficking investigations.

The Committee's request for interviews of Department prosecutors is part of a review in which the Committee has already had extraordinary access to Department personnel and documents. As you know, the Department has voluntarily made six ATF employees available for transcribed interviews, and the Committee has conducted interviews of additional ATF personnel, including then-Acting Director Melson. We likewise have made senior Department officials available for public testimony. The Department has cooperated in the scheduling and conduct of those interviews notwithstanding the fact that the Committee sought to inquire about matters related to open investigations and pending prosecutions. The Department has sought to accommodate the Committee's interests regarding the strategy adopted in this law enforcement effort because it recognizes the legitimate questions about whether illegally purchased firearms were knowingly permitted to cross the border to Mexico.

The Honorable Darrell E. Issa
 The Honorable Charles E. Grassley
 Page 2

For these same reasons, the Department has made more than 5,000 pages of documents available to the Committee, and it continues to search for and review documents responsive to the Committee's requests, including but not limited to its subpoenas. Indeed, as you are well aware, the Department has dedicated substantial resources to accommodating the Committee's information requests related to the strategy adopted in connection with Operation Fast and Furious. At the same time, however, we have attempted to accommodate the Committee's requests without harming pending investigations and prosecutions, and without impairing other values that are central to the Department's mission.

As we have advised your staff, we are prepared to make Patrick Cunningham, Chief of the Criminal Division in the United States Attorney's Office for the District of Arizona, available for an interview. However, the Department expects to be present to protect its law enforcement interests during the interview. We understand that Mr. Cunningham has retained private counsel and we will defer to him with regard to scheduling, as long as we can attend. We also will make available Gary Grindler, formerly the Acting Deputy Attorney General and now Chief of Staff to the Attorney General, in accordance with our conversations with Committee staff, on December 14, 2011. In addition, we are prepared to make available Jason Weinstein, Deputy Assistant Attorney General in the Department's Criminal Division, but we need to be present to protect the Department's interests, regardless of whether Mr. Weinstein also chooses to be accompanied by any private counsel. We understand that you would like to continue the interview of now former United States Attorney Dennis K. Burke, whom we understand has retained private counsel. The Department has no objection to this further interview so long as we are permitted to attend. We are currently preparing to provide documents to Mr. Burke and his attorney to assist his preparation for this resumed interview.

It is particularly important that the Department attend the interviews of these current and former employees in order to protect its own interests, especially those pertaining to the ongoing criminal investigations and prosecutions. It is standard Executive Branch practice for agency counsel or other agency representatives to attend congressional staff interviews of agency personnel, and a witness's personal counsel does not represent the agency. Indeed, we understand that the Committee has informed another agency that both private counsel and agency counsel may be present at a Committee staff interview. We expect that Messrs. Cunningham, Burke, Grindler and Weinstein may answer questions at their interviews about their knowledge of the strategy adopted in Operation Fast and Furious. For the reasons discussed below, however, and consistent with limitations applicable in prior interviews, they will not discuss the details of pending investigations or prosecutions, including prosecutorial decisions about particular individuals. These limitations are essential to protect the integrity and independence of the criminal justice process as well as the public's confidence that such decisions are made without regard to political considerations. It is the responsibility of the Department's counsel to identify these limitations as needed and any other Department equities that may be implicated during the course of the interviews.

We expect that Messrs. Burke and Cunningham will be in a position to address the topics that Assistant Attorney General Weich identified on page 3 of his prepared statement for the

The Honorable Darrell E. Issa
 The Honorable Charles E. Grassley
 Page 3

Committee hearing on June 15 as being at the “core of the Committee’s oversight interests” and which the Department has been and is willing to accommodate: “the decisionmaking and responsibility for strategic decisions, if any, regarding the timing of arrests in connection with the alleged sale of firearms to individuals suspected of being straw purchasers, the legal basis to seize such firearms, and any efforts to track the firearms to those higher up the chain of command in firearms and drug trafficking interests.” We are concerned about your request for interviews of Kenneth Blanco, also a Deputy Assistant Attorney General in the Criminal Division, because his only connection with Operation Fast and Furious arose from his role in reviewing applications for Title III surveillance, a technique that the Department has acknowledged was used in this investigation. That acknowledgement will not, however, relieve Mr. Blanco of his obligation to protect the confidentiality of information pertaining to particular applications. Moreover, to the extent that you are interested in eliciting from Mr. Blanco any information about the general process for reviewing Title III applications, Mr. Weinstein could provide that information during his interview. Additionally, we have previously agreed to provide a briefing on the Title III procedures in response to a request from Committee staff. Under these circumstances, we would seek to defer the interview of Mr. Blanco and, following Mr. Weinstein’s interview, proceed with a briefing if you feel you still need additional information about the general procedures for reviewing Title III applications.

We are also unclear about the Committee’s interest in interviewing Bruce Swartz, another Deputy Assistant Attorney General in the Criminal Division, whom the Committee has not indicated had any connection with Operation Fast and Furious. As noted above, we are in the process of searching for documents responsive to the Committee’s subpoena, including categories that mention Mr. Swartz. We would like to defer any final decisions about the Committee’s request for Mr. Swartz’s interview until we have identified any responsive documents, some of which may implicate equities of another agency. We will supplement this response when that process is completed.

The remaining employees you have asked to interview are all career employees who are either line prosecutors or first- or second-level supervisors. James Trusty and Michael Morrissey were first-level supervisors during the time period covered by the Fast and Furious investigation, and Kevin Carwile was a second-level supervisor. The remaining three employees you have asked to interview – Emory Hurley, Serra Tsethlikai, and Joseph Cooley – are line prosecutors. We are not prepared to make any of these attorneys available for interviews. We believe that, in addition to the staff interviews of Department employees that have already occurred and the documents we have and will provide, the transcribed interviews offered above should provide sufficient information to satisfy the Committee’s legitimate oversight interests. Committee staff questioning of lower level supervisors and line prosecutors poses significant risks, however unintended, to the Department’s discharge of its law enforcement responsibilities and in particular would have a substantial chilling and intimidating effect on Department prosecutors across the country, as we discuss more fully below.

The Honorable Darrell E. Issa
 The Honorable Charles E. Grassley
 Page 4

I. Respected Governmental Officials on a Bipartisan Basis Have Opposed Subjecting Line Prosecutors to Congressional Inquiry

Subjecting line prosecutors to congressional scrutiny concerning decisions they have made in particular cases raises very grave concerns for the Department and similarly has troubled an array of respected Congressional leaders and Department officials across the ideological spectrum. In the enclosed September 21, 1993 letter to Attorney General Janet Reno, Senator Orrin Hatch wrote:

I have been troubled to learn recently that consideration is apparently being given to having career line attorneys of the Department of Justice interrogated by, and appear before, Congressional committees for the purpose of defending or otherwise explaining their conduct of particular cases. My initial impression is that this is a very disturbing idea. It could chill career Department of Justice lawyers in the exercise of their daily duties. . . .

Beyond practical concerns of case management, constitutional concerns are, of course, also raised by the contemplated plan.

Similarly, in the enclosed September 7, 1993 letter to Attorney General Reno on the same topic, Representative Henry J. Hyde criticized the notion that line prosecutors might appear before Congress, calling the idea "misguided" and urging the Attorney General to "thwart this outrageous politicizing of law enforcement" because "[w]e should not open the door to congressional micromanagement of prosecutions." Such a result, Representative Hyde wrote, "would threaten the integrity of the Justice Department and undermine public respect for our entire judicial system."

The views expressed by Senator Hatch and Representative Hyde were shared by the Department during the Administration of George W. Bush. In the enclosed letter dated March 23, 2005, William E. Moschella, Assistant Attorney General for Legislative Affairs, wrote to Senator Susan Collins that:

[t]he Department has a strong institutional interest in ensuring that appropriate supervisory personnel, rather than line attorneys and agents, answer Congressional inquiries about Department actions. This is based in part upon our view that supervisory personnel, not line employees, make the decisions that are the subjects of Congressional review, and therefore they should be the ones to explain their decisions. More fundamentally, however, the Department needs to ensure that our line attorneys and agents can exercise the independent judgment essential to the integrity of our law enforcement activities and to public confidence in those activities.

The Honorable Darrell E. Issa
 The Honorable Charles E. Grassley
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Stuart M. Gerson, an Assistant Attorney General during the Administration of George H.W. Bush, has observed that congressional efforts to subpoena line prosecutors “pose a long-term constitutional threat by impinging upon the core, judicially-unreviewable, Executive Branch function of rendering independent decisions concerning the undertaking or forbearance of criminal prosecutions.” Stuart Gerson, “The Legislative Politicization of the U.S. Department of Justice,” Legal Backgrounder for the Washington Legal Foundation, at 1 (Nov. 18, 1994) (copy enclosed).

In the enclosed January 5, 1994 response to the letter from Senator Hatch, Attorney General Reno wrote that:

A prosecutor’s discretion to investigate or indict a particular individual is an awesome power, with irreparable impact on the life of that individual and on the integrity of our system of justice. It must be exercised with the greatest of care and in a manner guaranteed to ensure that only objective, non-political considerations bear on its determination. Permitting Congressional examination of line prosecutors carries substantial danger of chilling the objective exercise of that discretion and of generating the appearance of political influence on prosecutorial decisions.

And, for similar reasons, the American Bar Association in 1996 adopted recommendations that “[c]ongressional committees should not seek . . . compelled testimony of . . . line attorneys regarding discretionary decisions being made in pending cases” and that, as a general matter, “congressional committees should not seek the compelled testimony of line attorneys about adjudicated cases.” ABA Resolution 104A (AM 96-104A) *available at* http://www.americanbar.org/groups/criminal_justice/policy/index_aba_criminal_justice_policies_by_meeting.html#am96104a.

II. Requiring These Prosecutors in the Instant Matter to Provide Information to the Committee Would Imperil Pending and Future Prosecutions Arising Out of the Criminal Investigations Under Review


We take as a given that the Committee seeks to give no aid to those who either have been or will be charged with serious crimes arising out of the Fast and Furious matter. However, requiring an appearance by these prosecutors about the prosecution of already-charged defendants, and the oversight of investigations that may lead to charges against others is certain to lead to significant legal attacks in court by counsel for these individuals. Requiring these prosecutors to explain why certain facts did or did not give rise to legal rights on behalf of the government, or requiring them to explain in exacting detail the government’s investigative actions, can give rise to motions by counsel for criminal defendants that may, at the least, complicate the government’s ability to bring dangerous individuals to justice. Such results are not in the interests of the criminal justice system or the public generally.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
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Similarly, requiring these prosecutors to provide information to Congress can trigger additional discovery obligations in favor of criminal defendants that can undermine the government's case. We recognize that such outcomes are not intended consequences of the Committee's request for information, but they may well be unavoidable consequences.

We hope this information is helpful and appreciate your consideration of our views in this matter. Please do not hesitate to contact this office if we may provide additional assistance.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

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

Office of Legislative Affairs

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

December 7, 2011

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

The Honorable Charles E. Grassley
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Issa and Senator Grassley:

Thank you for your letter of December 6, 2011 to Secretary Napolitano.

I am attaching an email previously sent to Senator Grassley's staff on October 18, 2011 responding to the questions posed in your letter. The Department has asked ICE to provide the Committee with additional information about these events and gather any documents responsive to your request. The Department's Office of Legislative Affairs will contact your office to set a date and time when appropriate ICE personnel can provide a briefing to your staffs. In addition, our Office of General Counsel will coordinate with Committee staff regarding your document request.

Thank you for your attention to this correspondence.

Respectfully,

A handwritten signature in blue ink, appearing to read "N. Peacock", written over a horizontal line.

Nelson Peacock
Assistant Secretary for Legislative Affairs

Enclosure

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

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

www.dhs.gov



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 13, 2011

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

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letter dated July 12, 2011, and supplements our previous responses to the October 11, 2011 subpoena.

Enclosed are 19 pages of responsive documents. Consistent with Department practice, we have redacted non-responsive text from multi-subject documents and limited law enforcement sensitive information. Specifically, we are enclosing with this letter additional notes taken by staff of the Office of the Deputy Attorney General (ODAG) at a regular meeting between the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and ODAG on March 12, 2010 that mention both Operation Fast and Furious and the demand letter for multiple sales of certain rifles. We have previously provided to you other notes from this meeting. We are also enclosing (1) a memorandum received by the Department on March 26, 2010, proposing a pilot project to issue demand letters to all FFLs in twelve selected states, and (2) a memorandum, dated December 6, 2010, which narrowed the scope of the proposal to four states. Both the March and December memoranda include brief descriptions of seven unnamed cases that ATF believed illustrated the potential benefit of such a requirement. Operation Fast and Furious is one of the unnamed cases in each memorandum.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
Page Two

We hope that this information is helpful. We will supplement this response with additional information responsive to your July 12, 2011 letter. In the meantime, please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc:

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

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

DARRELL E. ISSA, CALIFORNIA
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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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JACKIE SPEIER, CALIFORNIA

December 15, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

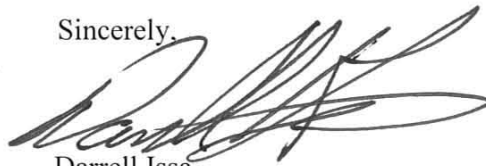
Dear Mr. Attorney General:

The Committee on Oversight and Government Reform hereby requests your testimony on January 24, 2012, at a hearing in room 2154 of the Rayburn House Office Building in Washington, DC. The Committee staff has also provided six alternate dates in January and February for this hearing. We have not yet received a response from the Department confirming your attendance.

The hearing will examine flaws in the management structure of the Justice Department as demonstrated in the genesis and implementation of ATF's Operation Fast and Furious. Specifically, the hearing will focus on what senior Department officials could and should have done to put a stop to this reckless program, as well as the specific areas where failures in communication and management occurred. The Department's February 4, 2011, letter to Congress will be but one example of these failures in management.

We ask that you contact the Committee by January 3, 2012, to confirm your attendance. If you have any questions, please contact Henry Kerner of the Committee staff at (202) 225-5074.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 21, 2011

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

Dear Chairman Issa:

This responds to your letter of December 15, 2011, requesting that the Attorney General testify in the House Committee on Oversight and Government Reform. The Attorney General is available to testify before your committee on the morning of February 2, 2012, which is one of the dates proposed by your staff. The Attorney General is prepared to appear until 1:00 pm, at which point he must depart to attend to other Department business.

While the Attorney General has agreed to appear voluntarily before your Committee, we must, with all due respect, note the redundancy of your request. This will be the sixth occasion on which the Attorney General will answer questions about Operation Fast and Furious before a congressional committee. In addition to appearances earlier this year before the Senate Appropriations Committee, the House Judiciary Committee and the Senate Judiciary Committee at which questions on this subject were raised, the Attorney General has twice in the last seven weeks participated in oversight hearings in the Senate and House Judiciary Committees featuring comprehensive reviews of this single law enforcement operation. Most recently, on December 8, the Attorney General spent virtually the entire day at a hearing in the House Judiciary Committee at which almost 40 House members, including you and several other members of the House Oversight Committee who are also members of the Judiciary Committee, had ample opportunity to ask the Attorney General about every aspect of the matter.

In addition to his live testimony before Congress, the Attorney General has answered and will answer voluminous written questions submitted for the record of the congressional hearings at which he has testified. Furthermore, the Department has answered at least three dozen letters from members of Congress about Operation Fast and Furious. At the same time, in the course of cooperating with congressional oversight of this matter, the Department has produced or made available for review over 5,000 pages of documents and facilitated numerous transcribed interviews of Department personnel by congressional investigators. Meanwhile, the Department's Acting Inspector General is conducting a comprehensive review of these same matters – a review that was initiated by the Attorney General less than a month after concerns about Operation Fast and Furious were brought to his attention. In light of this extensive public record and ongoing investigative activity, it is difficult to see how the American people will be well served by yet another congressional hearing on this subject held less than two months after

The Honorable Darrell E. Issa
Page Two

the last hearing on this subject and only weeks before the annual cycle of oversight hearings before the House and Senate Appropriations and Judiciary Committees commences.

Your December 15 letter suggests that this hearing will examine "flaws in the management structure of the Justice Department." Yet, you have not accepted our offer for you to meet with Todd Jones, Acting Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives, who could describe to you the significant management reforms he has instituted at ATF in the months since the Attorney General asked him to lead that agency in the absence of a Senate-confirmed Director. Indeed, Mr. Jones would be pleased to meet with you or to testify before your committee, which would afford the committee an opportunity to examine the future of the agency and efforts to strengthen its important law enforcement functions. It seems to us that a serious examination of the topic set forth in your letter would begin with the important changes that Acting Director Jones has made at ATF.

It is our sincere hope that the questioning during this hearing before your committee be conducted in a professional manner. The Attorney General has demonstrated great restraint in responding to some questioning in other committees that has, at times, been disrespectful and unproductive. The American people are entitled to a more thoughtful and reasoned dialogue on these critical issues and we ask that you, as Chairman, encourage such a dialogue during the February 2 hearing.

Please do not hesitate to contact this office if we may of assistance with respect to this or other matters.

Sincerely,



Ronald Weich
Assistant Attorney General

cc:

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

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 21, 2011

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

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

Dear Chairman Issa and Senator Grassley:

This responds to your letter to the Attorney General dated November 1, 2011, which requested a comprehensive schedule of records of all government surveillance of suspected straw purchases of firearms in the United States.

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) advises that it does not maintain a searchable database of cases involving surveillance of suspected straw purchases. ATF advises that creating the schedule you have requested would require a manual review of thousands of firearms trafficking case files in order to determine whether surveillance of suspected straw purchases occurred. This would entail an extraordinary commitment of time and resources that ATF is not equipped to undertake at this time. Further, the Federal Bureau of Investigation and Drug Enforcement Administration advise that they do not conduct surveillance of straw purchases in the ordinary course of their law enforcement activities. We are not aware of any other Department components that would be likely to conduct surveillance of straw purchases. We also note that any surveillance records would likely implicate significant law enforcement and individual privacy interests.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
Page Two

We regret that we have been unable to assist you with your request. Please do not hesitate to contact this office if we may provide further information on this, or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc:

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

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable John Cornyn
Committee on the Judiciary
United States Senate

January 2012

January 2012

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 5, 2012

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

Dear Mr. Chairman:

This responds to your subpoena dated October 11, 2011, which requested documents regarding the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigation known as Operation Fast and Furious and related matters. It also responds to your subpoena of March 31, 2011 to then-Acting ATF Director Kenneth Melson requesting documents about Operation Fast and Furious, your letter dated July 11, 2011, requesting communications of twelve named Department employees, and your letter dated September 1, 2011, requesting documents and communications of six current or former employees in the United States Attorney's Office for the District of Arizona.

We are delivering today to your office 482 pages of material responsive to these requests.¹ Further, we have identified an additional 80 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by staff of your Committee, as well as staff of the Senate and House Committees on the Judiciary.²

¹ These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques or disclose prosecutorial deliberations, plus limited information relating to line employees, such as their cellular phone numbers, and we have withheld entire pages for these same reasons in some instances. We also have withheld text that implicates individual privacy interests, including information about individuals who have been investigated but not prosecuted. In addition, we have redacted text from multi-subject documents that is not responsive to your requests. In some substantial multi-subject documents, such as regular ATF reports, we have not included entire pages that contained text that was either not responsive or contained details of investigations outside of the scope of your inquiry. In response to requests from Chairman Smith and Chairman Leahy, we will deliver to the House and Senate Committees on the Judiciary the same documents that we deliver to you.

² There are limited redactions of text in these pages that would identify law-enforcement sensitive details and techniques as well as information implicating individual privacy interests.

The Honorable Darrell E. Issa
Page 2

To assist the Committee in its oversight duties, we appreciate the opportunity to provide relevant and necessary context for some of the documents in today's production. The single largest group of materials produced today relates to the Wide Receiver investigation.³ Previously, on October 31, 2011, we provided the Committee with documents regarding the involvement in Wide Receiver of the Gang Unit of the Justice Department's Criminal Division. Those documents focused largely on the 2009-10 time period and reflected the Gang Unit's entry into the matter after the prosecution had languished in the United States Attorney's Office for the District of Arizona following the completion of the investigation near the end of 2007. After the Gang Unit became involved, individuals who would not otherwise have been prosecuted were charged in indictments returned in May and October 2010 and, to date, six of these defendants have been convicted.

By way of background, our prior production included a memorandum dated July 13, 2006 from Arizona AUSAs Maldonado and Petermann to then-U.S. Attorney Paul Charlton. That memorandum noted a question "as to the U.S. Attorney's Office's position on the possibility of allowing an indeterminate number of illegal weapons, both components of which (the upper and the lower) were provided to the criminals with ATF's knowledge and/or participation, to be released into the community, and possibly into Mexico, without any further ability by the U.S. Government to control their movement or future use." HOCR WR 003364. Our prior production also included a response from U.S. Attorney Charlton on July 14, 2006 that "I'm meeting with the ATF SAC on Tuesday and I'll discuss it with him then." HOCR WR 003366. Today's production includes a June 20, 2006 U.S. Attorney's Office memorandum reviewing legal authorities on issues related to the Wide Receiver investigation and bearing a handwritten note on the first page reading "Check w/ Agent - Is this still an issue? Any response from PKC following my memo of 7-13-06?" HOCR WR 005231.

Today's production of Wide Receiver materials generally focuses on the investigative phase of the matter during the time period 2006-07. Today's documents reflect that in March 2006, ATF's Tucson field office received information that an individual was purchasing large quantities of AR-15 lower receivers from a federal firearms licensee. HOCR WR 005200. By June, according to the documents, three suspects had purchased a total of 126 lower receivers in four separate firearms transactions. HOCR WR 005200. One of the suspects told a confidential source that the firearms were being converted into machine guns and that upper receivers were being purchased on the Internet. HOCR WR 005201. ATF believed that the gun-purchasing ring had ties to a "very powerful, aggressive and violent" Mexican drug cartel. HOCR WR 005201. Despite this, it appears from the documents that a decision was made during early 2006 not to charge the case at that time. As one ATF official explained in March 2006, "[w]e have two AUSA[s] assigned to this matter, and the USAO @ Tucson is prepared to issue Search and Arrest Warrants. We already have enough for the 371 [conspiracy] and 922 a6 [false statement in purchase of a firearm] charges, but we want the Title II [sic] manufacturing and distribution

³ Other investigations reflected in today's production include the Hernandez, Medrano and Fast and Furious matters. Our collection and review of documents related to all of these matters is ongoing.

The Honorable Darrell E. Issa
Page 3

pieces also – we want it all.” HOCR WR 005176. A June 15, 2006 email from an ATF supervisor in Arizona to other ATF personnel observed that “we believe at this point there is more value in the surveillance, identification of locations, persons, vehicles and asset [sic] rather than making sight arrests.” HOCR WR 005189. A June 2006 ATF memorandum noted that a “strategy meeting” had recently been held with the United States Attorney’s Office and that the “AUSAs concurred with the current investigative strategy and its progression.” HOCR WR 005205.

In August 2006, ATF’s Phoenix Field Division prepared a briefing paper on Wide Receiver for “Law Enforcement Command Staff.” HOCR WR 005243-005246. The briefing paper explained that the “state of affairs in Mexico” is “basically one of daily violence, including the routine murder of police officers and other government officials.” HOCR WR 005243. According to the briefing paper, the “primary and [sic] source of firearms used by [these Mexican cartels] is the United States, specifically Arizona and Texas.” HOCR WR 005244. The briefing paper went on to say that “[i]t is highly unlikely in view of the very limited recovery within the United States of firearms transfers identified in this case [sic], that the remaining firearms have not entered into the conduit of illegally trafficked firearms to Mexico.” HOCR WR 005244. Like the March 2006 memorandum discussed above, the August 2006 briefing paper made clear that “[t]here is currently sufficient documentation to conclude a historical criminal case on individuals involved in the illegal purchase and transfer of firearms identified as of this date.” HOCR WR 005244.

Despite this, the August 2006 briefing paper does not reflect that arrests were contemplated any time soon. Rather, the briefing paper explained that one of the “[e]xpected [o]utcomes” of the investigation was the “[i]dentification and development of sufficient evidence to dismantle, disrupt and prosecute levels of this trafficking organization up to and including the primary conspirators responsible for providing the funds, direction and ultimate delivery and criminal implementation of the firearms in question.” HOCR WR 005245. An October 2006 ATF Operational Plan explicitly stated that “[w]e are not prepared to make any arrests at this time because we are still attempting to coordinate our efforts with AFI in Mexico.” HOCR WR 005272. Consistent with the desire to coordinate with Mexican law enforcement (“MLE”) officials, the August 2006 briefing paper contemplated “[t]ravel to Mexico by ATF Case Agents to brief the MCO as to this investigation in preparation for initiation of joint investigative activity with vetted MLE.” HOCR WR 005245. The ATF MCO was to “coordinate law enforcement activity within Mexico through the appropriate vetted MLE.” HOCR WR 005245.

By December 2006, the documents reflect that targets of the investigation had purchased 136 lower rifle receivers from a federal firearms licensee, as well as 45 firearms purchased from other sources. HOCR WR 005296. ATF reported in December that “[t]he Tucson II Field Office has maintained contact with the ATF Mexico City Country Office in an effort to secure the cooperation and joint investigation with” Mexican officials. HOCR WR 005299. ATF further noted that “[t]hree Tucson II Field Office SA have obtained official U.S. Government passports in anticipation of a coordination meeting” with Mexican officials “during calendar year 2007.” HOCR WR 005299.

The Honorable Darrell E. Issa
Page 4

The documents reflect ATF efforts in the spring of 2007 to enlist Mexican law enforcement assistance. In an April 10, 2007 email, a Special Agent in ATF's Phoenix Field Division reported on a call with an ATF Assistant Attaché in Mexico, saying that the ATF Mexico City Office "would coordinate the involvement of Mexican Federal law enforcement and security agencies in investigating in Mexico the recipients of the firearms purchased in Tucson." HOCR WR 005315. The email observed that ATF in Tucson "wished that once the trafficker moved into Mexico that LE on that side follow the lead to it's [sic] ultimate destination and that all phones and other means be utilized to identify the organization involved." HOCR WR 005315. The email also made clear that "it was not in Tucson II's interest to engage in a long term surveillance if the end result would be a Border entry stop or traffic stop in Mexico" and that a particular purchase and trafficking of firearms by the suspects in the case "was only one piece of a potentially much larger future movement of firearms into Mexico." HOCR WR 005315. The documents reflect ATF "viewed a successful operation in Mexico as a potential CCE [Continuing Criminal Enterprise] of a DTO." HOCR WR 005315. In another email that same day, the ATF supervisor in Arizona observed that "[w]e are looking at this as a test of the Mexican interest and capability. If the Mexican authorities decline to participate we anticipate arresting those subjects prior to their leaving the U.S. If the Mexican authorities decline to surveil or further this investigation, merely arresting the individuals once they get to the Mexico side we will proceed accordingly in the future." HOCR WR 005316. The ATF supervisor observed "[o]bviously, a lot has to go right for this op to work - I won't give odds. Certainly, if successful, ATF can point to this matter as part of the SWB initiative. The plan certainly won't work if we don't give it a try." HOCR WR 005316.

An ATF Operational Plan dated April 11, 2007 asserted that Wide Receiver was by that point in time being conducted by "[t]he Tucson II field Ofc in conjunction w/ the Tucson Police Department, Special Investigation Division (TPD SID), the ATF Mexico City Office, and Mexican Federal law enforcement authorities," who "intend to work jointly to determine violations of U.S. and Mexican law." HOCR WR 005322. A late-April 2007 ATF memorandum noted that "Government passports have been obtained by four (4) Tucson II Field Office special agents. A meeting between Tucson II Field Office agents, ATF Mexico City Agents, and the Mexican Federal law enforcement officials is anticipated during May 2007." HOCR WR 005344. A May 12, 2007 ATF email, however, reflects that a meeting between ATF and Mexican officials was delayed: "[w]e will not be traveling to Hermosillo this coming Tuesday per our conversation with Edgar today [sic] we hope that we can reschedule this in the next couple of weeks and that the PGR will by that time have information on some of these players." HOCR WR 005370.

The documents produced today paint a mixed picture of events in May and June 2007. An ATF Operational Plan dated May 7, 2007 indicates that ATF officials planned to monitor a purchase of weapons by the suspects and that "[d]etectives and officers will subsequently follow these individuals to their border crossing at the U.S./Mexico border, where Mexican enforcement authorities will follow the firearms to their final destination in Mexico. If the Mexican authorities decline or fail to participate, the firearms traffickers will be arrested prior to leaving

The Honorable Darrell E. Issa
Page 5

the United States.” HOCR WR 005357. A May 29, 2007 email from a prosecutor in the U.S. Attorney’s Office in Arizona to the ATF supervisor in Arizona said that “[m]y understanding his [sic] you guys will probably take them down on the next purchase. Keep me posted.” HOCR WR 005403. By June, an ATF official observed that “[w]e already have numerous charges up here and actually taking it into Mexico doesn’t add to our case specifically at that point. We want the money people in Mexico that are orchestrating this operation for indictment but obviously we may never actually get our hands on them for trial, so the real beneficiary is to PGR [sic].” HOCR WR 005404. And, a late-June 2007 email exchange between the ATF supervisor in Arizona and the OCDETF coordinator for the Southwest Region reflects that:

the southbound firearms trafficking investigation has gathered even more steam. We anticipate surveillance this evening where the subject(s) of interest are scheduled to purchase approx. \$20K of assorted firearms for further shipment to Caborca, Mx, and we are coordinating with the Mexican authorities in the event that the surveillance is successful. We have reached that stage where I am no longer comfortable allowing additional firearms to ‘walk,’ without a more defined purpose.

HOGR WR 005412.

Today’s production reflects that by late 2008, concerns about the tactics used in the investigation were expressed by the Arizona AUSA then-assigned to the case. In December 2008, the prosecutor -- who took over the matter after the original prosecution team had departed -- wrote that she had reviewed the prosecution memo prepared by her predecessor and “I don’t like the case. I think it is wrong for us to allow 100s of guns to go into Mexico to drug people knowing that is where they are going.” HOCR WR 005430. In August 2009, just a month before the Gang Unit of the Criminal Division took over the matter, an ATF email summarized the case as follows:

AUSA was also pushing back w/ moral dilemma w/ the G allowing the targets to traffic 300+ firearms to Mexico. I advised AUSA that the case was investigated within ATF Trafficking guidelines and in furtherance of attempting to identify and secure evidence on targets inside Mexico receiving the firearms for the drug cartels. The case stands on its own merit and a prosecution decision should be made.

HOGR WR 005432.

In September 2009, as the case was about to be transferred to the Gang Unit, ATF’s Phoenix SAC prepared to send a summary of the investigation to the head of the Gang Unit. Before doing so, he told the Phoenix ASAC “I want Dennis Burke to be aware of what we’ve done to try to get this case prosecuted. Can you e-mail me some bullets on the meetings we’ve had (quantity and date – approx), with whom at the USAO, and what was said.” HOCR WR 005438. As noted earlier and in our October letter to you, the Gang Unit agreed to assume responsibility for prosecuting the Wide Receiver defendants notwithstanding the problematic

The Honorable Darrell E. Issa
Page 6

history of the case and, to date, six defendants have been convicted of offenses connected to the trafficking of these firearms in 2006 and 2007.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'm weich', is written over the typed name.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah E. Cummings
Ranking Minority Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 5, 2012

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed on CD please find 482 pages of material that we produced to the House Oversight and Government Reform Committee on January 5, 2012.¹ Further, we have identified an additional 80 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by staff of your Committee, as well as staff of the House Committee on the Judiciary.²

To assist the Committee in its oversight duties, we appreciate the opportunity to provide relevant and necessary context for some of the documents in today's production. The single

¹ These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques or disclose prosecutorial deliberations, plus limited information relating to line employees, such as their cellular phone numbers, and we have withheld entire pages for these same reasons in some instances. We also have withheld text that implicates individual privacy interests, including information about individuals who have been investigated but not prosecuted. In addition, we have redacted text from multi-subject documents that is not responsive to your requests. In some substantial multi-subject documents, such as regular ATF reports, we have not included entire pages that contained text that was either not responsive or contained details of investigations outside of the scope of your inquiry. In response to requests from Chairman Smith and Chairman Leahy, we will deliver to the House and Senate Committees on the Judiciary the same documents that we deliver to you.

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The Honorable Patrick Leahy
Page 2

largest group of materials produced today relates to the Wide Receiver investigation.³ Previously, on October 31, 2011, we provided the Committee with documents regarding the involvement in Wide Receiver of the Gang Unit of the Justice Department's Criminal Division. Those documents focused largely on the 2009-10 time period and reflected the Gang Unit's entry into the matter after the prosecution had languished in the United States Attorney's Office for the District of Arizona following the completion of the investigation near the end of 2007. After the Gang Unit became involved, individuals who would not otherwise have been prosecuted were charged in indictments returned in May and October 2010 and, to date, six of these defendants have been convicted.

By way of background, our prior production included a memorandum dated July 13, 2006 from Arizona AUSAs Maldonado and Petermann to then-U.S. Attorney Paul Charlton. That memorandum noted a question "as to the U.S. Attorney's Office's position on the possibility of allowing an indeterminate number of illegal weapons, both components of which (the upper and the lower) were provided to the criminals with ATF's knowledge and/or participation, to be released into the community, and possibly into Mexico, without any further ability by the U.S. Government to control their movement or future use." HOCR WR 003364. Our prior production also included a response from U.S. Attorney Charlton on July 14, 2006 that "I'm meeting with the ATF SAC on Tuesday and I'll discuss it with him then." HOCR WR 003366. Today's production includes a June 20, 2006 U.S. Attorney's Office memorandum reviewing legal authorities on issues related to the Wide Receiver investigation and bearing a handwritten note on the first page reading "Check w/ Agent – Is this still an issue? Any response from PKC following my memo of 7-13-06?" HOCR WR 005231.

Today's production of Wide Receiver materials generally focuses on the investigative phase of the matter during the time period 2006-07. Today's documents reflect that in March 2006, ATF's Tucson field office received information that an individual was purchasing large quantities of AR-15 lower receivers from a federal firearms licensee. HOCR WR 005200. By June, according to the documents, three suspects had purchased a total of 126 lower receivers in four separate firearms transactions. HOCR WR 005200. One of the suspects told a confidential source that the firearms were being converted into machine guns and that upper receivers were being purchased on the Internet. HOCR WR 005201. ATF believed that the gun-purchasing ring had ties to a "very powerful, aggressive and violent" Mexican drug cartel. HOCR WR 005201. Despite this, it appears from the documents that a decision was made during early 2006 not to charge the case at that time. As one ATF official explained in March 2006, "[w]e have two AUSA[s] assigned to this matter, and the USAO @ Tucson is prepared to issue Search and Arrest Warrants. We already have enough for the 371 [conspiracy] and 922 a6 [false statement in purchase of a firearm] charges, but we want the Title II [sic] manufacturing and distribution pieces also – we want it all." HOCR WR 005176. A June 15, 2006 email from an ATF supervisor in Arizona to other ATF personnel observed that "we believe at this point there is more value in the surveillance, identification of locations, persons, vehicles and asset [sic] rather than making sight arrests." HOCR WR 005189. A June 2006 ATF memorandum noted that a "strategy meeting" had recently been held with the United States Attorney's Office and that the "AUSAs concurred with the current investigative strategy and its progression." HOCR WR 005205.

³ Other investigations reflected in today's production include the Hernandez, Medrano and Fast and Furious matters. Our collection and review of documents related to all of these matters is ongoing.

The Honorable Patrick Leahy
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In August 2006, ATF's Phoenix Field Division prepared a briefing paper on Wide Receiver for "Law Enforcement Command Staff." HOCR WR 005243-005246. The briefing paper explained that the "state of affairs in Mexico" is "basically one of daily violence, including the routine murder of police officers and other government officials." HOCR WR 005243. According to the briefing paper, the "primary and [sic] source of firearms used by [these Mexican cartels] is the United States, specifically Arizona and Texas." HOCR WR 005244. The briefing paper went on to say that "[i]t is highly unlikely in view of the very limited recovery within the United States of firearms transfers identified in this case [sic], that the remaining firearms have not entered into the conduit of illegally trafficked firearms to Mexico." HOCR WR 005244. Like the March 2006 memorandum discussed above, the August 2006 briefing paper made clear that "[t]here is currently sufficient documentation to conclude a historical criminal case on individuals involved in the illegal purchase and transfer of firearms identified as of this date." HOCR WR 005244.

Despite this, the August 2006 briefing paper does not reflect that arrests were contemplated any time soon. Rather, the briefing paper explained that one of the "[e]xpected [o]utcomes" of the investigation was the "[i]dentification and development of sufficient evidence to dismantle, disrupt and prosecute levels of this trafficking organization up to and including the primary conspirators responsible for providing the funds, direction and ultimate delivery and criminal implementation of the firearms in question." HOCR WR 005245. An October 2006 ATF Operational Plan explicitly stated that "[w]e are not prepared to make any arrests at this time because we are still attempting to coordinate our efforts with AFI in Mexico." HOCR WR 005272. Consistent with the desire to coordinate with Mexican law enforcement ("MLE") officials, the August 2006 briefing paper contemplated "[t]ravel to Mexico by ATF Case Agents to brief the MCO as to this investigation in preparation for initiation of joint investigative activity with vetted MLE." HOCR WR 005245. The ATF MCO was to "coordinate law enforcement activity within Mexico through the appropriate vetted MLE." HOCR WR 005245.

By December 2006, the documents reflect that targets of the investigation had purchased 136 lower rifle receivers from a federal firearms licensee, as well as 45 firearms purchased from other sources. HOCR WR 005296. ATF reported in December that "[t]he Tucson II Field Office has maintained contact with the ATF Mexico City Country Office in an effort to secure the cooperation and joint investigation with" Mexican officials. HOCR WR 005299. ATF further noted that "[t]hree Tucson II Field Office SA have obtained official U.S. Government passports in anticipation of a coordination meeting" with Mexican officials "during calendar year 2007." HOCR WR 005299.

The documents reflect ATF efforts in the spring of 2007 to enlist Mexican law enforcement assistance. In an April 10, 2007 email, a Special Agent in ATF's Phoenix Field Division reported on a call with an ATF Assistant Attaché in Mexico, saying that the ATF Mexico City Office "would coordinate the involvement of Mexican Federal law enforcement and security agencies in investigating in Mexico the recipients of the firearms purchased in Tucson." HOCR WR 005315. The email observed that ATF in Tucson "wished that once the trafficker moved into Mexico that LE on that side follow the load to it's [sic] ultimate destination and that all phones and other means be utilized to identify the organization involved." HOCR WR 005315. The email also made clear that "it was not in Tucson II's interest to engage in a long term surveillance if the end result would be a Border entry stop or traffic stop in Mexico" and

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that a particular purchase and trafficking of firearms by the suspects in the case “was only one piece of a potentially much larger future movement of firearms into Mexico.” HOGW WR 005315. The documents reflect ATF “viewed a successful operation in Mexico as a potential CCE [Continuing Criminal Enterprise] of a DTO.” HOGW WR 005315. In another email that same day, the ATF supervisor in Arizona observed that “[w]e are looking at this as a test of the Mexican interest and capability. If the Mexican authorities decline to participate we anticipate arresting those subjects prior to their leaving the U.S. If the Mexican authorities decline to surveil or further this investigation, merely arresting the individuals once they get to the Mexico side we will proceed accordingly in the future.” HOGW WR 005316. The ATF supervisor observed “[o]bviously, a lot has to go right for this op to work – I won’t give odds. Certainly, if successful, ATF can point to this matter as part of the SWB initiative. The plan certainly won’t work if we don’t give it a try.” HOGW WR 005316.

An ATF Operational Plan dated April 11, 2007 asserted that Wide Receiver was by that point in time being conducted by “[t]he Tucson II field Ofc in conjunction w/ the Tucson Police Department, Special Investigation Division (TPD SID), the ATF Mexico City Office, and Mexican Federal law enforcement authorities,” who “intend to work jointly to determine violations of U.S. and Mexican law.” HOGW WR 005322. A late-April 2007 ATF memorandum noted that “Government passports have been obtained by four (4) Tucson II Field Office special agents. A meeting between Tucson II Field Office agents, ATF Mexico City Agents, and the Mexican Federal law enforcement officials is anticipated during May 2007.” HOGW WR 005344. A May 12, 2007 ATF email, however, reflects that a meeting between ATF and Mexican officials was delayed: “[w]e will not be traveling to Hermosillo this coming Tuesday per our conversation with Edgar today [sic] we hope that we can reschedule this in the next couple of weeks and that the PGR will by that time have information on some of these players.” HOGW WR 005370.

The documents produced today paint a mixed picture of events in May and June 2007. An ATF Operational Plan dated May 7, 2007 indicates that ATF officials planned to monitor a purchase of weapons by the suspects and that “[d]etectives and officers will subsequently follow these individuals to their border crossing at the U.S./Mexico border, where Mexican enforcement authorities will follow the firearms to their final destination in Mexico. If the Mexican authorities decline or fail to participate, the firearms traffickers will be arrested prior to leaving the United States.” HOGW WR 005357. A May 29, 2007 email from a prosecutor in the U.S. Attorney’s Office in Arizona to the ATF supervisor in Arizona said that “[m]y understanding his [sic] you guys will probably take them down on the next purchase. Keep me posted.” HOGW WR 005403. By June, an ATF official observed that “[w]e already have numerous charges up here and actually taking it into Mexico doesn’t add to our case specifically at that point. We want the money people in Mexico that are orchestrating this operation for indictment but obviously we may never actually get our hands on them for trial, so the real beneficiary is to PGR [sic].” HOGW WR 005404. And, a late-June 2007 email exchange between the ATF supervisor in Arizona and the OCDETF coordinator for the Southwest Region reflects that:

the southbound firearms trafficking investigation has gathered even more steam. We anticipate surveillance this evening where the subject(s) of interest are scheduled to purchase approx. \$20K of assorted firearms for further shipment to Caborca, Mx, and we are coordinating with the Mexican authorities in the event that the surveillance is successful. We have reached

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that stage where I am no longer comfortable allowing additional firearms to 'walk,' without a more defined purpose.

HOGH WR 005412.

Today's production reflects that by late 2008, concerns about the tactics used in the investigation were expressed by the Arizona AUSA then-assigned to the case. In December 2008, the prosecutor -- who took over the matter after the original prosecution team had departed -- wrote that she had reviewed the prosecution memo prepared by her predecessor and "I don't like the case. I think it is wrong for us to allow 100s of guns to go into Mexico to drug people knowing that is where they are going." HOGH WR 005430. In August 2009, just a month before the Gang Unit of the Criminal Division took over the matter, an ATF email summarized the case as follows:

AUSA was also pushing back w/ moral dilemma w/ the G allowing the targets to traffic 300+ firearms to Mexico. I advised AUSA that the case was investigated within ATF Trafficking guidelines and in furtherance of attempting to identify and secure evidence on targets inside Mexico receiving the firearms for the drug cartels. The case stands on its own merit and a prosecution decision should be made.

HOGH WR 005432.

In September 2009, as the case was about to be transferred to the Gang Unit, ATF's Phoenix SAC prepared to send a summary of the investigation to the head of the Gang Unit. Before doing so, he told the Phoenix ASAC "I want Dennis Burke to be aware of what we've done to try to get this case prosecuted. Can you e-mail me some bullets on the meetings we've had (quantity and date -- approx), with whom at the USAO, and what was said." HOGH WR 005438. As noted earlier and in our October letter to you, the Gang Unit agreed to assume responsibility for prosecuting the Wide Receiver defendants notwithstanding the problematic history of the case and, to date, six defendants have been convicted of offenses connected to the trafficking of these firearms in 2006 and 2007.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member

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January 18, 2012

Patrick J. Cunningham, Esq.
Chief, Criminal Division
United States Attorney's Office for the District of Arizona
Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004

Dear Mr. Cunningham:

Yesterday, you canceled your interview scheduled with the Committee for Thursday, January 19, 2012. As recently as last Friday, both your attorney and the Department of Justice had assured the Committee that you would submit to a voluntary interview and that you intended to cooperate with our investigation. The Committee has made every effort to accommodate you. The Justice Department has identified you as the most appropriate person to interview from the U.S. Attorney's Office regarding Operation Fast and Furious, and we have been working with your counsel and the Department since August to interview you. Your sudden withdrawal, without any explanation, is unfortunate. It has also delayed the Committee's ability to uncover the truth about this reckless program.

During the course of our investigation, the Committee has learned of the outsized role played by the Arizona U.S. Attorney's Office – and you specifically – in approving the unacceptable tactics used in Fast and Furious. Senior Justice Department officials have recently told the Committee that you relayed inaccurate and misleading information to the Department in preparation for its initial response to Congress. These officials told us that even after Congress began investigating Fast and Furious, you continued to insist that no unacceptable tactics were used. In fact, documents obtained confidentially just last week appear to confirm that you remained steadfast in your belief that no unacceptable tactics were used, even after the Department's initial response to the congressional inquiry. Given that the Attorney General has labeled these tactics as unacceptable and Fast and Furious as “fundamentally flawed,” this position is startling.¹

It is of paramount importance that you appear before the Committee. Given your intimate knowledge of Fast and Furious, your counsel's offer of an attorney proffer, akin to what a defense lawyer would offer for an indicted defendant, is wholly inadequate. As a result of your

¹ Letter from Att'y Gen Eric Holder to Chairman Darrell Issa, et al. (Oct. 7, 2011).

Patrick J. Cunningham, Esq.
January 18, 2012
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recalcitrance and inflexible position, the Committee is now forced to engage in compulsory process to obtain your testimony.

Such compulsory process will require you to submit to a deposition with 72 hours advance notice. The deposition will take place at a time and place convenient to the Committee's schedule. Your lawyer has expressed a willingness to accept service of process on your behalf. The Committee will serve your subpoena in the near future.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
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The Honorable Darrell E. Issa
 Chairman
 Committee on Oversight and Government Reform
 U.S. House of Representatives
 2157 Rayburn House Office Building
 Washington, DC 20515

Dear Mr. Chairman:

I am writing in response to your letter of yesterday.

My client, Patrick Cunningham, has spent his entire 32-year career in government service, including as a JAG officer in the United States Army, as a state court prosecutor, and as a federal prosecutor. He also served on the State Bar of Arizona's Committee on Rules of Professional Conduct (Ethics Committee) from 1995 to 2002. When he returned to the United States Attorney's Office in 2010, he did so to advance the law enforcement interests of the United States. Regrettably, he now finds himself caught in the middle of a dispute between the Legislative Branch and the Executive Branch, with both, according to the allegations in your letter, finding it convenient to make accusations that are inconsistent with the documentary evidence and the public record.

My client and I offered your staff alternative ways to provide the Committee with the information it wants. Those options have been rejected. I am writing to explain why an interview was not an acceptable option from my perspective. According to your letter, Department of Justice officials have reported to the Committee that my client relayed inaccurate information to the Department upon which it relied in preparing its initial response to Congress. If, as you claim, Department officials have blamed my client, they have blamed him unfairly.

The objective evidence collected by this Committee demonstrates that Mr. Cunningham did nothing wrong and that he acted in good faith. Indeed, your staff has provided me with documentary evidence demonstrating the following. First, Mr. Cunningham proposed draft

WILLIAMS & CONNOLLY LLP
The Honorable Darrell E. Issa
January 19, 2012
Page 2

language internally to his supervisor in the United States Attorney's Office. Second, Mr. Cunningham vetted the accuracy of the draft language with others in the United States Attorney's Office. Third, Mr. Cunningham's supervisor reported that he provided the draft language to the Department of Justice. Fourth, the Department of Justice did not include in its response to Congress the draft language Mr. Cunningham's supervisor reportedly provided.

Further, although your staff purported to provide me with all documents sent or received by my client, it has provided no documents supporting the allegation in your letter that my client had anything to do with approving the "unacceptable tactics used in Fast and Furious." Indeed, it is a matter of public record that the Fast and Furious investigation began in 2009, months before my client even started at the United States Attorney's Office in 2010.

Finally, as a professional courtesy, and to avoid needless preparation by the Committee and its staff for a deposition next week, I am writing to advise you that my client is going to assert his constitutional privilege not to be compelled to be a witness against himself. The Supreme Court has held that "one of the basic functions of the privilege is to protect innocent men." *Grunewald v. United States*, 353 U.S. 391, 421 (1957); *see also Ohio v. Reiner*, 532 U.S. 17 (2001) (per curiam). The evidence described above shows that my client is, in fact, innocent, but he has been ensnared by the unfortunate circumstances in which he now stands between two branches of government. I will therefore be instructing him to assert his constitutional privilege.

If the Committee still wishes to proceed with the deposition, please let me know.

Respectfully submitted,



Tobin J. Romero

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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January 24, 2012

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I was disappointed to learn last week that Patrick J. Cunningham, Chief of the Criminal Division in the U.S. Attorney's Office for the District of Arizona, plans not to answer any questions regarding Fast and Furious at his deposition scheduled for today, Tuesday, January 24, 2012. Specifically, Mr. Cunningham pledged to "assert his constitutional privilege not to be compelled to be a witness against himself."¹ Because he refused to appear voluntarily, I authorized a subpoena for his testimony.

My staff was advised Mr. Cunningham's decision to invoke his Fifth Amendment rights was not simply limited to the facts associated with the Department's interactions with Congress during the pendency of our investigation, but was far broader. Mr. Cunningham, we have been told, will refuse to answer any questions beyond his name and position. This is extraordinary in that the only valid reason to assert Fifth Amendment rights is fear of criminal prosecution.

Mr. Cunningham's broad assertion of the privilege is a startling development in the Committee's Fast and Furious investigation. The implication that Mr. Cunningham may have engaged in criminal conduct with respect to Fast and Furious is a major escalation of the Department's culpability. The significance of these developments cannot be overstated, and this assertion raises many questions about ongoing criminal cases currently pending in federal court in Arizona – including prosecutions relating to Fast and Furious.

For the past year, the Department has denied any wrongdoing in Fast and Furious and its response to the congressional investigation. Yet, a senior Department official recently indicated that Mr. Cunningham misrepresented the facts of Fast and Furious as the Department prepared its initial response to the congressional inquiry. Senior Justice Department officials point to Cunningham as having significant responsibility for providing this false information, in addition

¹ Letter from Tobin J. Romero, Esq., Williams & Connolly LLP, to Rep. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Jan. 19, 2012).

The Honorable Eric H. Holder, Jr.
January 24, 2012
Page 2

to approving the reckless tactics used in Fast and Furious. Mr. Cunningham's lawyer disputes these allegations.

Without Mr. Cunningham's testimony, it will be difficult to gauge the veracity of some of the Department's claims. Main Justice has chosen to blame the U.S. Attorney's Office in Arizona, and senior officials in the U.S. Attorney's Office have rejected this accusation. This tension renews doubts about the Department's management of the Fast and Furious scandal. Additionally, Mr. Cunningham's broad assertion of his Fifth Amendment privilege raises the specter that the Department has allowed him to continue in his position as Chief of the Criminal Division knowing that he might have criminal culpability himself.

The former Acting ATF Director has testified that the Department is managing its response to the congressional inquiry to protect its political appointees. Deflecting blame deprives the American public of confidence that the Department of Justice is being fully truthful. The possibility that senior Justice Department officials were either engaging in a cover-up or were so negligently unaware that a key employee feared criminal prosecution underscores deep concerns about your management of the Department of Justice both during the implementation of Fast and Furious and the subsequent congressional investigation.

Although I was willing to excuse Mr. Cunningham from today's deposition, I have reserved the right to authorize another subpoena for his testimony at a future date. Due to Mr. Cunningham's recent actions, the Committee will be making further document requests of the Department. I expect nothing less than the Department's full and complete compliance with these requests.

The Committee is also reiterating its demand for subpoenaed documents created after February 4, 2011 – an arbitrary deadline you created to minimize the public fallout over the Department's cover-up. Further, it is now necessary to interview several of Mr. Cunningham's associates in the U.S. Attorney's Office regarding the details of Fast and Furious. As the Members of the Committee look forward to your February 2, 2012, testimony, it is now incumbent on you to finally take responsibility for this Justice Department scandal and the clear management failures that occurred on your watch.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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January 25, 2012

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The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Mr. Attorney General:

Last week's revelation that Patrick Cunningham, Criminal Division Chief of the U.S. Attorney's Office for the District of Arizona, was going to assert his Fifth Amendment rights during this week's scheduled deposition was stunning. Mr. Cunningham's position raises new questions about the Department's handling of the congressional inquiry into Operation Fast and Furious. Mr. Cunningham's assertion of the privilege suggests that the Department has jeopardized public safety and the public trust by allowing individuals with potential criminal culpability to remain in positions of authority. Further, Mr. Cunningham's refusal to testify has deprived Congress of important details about not only Operation Fast and Furious but also the Department's botched management of the congressional response.

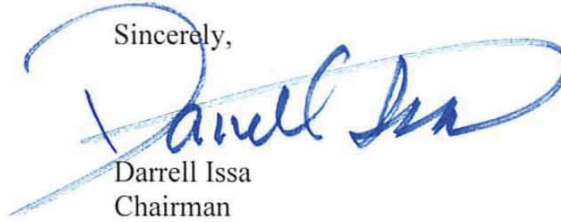
Since August, the Department has identified Patrick Cunningham as the best person in the U.S. Attorney's Office to provide information about Fast and Furious to the Committee. The Department has refused to make Michael Morrissey and Emory Hurley, both Assistant United States Attorneys supervised by Mr. Cunningham, available to speak with the Committee, citing a policy of not making "line attorneys" available for congressional scrutiny. Mr. Morrissey, however, was Mr. Hurley's direct supervisor, and an integral part of Fast and Furious. Importantly, both Morrissey and Hurley are unique in their possession of key factual knowledge about Fast and Furious not readily available from any other source.

Now that Mr. Cunningham has formally refused to speak with the Committee, the Department must make Mr. Morrissey available as soon as possible. Please notify the Committee no later than Thursday, January 26, 2012, at 5:00 p.m. whether you plan to make Mr. Morrissey available for a transcribed interview. If you choose not to make Mr. Morrissey available, the Committee will be forced to use compulsory process to ensure his presence.

I am also attaching a September 1, 2011 letter that Senator Grassley and I sent to Ann Scheel, Acting U.S. Attorney for the District of Arizona. In that letter, we requested all documents and communications created from October 1, 2009 and the present by Mr. Cunningham, Mr. Morrissey, and Mr. Hurley. The subpoena I authorized and issued to you on

The Honorable Eric H. Holder, Jr.
January 25, 2012
Page 2

October 12, 2011 also required the production of those documents. To date, you have not complied fully with the subpoena with respect to documents, including, but not limited to, e-mails sent and received by Messrs. Cunningham, Morrissey, and Hurley.

Sincerely,

Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lamar S. Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Minority Member
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Messrs. Chairmen and Senator Grassley, Congressman Conyers, and
Congressman Cummings:

In his appearance before the House Judiciary Committee on December 8, 2011, the Attorney General made clear that “[d]isrupting the dangerous flow of firearms along the Southwest border and putting an end to the violence that has claimed far too many lives is and will continue to be a top priority for this Department of Justice.” At the same time, the Attorney General has recognized that “in pursuit of that laudable goal, unacceptable tactics were adopted as part of Operation Fast and Furious,” as well as during the prior administration’s Operation Wide Receiver and in other investigations occurring in both administrations. This letter describes reforms we have instituted to ensure that such tactics are not utilized in the future, and to address other concerns raised in regard to this matter.

Shortly after learning about the allegations raised by agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Attorney General requested a review of the Fast and Furious matter by the Department’s Acting Inspector General. But, even while awaiting the Inspector General’s report, we are undertaking key enhancements to existing Department

policies and procedures to ensure that mistakes like those that occurred in Wide Receiver and Fast and Furious are not repeated. These changes are outlined below and are in addition to the numerous changes that have occurred in the leadership of both ATF and the U.S. Attorney's Office for the District of Arizona, as well as the reassignment of other personnel and cases. And, as the Attorney General has made clear, following receipt and review of the Acting Inspector General's report, additional decisions and enhancements may be implemented.

I. Enhancements Undertaken Even Prior to the Acting Inspector General's Report

ATF has put in place a series of new policies and programs designed to respond to the lessons of these operations and has provided employees with additional opportunities to raise work-related concerns above the level of their immediate supervisors. The Department's Office of Enforcement Operations (OEO) has implemented changes to its wiretap authorization process and I have issued a direction to Department components regarding the handling of congressional requests for information. I discuss each of these reforms in more detail below.

A. Enhancements Implemented By ATF

On August 30, 2011, the Attorney General announced the appointment of U.S. Attorney B. Todd Jones to serve as Acting Director of ATF. Acting Director Jones is a former military prosecutor, has twice served as the U.S. Attorney for the District of Minnesota, and was -- until his appointment as Acting Director of ATF -- the Chair of the Attorney General's Advisory Committee. Both the Attorney General and I have directed Acting Director Jones to evaluate ATF's operations and, where appropriate, overhaul them. Within several weeks of assuming the position, Acting Director Jones announced key management changes and instituted reviews of some of the agency's policies and procedures. Other of the agency's policies and procedures had been amended shortly before his arrival or were already under review. Acting Director Jones is committed to implementing reforms to prevent tactics like those used in Operation Fast and Furious from happening again. His work in that regard is well underway.

1. ATF Has Clarified Its Firearms Transfer Policy

On November 3, 2011, Acting Director Jones issued a memorandum clarifying ATF policy regarding firearms transfers. The policy reminds agents that interdiction or other forms of early intervention may be necessary to prevent the criminal acquisition, trafficking, or misuse of firearms, and that during the course of an investigation, protecting public and officer safety should be the primary considerations. Under the policy, an agent must take all reasonable steps to prevent a firearm's criminal misuse.

The policy establishes a list of specific law enforcement options from which an agent must choose once the agent has a legal basis to make an arrest or seize a firearm. In addition, the policy makes clear that when a Federal Firearms Licensee (FFL) contacts an agent with concerns regarding a suspicious person or transaction prior to consummating a firearm transfer, the agent should: (1) direct the FFL to follow applicable law; and (2) advise the FFL that he or she is under no obligation to transfer firearms under circumstances he or she feels are suspicious and should use his or her best judgment in determining whether or not to transfer a firearm. Moreover, the policy makes clear that an agent should never respond to general inquiries by an FFL by affirmatively advising the FFL to sell or transfer a firearm. To help implement the policy, ATF has added a code in its case management system to track interdiction efforts. The addition of this code reinforces the message to agents that interdiction is an important law enforcement tool and one that will be considered in evaluating their performance.

2. ATF Has Implemented a New Monitored Case Program

On July 19, 2011, ATF announced the implementation of a new Monitored Case Program designed to ensure close investigative, operational and strategic coordination between the field and relevant headquarters personnel for ATF's most sensitive investigations. Under the Program, certain identified categories of investigations—among them investigations in which more than 50 firearms have been straw-purchased or trafficked—will receive enhanced oversight from ATF headquarters. Once an investigation qualifies as a monitored case, the Special Agent in Charge (SAC) of the relevant ATF Field Division becomes responsible for briefing his or her supervisor at ATF headquarters each month on the progress of the investigation. The SAC is also required to notify the supervisor each time an unanticipated significant event occurs in the investigation. ATF's Deputy Assistant Directors have begun briefing on a monthly basis the Acting Director, Deputy Director and Assistant Director for Field Operations on the monitored investigations within their region. Through the Monitored Case Program, significant cases will receive additional oversight and guidance from ATF headquarters personnel.

3. ATF Has Revised Its Policies Regarding The Use Of Confidential Informants And Undercover Operations

ATF also recently revised its policies governing the use of confidential informants and undercover operations. The revised Confidential Informants Usage Policy was issued on November 8, 2011 and the revised Undercover Operations Policy was issued on November 17, 2011.

The revised Undercover Operations Policy establishes an undercover review committee to review all cases that are deemed to involve sensitive circumstances, or to have or potentially have a significant regional or national impact, or otherwise to merit committee review. The committee is comprised of a Deputy Assistant Director for Field Operations, the Chief of the Special Operations Division, the SAC of the Undercover Branch, the Chief of the Operations Security Branch, and the Associate Chief Counsel for Field Operations and Information. The revised confidential informant usage guidelines similarly establish a confidential informant review committee to consider issues including the use of high-level confidential informants, long-term confidential informants, and informants under the obligation of a legal privilege or affiliated with the media. Under the guidelines, this committee is chaired by a Deputy Assistant Director for Field Operations and includes a Criminal Division Deputy Assistant Attorney General, an Assistant United States Attorney, the Chief of the Special Operations Division, and the Associate Chief Counsel for Field Operations and Information.

ATF's revised confidential informant policy also contains a provision stating that, "[u]nless extraordinary circumstances exist and are substantiated," ATF shall not approve the use of "[p]ersons who are licensees in an industry in which ATF has jurisdiction (including Federal firearms and explosives licensees)" as confidential informants. This provision means that, absent such extraordinary circumstances, ATF may not use FFLs as paid informants. Another provision specifically illustrates the types of situations in which "extraordinary circumstances" are deemed to exist. The first is when the licensee is arrested, charged or facing charges and agrees to cooperate as a confidential informant in consideration of a reduction of sentence or in lieu of prosecution. The second is when employees of licensees who are not actual license holders or officers of the corporation listed under the license provide information against the licensee suspected of illegal activity. Combined with the refinements to ATF's firearms transfer policy discussed above, these measures directly address the concerns presented by ATF's interactions with FFLs in Wide Receiver and Fast and Furious.

4. ATF Has Reinforced The Importance of Deconfliction and Information Sharing

In July 2011, ATF issued a memorandum to all Special Agents in Charge (SACs) reinforcing the importance of deconfliction and information sharing in every investigation and requiring the use of available deconfliction databases in every investigation. The memorandum requires deconfliction with other law enforcement components of all suspects or persons prior to opening an investigation to determine whether the suspect or his or her address is already the subject of investigation. If there is an open investigation, the memorandum requires ATF agents to contact the appropriate case agent and coordinate efforts. Any new persons or subjects identified during the course of the investigation must also be queried through the databases to

ensure constant and continual deconfliction. The memorandum recognizes the need for such deconfliction given the multi-jurisdictional nature of the individuals and criminal organizations subject to investigation by ATF and other law enforcement agencies.

5. ATF Has Established Advisory Committees To Advise Agency Leadership

This year, Acting Director Jones established a SAC Advisory Committee and the Deputy Director established a Special Agent (SA) Advisory Committee. These Committees will meet quarterly with the Acting Director and Deputy Director, respectively, to share their issues, concerns, and recommendations. They may also be tasked to propose solutions for problems or concerns that they identify. The Advisory Committees offer the field an opportunity to be heard directly by the leaders of the agency. The SAC Advisory Committee, which is modeled after the Attorney General's Advisory Committee and the SAC Advisory Committees of the FBI and DEA, is composed of a diverse group of SACs representing the three regions of the country. The SAC Advisory Committee will present ideas directly to the Acting Director and examine particular issues on which he seeks input. The SA Advisory Committee originated as a result of the Deputy Director's desire to open a dialogue with ATF agents who work at the street level and whom he does not see every day. The Deputy Director intends to solicit ideas and recommendations that Special Agents have for making the Bureau better. This committee is composed of a mix of street agents who volunteered to participate. The Committee gives agents a direct line of communication to the Deputy Director.

6. ATF Has Provided Supplemental Training Based On The Lessons Of Fast and Furious

Recently, ATF provided targeted training for special agents and law enforcement personnel in the Phoenix Field Division designed to address the legal and investigative issues raised by Operation Fast and Furious. The training covered techniques, strategies and the law applicable to firearms trafficking investigations. The training specifically targeted U.S.-Mexico cross-border firearms trafficking issues with many of the instructors having been posted in, or temporarily assigned to, Mexico. The training focused on legal and practical issues involved in developing cases beyond traditional false statement charges. It also included instruction on ATF's revised firearms transfer policy. Other topics addressed included: making traffic stops based on reasonable suspicion (with a renewed emphasis on interdiction); interviewing suspects and identification techniques; intelligence issues and ATF Mexico operations capabilities with specific reference to cross-border firearms trafficking; trafficking trends involving Mexico; and the role of the Phoenix Field Division in ATF's efforts to interrupt firearms destined for the Mexican drug trafficking organizations. The legal instruction also emphasized moving cases

beyond straw purchaser investigations and helping obtain increased sentences for straw purchasers.

ATF intends to evaluate the training delivered to Phoenix employees and determine how to provide similar training nationally.

B. ATF Has Expanded Opportunities For Employees To Raise Work-Related Concerns

ATF has expanded the opportunities for employees to raise work-related concerns and stressed the need for supervisory level officials to be receptive to those concerns when they are raised. Acting Director Jones is in the process of visiting each field office and conducting town hall meetings with employees. Employees are encouraged to raise concerns or issues directly with him and the Senior Executive Staff at these meetings without fear of retaliation or reprisal. ATF has also restructured its Office of the Ombudsman, which assists employees in seeking fair solutions to work-related problems through an informal, neutral and confidential process. In January 2011, ATF added a full-time special agent position to that office to address issues raised by other special agents. In December 2011, the Acting Director also appointed a senior special agent as the Chief ATF Ombudsman and has initiated measures to better publicize the existence of the office and ultimately improve efforts to address concerns raised by ATF employees.

C. Enhancements Implemented By The Department's Office of Enforcement Operations

Beyond the enhancements implemented by ATF, Assistant Attorney General for the Criminal Division Lanny Breuer has refined the Criminal Division's wiretap authorization process. As you know, OEO is primarily responsible for the Department's statutory wiretap authorizations. Assistant U.S. Attorneys in U.S. Attorneys' Offices around the country, and trial attorneys in the Criminal Division's litigating sections, submit wiretap packages (which consist of an application from a prosecuting attorney, an affidavit from a case agent, and a proposed judicial order) to OEO's Electronic Surveillance Unit (ESU), and ESU lawyers help AUSAs and trial attorneys ensure that their wiretap packages meet statutory requirements and DOJ policies. Once a wiretap package is deemed sufficient by OEO, OEO then submits the package, with a cover memorandum making a recommendation, to a Deputy Assistant Attorney General (DAAG) in the Criminal Division, who reviews it to decide whether or not to authorize the submission of the wiretap application to a federal court. Thousands of wiretap packages are submitted to OEO each year.

In the Fall of 2011, the OEO supervisors and Criminal Division DAAGs involved in the wiretap review process were directed to increase their efforts to ensure that relevant supervisory AUSAs are notified when the Criminal Division's review of wiretap applications raises concerns about operational tactics being used in a matter, rather than rely on the fact that supervisory

AUSAs should already be aware of the tactics used in their own office's cases. In particular, the Director of OEO has been instructed to communicate any such concerns—whether they originate with a DAAG or within OEO—to the relevant supervisory AUSAs if and when they arise. In addition, OEO now requires two levels of OEO supervisory review (as opposed to one) in cases involving multiple extensions of Title III wiretaps. Thus, after 90 days of interception in a particular case, if an AUSA requests a further extension of the wiretap, two OEO supervisors must now review the application before it is submitted to a Criminal Division DAAG for authorization.

D. The Department Has Issued a Directive To Components Regarding The Handling Of Congressional Requests For Information

On January 26, 2012, I issued a memorandum for Heads of Department Offices, Boards, Divisions and Components and all United States Attorneys regarding the handling of congressional requests for information. This directive makes clear that ensuring the accuracy and completeness of information that the Department provides to Congress is a matter of utmost importance. Accordingly, the directive instructs that each component must undertake rigorous efforts to obtain accurate and complete information from employees with the best knowledge of the matters relevant to the congressional inquiry. In particular, the directive instructs Department components to:

- Assign ultimate responsibility for submitting or reviewing a draft response to a congressional inquiry to an appropriate senior manager who can ensure that all appropriate units and sections within the component provide the necessary information and have the opportunity to raise any relevant questions or concerns. This senior manager has responsibility for ensuring that the component's response is properly fact-checked and vetted.
- Solicit information directly from employees with detailed personal knowledge of the subject matter at issue and consult records relevant to the inquiry if such records are available.
- Recognize that, in some instances, the employees with the most relevant information may already have made protected disclosures on the subject to Congress or others. The directive emphasizes the Department's commitment to protecting the rights of whistleblowers and to complying both with the letter and spirit of the Whistleblower Protection Act. It also makes clear that the Whistleblower Protection Act does not prohibit seeking relevant information directly from employees who have made protected disclosures when necessary to ensure the accuracy and completeness of

responses to Congress. The directive instructs components that, in seeking to obtain information from such employees, they must do so in a manner that does not create a fear of reprisal for any protected disclosure.

- Recognize that while the Department strives to answer congressional inquiries promptly and undertakes to meet deadlines set by requestors when practical, the top priority is to ensure the accuracy and completeness of the information ultimately provided to Congress.

II. The Need For Congressional Action

While the reforms described above are an appropriate response to Wide Receiver, Fast and Furious and the other investigations where inappropriate investigative tactics were used, they will not halt the epidemic of gun trafficking on the Southwest border. Respectfully, we ask Congress to join us in addressing the dangers revealed by these flawed operations. The very ATF agents who brought Fast and Furious to light testified before the House Oversight and Government Reform Committee that ATF needs more effective enforcement tools if it is to make more progress in the fight against Mexican drug cartels.

As the Attorney General has testified, there are several concrete steps we ask Congress to take to assist ATF in addressing this major public safety challenge:

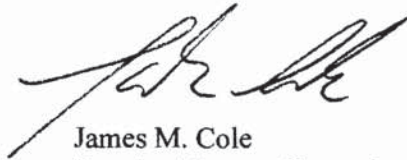
- *Enact a Federal Firearms Trafficking Statute.* Currently, there is no federal statute that specifically prohibits straw purchasing or firearms trafficking itself. Instead, prosecutors rely primarily on “paperwork” provisions in Title 18 that prohibit making false statements in connection with the purchase of a firearm. We ask Congress to enact a comprehensive firearms trafficking statute to directly target criminal enterprises that utilize straw purchasers to assemble arsenals and supply weapons to criminal organizations.
- *Strengthen Penalties for Straw Purchasing of Firearms.* Often the penalties imposed for the paperwork violations described above are too low to serve as a meaningful deterrent or to account for the violence associated with gun trafficking. Due in large part to the low penalties they are likely to face, defendants arrested for straw purchasing or related conduct have little or no incentive to cooperate with law enforcement, which frustrates prosecutors’ efforts to build cases against the leaders of gun trafficking schemes. Although the Sentencing Commission recently adopted changes to the Sentencing Guidelines

applicable to straw purchasing, we ask Congress to amend Title 18 to provide stiffer penalties in gun trafficking cases.

- *Do Not Block ATF from Receiving Useful Intelligence About Gun Trafficking.* Last year, ATF established a common sense requirement that gun dealers in the border states report multiple sales of certain long guns to law enforcement, just as they have long been required to report multiple sales of handguns. The House of Representatives voted to withhold funding for this requirement, notwithstanding the fact that a court subsequently concluded that the requirement is “properly limited in scope.” *The National Shooting Sports Foundation, Inc. v. B. Todd Jones, Acting Director, Bureau of Alcohol, Tobacco, Firearms & Explosives*, Civil Action No. 11-1401 (RMC), slip op. at 2 (D.D.C. Jan. 13, 2012).

In conclusion, the Department has worked to develop and implement measures to address the concerns raised in connection with these flawed law enforcement operations. We look forward to continuing to work with you to improve public safety on the Southwest border.

Sincerely,



James M. Cole
Deputy Attorney General



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 27, 2012

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

Dear Mr. Chairman:

This responds to your subpoena dated October 11, 2011, which requested documents regarding the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigation known as Operation Fast and Furious and related matters. It also supplements our previous responses to your subpoena of March 31, 2011 to then ATF Acting Director Kenneth Melson requesting documents about Fast and Furious, your letter dated July 11, 2011, requesting communications of twelve named Department employees, and your letter dated September 1, 2011, requesting documents and communications of six current or former employees in the United States Attorney's Office for the District of Arizona.

We are delivering today to your office 486 pages of material.¹ We have identified an additional 94 pages that we are prepared to make available at the Department for review by staff of your Committee, as well as staff of the Senate and House Committees on the Judiciary. The majority of the materials produced today are responsive to items 7, 11 and 12 of your October 11 subpoena. We are producing or making available for review materials that are responsive to these items, most of which pertain to the specific investigations that we have already identified to

¹ These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques or disclose prosecutorial deliberations, plus limited information implicating individual privacy interests, such as employee cellular phone numbers or information about individuals who have been investigated but not prosecuted. In addition, we have redacted text from multi-subject documents that is not responsive to your requests. In some substantial multi-subject documents, such as regular ATF reports, we have not included pages that contained text that was either not responsive or contained details of investigations outside of the scope of your inquiry. In response to requests from Chairman Smith and Chairman Leahy, we will deliver to the House and Senate Committees on the Judiciary the same documents that we deliver to you.

The Honorable Darrell E. Issa
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the Committee. We are not, however, providing materials pertaining to other matters, such as documents regarding ATF cases that do not appear to involve the inappropriate tactics under review by the Committee; non-ATF cases, except for certain information relating to the death of Customs and Border Protection Agent Brian Terry; administrative matters; and personal records. Consistent with established third-agency practice, we have consulted with the Departments of State and Homeland Security about materials that are responsive to your interests and implicate their equities. We have completed those consultations with the Department of Homeland Security, and with the Department of State as to a portion of the documents implicating its equities, and those documents are enclosed today with limited redactions. We will supplement this response when the consultation with the Department of State as to the remaining documents is completed.

In addition, following the public release of the indictment in *Fast and Furious*, ATF's William Newell emailed copies of that indictment and several others multiple times. We have included in this production one full set of these materials, following the email at HOCR DOJ 005645. These indictments were also attached to emails at HOCR DOJ 005734 and HOCR DOJ 005738 but, for your convenience, we have not reproduced them. Similarly, because some of the materials requested in subpoena items 7, 11 or 12 overlap with other requests you have made, we have not re-produced duplicates of materials previously produced to you.

To assist the Committee in its oversight duties, we also appreciate the opportunity to provide relevant and necessary context for some of the documents in today's production.

We have previously produced communications from the mid-December 2010 time period between former Arizona U.S. Attorney Dennis Burke and Monty Wilkinson, former Deputy Chief of Staff to the Attorney General. Today's production includes additional communications between the two from that same time period that were located in response to your most recent requests. Burke received an email during the early morning hours of December 15 reporting that Customs and Border Protection Agent Brian Terry had tragically lost his life. HOCR DOJ 005869. Burke forwarded that information to Wilkinson later that morning. HOCR DOJ 005872. Wilkinson responded by saying, "[t]ragic. I've alerted the AG, the Acting DAG, Lisa, etc." HOCR DOJ 005872. Later that morning, Wilkinson again emailed Burke, saying "[p]lease provide any additional details as they become available to you." HOCR DOJ 005876. Burke followed up with an email later that afternoon, and Wilkinson responded, "[t]hanks, Dennis. Terrible situation." HOCR DOJ 005888. That same evening, Burke emailed Wilkinson that "[t]he guns found in the desert near the murder [sic] BP officer connect back to the investigation we were going to talk about – they were AK-47s purchased at a Phoenix gun store." HOCR DOJ 005917. Wilkinson responded "I'll call tomorrow." HOCR DOJ 005917. Wilkinson does not recall a follow-up call with Burke or discussing this aspect of the matter with the Attorney General. Similarly, we have been advised that Burke has no recollection of discussing this aspect of the matter with Wilkinson.

The Committee has received testimony and evidence in this matter regarding the priority that the Department has placed on fostering a cooperative relationship with Mexican law

The Honorable Darrell E. Issa
Page 3

enforcement officials in order to advance the two nations' efforts to combat Mexican drug cartels. Today's production includes several documents that reflect this commitment. We are producing these documents because, although they fall outside the terms of the subpoenas and letter requests referenced earlier, they may pertain to your investigative interests.² These include a redacted summary, written by the then-Criminal Division attaché to Mexico, of several meetings that Assistant Attorney General Lanny Breuer participated in, along with the U.S. Deputy Chief of Mission in Mexico, the attaché, and others, during an official visit to Mexico on February 1-3, 2011. HOCR DOJ 005752 - HOCR DOJ 005754. As this document reflects, on February 2, 2011, Assistant Attorney General Breuer met with numerous senior officials in the Mexican government, including the Attorney General of Mexico, who heads the Procuraduría General de la República (PGR); the Secretary of Public Security, who heads the Secretaría de Seguridad Pública (SSP); and the Undersecretary for North American Affairs, in the Secretaría de Relaciones Exteriores (SRE). The document reflects that Assistant Attorney General Breuer discussed with the Attorney General of Mexico and the Secretary of Public Security a number of mutual law enforcement priorities, including prosecutions on both sides of the border in connection with the March 2010 murders of a U.S. Consular official and others that occurred in Ciudad Juárez; extraditions between Mexico and the United States; and the sharing of evidence between the two countries.

In addition, the summary indicates that Assistant Attorney General Breuer met with the Mexican Undersecretary for North American Affairs to discuss multiple issues of mutual Mexico/U.S. interest, including U.S. extradition requests to Mexico; the Mérida initiative; and ways to stem the flow of arms from the United States to Mexico. The summary states that, during the arms trafficking discussion, the Undersecretary said that "greater coordination and flow of information would be helpful to combat arms trafficking into Mexico." HOCR DOJ 005754. According to the document, Assistant Attorney General Breuer followed up with two ideas: that the SRE or PGR write a letter in support of increased sentencing guidelines for straw purchasers, and that the United States and Mexico consider working together to allow straw purchasers to "cross into Mexico so SSP can arrest and PGR can prosecute and convict" them. HOCR DOJ 005754. In short, Assistant Attorney General Breuer and the Undersecretary discussed how their two nations could work more closely with one another to fight arms trafficking, including whether U.S. and Mexican law enforcement should consider coordinating their law enforcement operations to enable the Mexican government to interdict at the border and prosecute in Mexico straw purchasers, given the more expansive prohibitions in Mexico on the possession and purchase of firearms.

Today's production also includes a summary, written by the same Criminal Division attaché to Mexico mentioned above, of a meeting that then-Acting Director Melson had with the former U.S. Ambassador to Mexico while Acting Director Melson was in Mexico during the week of February 7, 2011. At that meeting, the summary states, "Melson and the Ambassador discussed the possibility of allowing weapons to pass from the US to Mexico and US law enforcement coordinating with SSP and PGR to arrest and prosecute the arms trafficker."

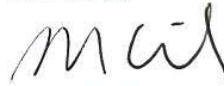
² Certain of the documents produced on this subject are also being made available for review by the Committee with fewer redactions than are contained in the versions being produced.

The Honorable Darrell E. Issa
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HOCR DOJ 005761. The summary further states that the then-attaché “raised the issue that there is an inherent risk in allowing weapons to pass from the US to Mexico; the possibility of the [Government of Mexico] not seizing the weapons; and the weapons being used to commit a crime in Mexico.” HOCR DOJ 005761.

We hope that this information is helpful. Our efforts to identify documents responsive to your subpoena are continuing and we will supplement this response when additional documents become available. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 27, 2012

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed on CD please find 486 pages of material that we produced to the House Oversight and Government Reform Committee (HOCR) today.¹ We have identified an additional 94 pages that we are prepared to make available at the Department for review by staff of your Committee, as well as staff of the House Committee on the Judiciary. The majority of the materials produced today are responsive to items 7, 11 and 12 of Chairman Issa's October 11 subpoena. We are producing or making available for review materials that are responsive to these items, most of which pertain to the specific investigations that we have already identified to the Committee. We are not, however, providing materials pertaining to other matters, such as documents regarding ATF cases that do not appear to involve the inappropriate tactics under review by the Committee; non-ATF cases, except for certain information relating to the death of Customs and Border Protection Agent Brian Terry; administrative matters; and personal records. Consistent with established third-agency practice, we have consulted with the Departments of

¹ These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques or disclose prosecutorial deliberations, plus limited information implicating individual privacy interests, such as employee cellular phone numbers or information about individuals who have been investigated but not prosecuted. In addition, we have redacted text from multi-subject documents that is not responsive to your requests. In some substantial multi-subject documents, such as regular ATF reports, we have not included pages that contained text that was either not responsive or contained details of investigations outside of the scope of your inquiry. In response to requests from Chairman Smith, we will deliver to the House Committee on the Judiciary the same documents that we deliver to you.

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State and Homeland Security about materials that are responsive to your interests and implicate their equities. We have completed those consultations with the Department of Homeland Security, and with the Department of State as to a portion of the documents implicating its equities, and those documents are enclosed today with limited redactions. We will supplement this response when the consultation with the Department of State as to the remaining documents is completed.

In addition, following the public release of the indictment in *Fast and Furious*, ATF's William Newell emailed copies of that indictment and several others multiple times. We have included in this production one full set of these materials, following the email at HOCR DOJ 005645. These indictments were also attached to emails at HOCR DOJ 005734 and HOCR DOJ 005738 but, for your convenience, we have not reproduced them. Similarly, because some of the materials requested in subpoena items 7, 11 or 12 overlap with other requests you have made, we have not re-produced duplicates of materials previously produced to you.

To assist the Committee in its oversight duties, we also appreciate the opportunity to provide relevant and necessary context for some of the documents in today's production.

We have previously produced communications from the mid-December 2010 time period between former Arizona U.S. Attorney Dennis Burke and Monty Wilkinson, former Deputy Chief of Staff to the Attorney General. Today's production includes additional communications between the two from that same time period that were located in response to your most recent requests. Burke received an email during the early morning hours of December 15 reporting that Customs and Border Protection Agent Brian Terry had tragically lost his life. HOCR DOJ 005869. Burke forwarded that information to Wilkinson later that morning. HOCR DOJ 005872. Wilkinson responded by saying, "[t]ragic. I've alerted the AG, the Acting DAG, Lisa, etc." HOCR DOJ 005872. Later that morning, Wilkinson again emailed Burke, saying "[p]lease provide any additional details as they become available to you." HOCR DOJ 005876. Burke followed up with an email later that afternoon, and Wilkinson responded, "[t]hanks, Dennis. Terrible situation." HOCR DOJ 005888. That same evening, Burke emailed Wilkinson that "[t]he guns found in the desert near the murder [sic] BP officer connect back to the investigation we were going to talk about – they were AK-47s purchased at a Phoenix gun store." HOCR DOJ 005917. Wilkinson responded "I'll call tomorrow." HOCR DOJ 005917. Wilkinson does not recall a follow-up call with Burke or discussing this aspect of the matter with the Attorney General. Similarly, we have been advised that Burke has no recollection of discussing this aspect of the matter with Wilkinson.

The Committee has received testimony and evidence in this matter regarding the priority that the Department has placed on fostering a cooperative relationship with Mexican law enforcement officials in order to advance the two nations' efforts to combat Mexican drug cartels. Today's production includes several documents that reflect this commitment. We are producing these documents because, although they fall outside the terms of the subpoenas and letter requests referenced earlier, they may pertain to your investigative interests.² These include

² Certain of the documents produced on this subject are also being made available for review by the Committee with fewer redactions than are contained in the versions being produced.

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a redacted summary, written by the then-Criminal Division attaché to Mexico, of several meetings that Assistant Attorney General Lanny Breuer participated in, along with the U.S. Deputy Chief of Mission in Mexico, the attaché, and others, during an official visit to Mexico on February 1-3, 2011. HOCR DOJ 005752 - HOCR DOJ 005754. As this document reflects, on February 2, 2011, Assistant Attorney General Breuer met with numerous senior officials in the Mexican government, including the Attorney General of Mexico, who heads the Procuraduría General de la República (PGR); the Secretary of Public Security, who heads the Secretaría de Seguridad Pública (SSP); and the Undersecretary for North American Affairs, in the Secretaría de Relaciones Exteriores (SRE). The document reflects that Assistant Attorney General Breuer discussed with the Attorney General of Mexico and the Secretary of Public Security a number of mutual law enforcement priorities, including prosecutions on both sides of the border in connection with the March 2010 murders of a U.S. Consular official and others that occurred in Ciudad Juárez; extraditions between Mexico and the United States; and the sharing of evidence between the two countries.

In addition, the summary indicates that Assistant Attorney General Breuer met with the Mexican Undersecretary for North American Affairs to discuss multiple issues of mutual Mexico/U.S. interest, including U.S. extradition requests to Mexico; the Mérida initiative; and ways to stem the flow of arms from the United States to Mexico. The summary states that, during the arms trafficking discussion, the Undersecretary said that “greater coordination and flow of information would be helpful to combat arms trafficking into Mexico.” HOCR DOJ 005754. According to the document, Assistant Attorney General Breuer followed up with two ideas: that the SRE or PGR write a letter in support of increased sentencing guidelines for straw purchasers, and that the United States and Mexico consider working together to allow straw purchasers to “cross into Mexico so SSP can arrest and PGR can prosecute and convict” them. HOCR DOJ 005754. In short, Assistant Attorney General Breuer and the Undersecretary discussed how their two nations could work more closely with one another to fight arms trafficking, including whether U.S. and Mexican law enforcement should consider coordinating their law enforcement operations to enable the Mexican government to interdict at the border and prosecute in Mexico straw purchasers, given the more expansive prohibitions in Mexico on the possession and purchase of firearms.

Today’s production also includes a summary, written by the same Criminal Division attaché to Mexico mentioned above, of a meeting that then-Acting Director Melson had with the former U.S. Ambassador to Mexico while Acting Director Melson was in Mexico during the week of February 7, 2011. At that meeting, the summary states, “Melson and the Ambassador discussed the possibility of allowing weapons to pass from the US to Mexico and US law enforcement coordinating with SSP and PGR to arrest and prosecute the arms trafficker.” HOCR DOJ 005761. The summary further states that the then-attaché “raised the issue that there is an inherent risk in allowing weapons to pass from the US to Mexico; the possibility of the [Government of Mexico] not seizing the weapons; and the weapons being used to commit a crime in Mexico.” HOCR DOJ 005761.

We hope that this information is helpful. Our efforts to identify documents responsive to Chairman Issa’s subpoena are continuing and we will supplement this response when additional

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documents become available. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'm w', with a stylized flourish at the end.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member

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STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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January 31, 2012

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

On October 12, 2011, this Committee issued a subpoena to you for documents regarding Operation Fast and Furious. The subpoenaed documents are vital to help Congress fully understand the genesis, implementation, and oversight of Operation Fast and Furious within the Department of Justice. They are also critical in understanding how the Department mishandled its response to Congress and obstructed our investigative responsibilities.

Late on Friday, January 27, 2012 – a year into our investigation – the Department produced documents that provide startling new details about the involvement of senior Department officials in what appears to be the Fast and Furious cover-up. We now know that Assistant Attorney General Lanny Breuer, head of the Criminal Division, promoted the moving of guns to Mexico as a strategy worth pursuing. This dangerous strategy relied on Mexican law enforcement officials to capture the guns and the smugglers who trafficked them. One e-mail reads, **“Breuer suggested allowing straw purchasers cross into Mexico so SSP [Secretariat of Public Security] can arrest and PGR [Office of the General Prosecutor] can prosecute and convict. Such coordinated operations between the US and Mexico may send a strong message to arms traffickers.”**¹ These new documents show that Breuer made this statement on February 4, 2011, the same day Assistant Attorney General Ronald Weich wrote to Congress denying that the Department allowed guns to walk.

The fact that the Department just produced this document on Friday shows the lengths to which you are willing to go to obstruct our investigation and deceive the public. Just months ago, the prior administration faced severe criticism regarding the ATF Phoenix Field Division’s alleged use of similar tactics. Mr. Breuer advocated these same tactics. It is inconceivable that the Department just became aware of this highly damaging document. On October 31, 2011, Mr. Breuer apologized for failing to stop questionable tactics used in Fast and Furious in 2010. Yet, as late as February 2011, he was actively advocating gunwalking. This e-mail casts renewed doubt on the sincerity of Mr. Breuer’s apology and his ability to continue to serve in a leadership role at the Department.

¹ E-mail from Anthony P. Garcia to Adam Lurie, Bruce Swartz, Kenneth Blanco, Jason Weinstein, et al. (Feb. 4, 2011, 3:49 PM) [HOCR DOJ 005752-54].

The Honorable Eric H. Holder, Jr.
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During your testimony before the House Judiciary Committee on December 8, 2011, you stated that the Department of Justice will not produce any responsive documents created after February 4, 2011 regarding Operation Fast and Furious. Your testimony was the first assertion of this position to Congress. In no uncertain terms, you stated that:

[W]ith regard to the Justice Department as a whole – and I’m certainly a member of the Justice Department – we will not provide memos after February the 4th. . . e-mails, memos – consistent with the way in which the Department of Justice has always conducted itself in its interactions.²

You again impressed this point upon Committee Members later in the hearing:

Well, with the regard to provision of e-mails, I thought I’ve made it clear that after February the 4th it is not our intention to provide e-mail information consistent with the way in which the Justice Department has always conducted itself.³

Your testimony indicates that the Department has no intention of fully complying with the Committee’s subpoena. This position is entirely unacceptable. For three months after Senator Grassley’s initial letters, the Department was in denial that the congressional investigation had any merit. Not until a May 5, 2011, meeting with Committee staff did the Department finally admit that “there’s a there, there.” The actions of the Department following February 4 are crucial in determining whether it has concealed information from Congress – including subpoenaed information – and to what extent it has obstructed our work.

During a transcribed interview on December 14, 2011, your chief of staff, Gary Grindler, broadened the Department’s position with respect to sharing documents created after February 4, 2011. The Associate Deputy Attorney General serving as Department counsel refused to allow Mr. Grindler to answer any questions relating to conversations that he had with you or anyone else in the Department regarding Fast and Furious after February 4, 2011:

What I am saying is that the Attorney General made it clear at his testimony last week that we are not providing information to the committee subsequent to the February 4th letter.⁴

Department counsel expanded the position you articulated regarding documentary evidence at the Judiciary Committee hearing to include testimonial evidence as well.⁵ Given the initial response by the Department to the congressional inquiry earlier this year, the comments by the Associate Deputy Attorney General create a barrier preventing Congress from obtaining vital information about Fast and Furious.

The Department has also maintained this position during additional transcribed interviews. In an interview with Deputy Assistant Attorney General Jason Weinstein on January 10, 2012, in response to a question about Mr. Weinstein’s interactions with the Arizona U.S. Attorney’s Office, Department counsel

² *Oversight Hearing on the United States Department of Justice of the H. Comm. on the Judiciary*, 112th Cong. (Dec. 8, 2011) (testimony of Att’y Gen. Eric H. Holder, Jr.) [hereinafter Holder Testimony].

³ *Id.*

⁴ Transcribed Interview of Gary Grindler, Chief of Staff to the Att’y Gen. (Dec. 14, 2011) at 22.

⁵ *Id.*

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prohibited an entire line of questioning by claiming it “implicates the post-February 4th period.”⁶ Department counsel cited a “constitutional privilege” in support of this position, without elaborating further.⁷ To date, the Department has not provided any further detail as to the scope of this position, which was at odds with Mr. Weinstein’s willingness to answer the Committee’s questions:

[A]s I said, I personally would be more than happy to answer questions about post-February 4th, but I am not authorized to do so.⁸

In fact, following the February 4, 2011, letter, Mr. Weinstein, at the behest of Mr. Breuer, prepared an analytical review of *Fast and Furious*.⁹ Mr. Weinstein interviewed Emory Hurley and Patrick Cunningham of the Arizona U.S. Attorney’s office in conducting this review.¹⁰ The document that resulted from Mr. Weinstein’s analysis specifically discussed issues relevant to the case. To date, the Department has not produced this document to the Committee, despite the fact that it is responsive to the subpoena.

At the December 8 hearing, you also stressed, on multiple occasions, that the Department’s decision to produce documents related to the February 4, 2011 letter to Senator Grassley was unprecedented, and reflected an effort to be transparent.¹¹ Such comments, however, completely belie the facts and are misleading. First and foremost, I cannot underemphasize that the Department’s February 4, 2011, letter to Congress contained false information. You decided to release materials related to the letter only after Committee staff informed Department lawyers that the Committee was considering a criminal referral. It is disingenuous to claim that this was a voluntary effort to be transparent. Unfortunately, the Department’s delays in document production reflect a recurring pattern throughout this investigation. To put it bluntly, the Department has been irresponsible in failing to take congressional oversight of *Fast and Furious* seriously.

The Committee issued its first subpoena for documents on March 31, 2011. In response, the Department produced zero pages of non-public documents until June 10, 2011, over two months later, and on the eve of the Committee’s first hearing into *Fast and Furious*. That hearing featured constitutional scholars who explained the Department’s clear obligations to comply with the subpoena and highlighted congressional mechanisms to compel production. Faced with the possibility of contempt proceedings, the Department began to produce documents.

Over the next five months, Senator Grassley and I repeatedly asked for information surrounding the creation of the Department’s February 4, 2011 letter. The Department flatly refused these requests. It was not until my November 9, 2011 letter to Assistant Attorney General Ronald Weich – which raised the possibility of criminal charges for the false statements made in the February 4 letter – that the Department finally saw fit to give Congress the materials we had been requesting for months. Contrary to statements you made during the December 8 hearing, you did not release these materials voluntarily. Instead, the Department provided them because it had no alternative.

As I stated in my November 9, 2011 letter to Assistant Attorney General Weich, understanding the Department’s actions after Congress began its investigation is crucial. Even after the Department

⁶ Transcribed Interview of Jason Weinstein, Deputy Assistant Att’y Gen. (Jan. 10, 2012) at 177.

⁷ *Id.* at 178.

⁸ *Id.* at 227.

⁹ Transcribed Interview of Dennis K. Burke at 158-60 (Dec. 13, 2011).

¹⁰ *Id.* at 158-59.

¹¹ Holder Testimony, *supra* note 2.

The Honorable Eric H. Holder, Jr.
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began to recognize the full effect of the problems resulting from Fast and Furious, it still failed to come forward and share with Congress what it had learned.

Since the Department initially misrepresented the facts and misled Congress, it is necessary to investigate the Department's response to our investigation. Your actions lead us to conclude that the Department is actively engaged in a cover-up. It is essential for the Department's Office of Legislative Affairs to facilitate the production of documents we have requested so we can complete our investigation. The Department's persistent delay tactics make this task increasingly and unreasonably difficult.

In short, the Committee requires full compliance with all aspects of the subpoena, including complete production of documents created after the Department's February 4, 2011 letter. As such, provide all documents pursuant to the October 12, 2011 subpoena as soon as possible, but by no later than 5:00 p.m. on February 9, 2012. Should you choose to continue to withhold documents pursuant to the subpoena, you must create a detailed privilege log explaining why the Department is refusing to produce each document. If the Department continues to obstruct the congressional inquiry by not providing documents and information, this Committee will have no alternative but to move forward with proceedings to hold you in contempt of Congress.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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

February 2012

February 2012



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

February 1, 2012

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

Dear Mr. Chairman:

This responds to your letter to the Attorney General dated January 31, 2012 regarding your Committee's inquiry into Operation Fast and Furious. Your criticisms of the Department, in general, and Assistant Attorney General for the Criminal Division Lanny Breuer, in particular, seem predicated on significant misunderstandings both of the documents we recently produced and of the Department's positions on the issues you raise.

You criticize Mr. Breuer for conversations he had with his Mexican law enforcement counterparts in February 2011 on the subject of a proposed cross-border operation. But it is not correct for you to contend, as you do in your letter, that Mr. Breuer was "actively advocating gunwalking" or that he suggested the use of the same failed tactics that had been used in the prior administration's Operation Wide Receiver, in Operation Fast and Furious, or in similar operations. Likewise, your criticism of our response to the Committee's extremely broad October 11, 2011 subpoena fails to account for the substantial efforts we have made in that regard and for the numerous ways in which we have cooperated with the Committee's inquiry, including by taking the nearly unprecedented step of providing the Committee with materials showing the internal process by which our now-withdrawn February 4, 2011 letter was drafted.

And, finally, your letter claims that we have refused to provide the Committee with any materials created after February 4, 2011. That is not the case. Last October, we wrote to you and explained our position on this issue after having discussed it with your staff. Our position is consistent with the position the Department has taken across Administrations of both political parties. To the extent responsive materials exist that post-date congressional review of this matter and were not generated in that context or to respond to media inquiries, and likewise do not implicate other recognized Department interests in confidentiality (for example, matters occurring before a grand jury, investigative activities under seal or the disclosure of which is prohibited by law, core investigative information, or matters reflecting internal Department deliberations), we intend to provide them.

I address each of these issues below.

I turn first to your contentions relating to Assistant Attorney General Breuer. The documents we produced to the Committee on January 5, 2012 suggest that Wide Receiver was an operation in which ATF rejected the idea of having Mexican law enforcement make arrests of

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straw purchasers at the U.S./Mexico border. Instead, the documents indicate that ATF believed that arrests at the border were inconsistent with the goals of that investigation. An ATF email about Wide Receiver from April 2007 said that it was not in the agency's interest "to engage in a long term surveillance if the end result would be a Border entry stop or traffic stop in Mexico." HOCR WR 005315. Rather, ATF's plan, as reflected in the documents, was that "once the trafficker moved into Mexico that LE on that side follow the lead to it's [sic] ultimate destination and that all phones and other means be utilized to identify the organization involved." *Id.*

This understanding of the goals of Wide Receiver is reaffirmed by a July 13, 2006 memorandum from two Assistant United States Attorneys in Arizona to then-Arizona U.S. Attorney Paul Charlton that we produced to the Committee last October. In that memorandum, Mr. Charlton was advised by his subordinates that Operation Wide Receiver involved "allowing an indeterminate number of illegal weapons, both components of which (the upper and the lower) were provided to the criminals with ATF's knowledge and/or participation, to be released into the community, and possibly into Mexico, without any further ability by the U.S. Government to control their movement or future use." HOCR WR 003364.

The documents relating to Assistant Attorney General Breuer's meeting with Mexican law enforcement officials relate to a potential joint operation with Mexico that would have been dramatically different from Wide Receiver, Fast and Furious and similar operations. The documents reflect that on February 2, 2011, Assistant Attorney General Breuer met with a variety of high-level Mexican officials, including the Attorney General of Mexico, and over the course of that day discussed multiple issues of mutual Mexico/U.S. interest, including U.S. extradition requests to Mexico, the Mérida initiative, and ways to stem the flow of arms from the United States to Mexico. A summary of a meeting that Assistant Attorney General Breuer had with the Mexican Undersecretary for North American Affairs states that, during an arms trafficking discussion, the Undersecretary said that "greater coordination and flow of information would be helpful to combat arms trafficking into Mexico." HOCR DOJ 003104.

According to the document, Assistant Attorney General Breuer followed up with two ideas: that Mexican officials write a letter in support of increased sentencing guidelines for straw purchasers in the United States, and that the United States and Mexico consider working together to allow straw purchasers to "cross into Mexico so SSP can arrest and PGR can prosecute and convict" them.¹ HOCR DOJ 003104. In short, Assistant Attorney General Breuer and the Undersecretary discussed how their two nations could work more closely with one another to fight arms trafficking, including whether U.S. and Mexican law enforcement should consider coordinating their law enforcement operations to enable the Mexican government to interdict straw purchasers at the border and prosecute them in Mexico, given the more expansive prohibitions in Mexico for the possession and purchase of firearms.

As this discussion makes clear, Assistant Attorney General Breuer proposed to his Mexican counterparts a scenario in which those carrying illegal weapons across the border would be arrested at the border by Mexican officials and charged in Mexico. While these officials

¹ The SSP is Mexico's Secretaría de Seguridad Pública. The PGR is Mexico's Procuraduría General de la República.

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ultimately did not pursue that strategy, it is neither fair nor accurate to say that this was advocacy of “gunwalking.” It was not. In light of Assistant Attorney General Breuer’s commitment to stemming the flow of guns from the United States into Mexico and his strong ties and collaborative relationships with his counterparts in Mexico, it is inconceivable that his intention was to have guns released into Mexico.

You also criticize the Department’s response to the Committee’s October 11, 2011 subpoena. This criticism does not recognize our substantial efforts to comply with the extensive requests in the subpoena, or the many other requests for information we have received from the Committee by letter, email or orally, without requiring formal process. We have devoted significant resources to meeting the Committee’s many requests for information. Our cooperation includes:

- Producing or making available for review by the Committee in excess of 6,400 pages of material.
- Making numerous witnesses available either for transcribed interviews or public hearings, including senior-level Department officials.
- Making the Attorney General available six times (including tomorrow’s scheduled appearance) to discuss with members of Congress matters relating to Fast and Furious.
- Making Assistant Attorneys General Weich and Breuer available to testify about this matter before congressional committees.
- Responding to more than three dozen letters on this subject from members of Congress.
- Devoting a team of lawyers and technical personnel to collecting, processing and reviewing documents requested by the Committee and making sure that responsive materials are provided in a timely manner.

Our good faith in this process is further reflected in our decision to provide the Committee with documents relating to the drafting of our now-withdrawn February 4 letter. While your most recent letter suggests that our decision to produce February 4 materials was not voluntary, that is not the case. Our December 2, 2011 letter transmitting those materials set forth our rationale for providing them. We explained that because we had concluded that our February 4 response contained inaccuracies, we had also determined that an exception to the Department’s recognized protocols was appropriate. Thus, we made a rare exception to the longstanding practice of Administrations of both political parties not to disclose deliberative documents and other internal communications generated in response to congressional oversight requests because disclosure would compromise substantial separation of powers principles and Executive Branch confidentiality interests.

Your most recent letter asks that we complete the production process under the October 11, 2011 subpoena by February 9, 2012. The broad scope of the Committee’s requests and the volume of material to be collected, processed and reviewed in response make it impossible to

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meet that deadline, despite our good faith efforts. We will continue in good faith to produce materials, but it simply will not be possible to finish the collection, processing and review of materials by the date sought in your most recent letter.

Finally, you assert that the Department is unwilling to produce any information generated after congressional review of these matters commenced. As I noted earlier, that is not the case and it appears that you have misconstrued our position with respect to this issue. To the extent responsive materials exist that post-date congressional review of this matter and were not generated in that context or to respond to media inquiries, and likewise do not implicate other recognized Department interests in confidentiality (for example, matters occurring before a grand jury, investigative activities under seal or the disclosure of which is prohibited by law, core investigative information, or matters reflecting internal Department deliberations), we intend to provide them. Indeed, in last week's production, we included a number of documents that post-date congressional review of this matter. Likewise, Department witnesses have provided information in their transcribed interviews about management and policy changes that the Department has undertaken during the course of congressional review.

Your letter suggests that the first time you learned of the Department's position on this issue was during the Attorney General's testimony before the House Judiciary Committee on December 8. However, in a letter to you dated October 11, 2011, which accompanied the production of certain documents, we confirmed prior discussions with your staff on this very subject. We wrote that:

as we have previously explained to Committee staff, we have also withheld internal communications that were generated in the course of the Department's effort to respond to congressional and media inquiries about Operation Fast and Furious. These records were created in 2011, well after the completion of the investigative portion of Operation Fast and Furious that the Committee has been reviewing and after the charging decisions reflected in the January 25, 2011 indictments. Thus, they were not part of the communications regarding the development and implementation of the strategy decisions that have been the focus of the Committee's inquiry. It is longstanding Executive Branch practice not to disclose documents falling into this category because disclosure would implicate substantial Executive Branch confidentiality interests and separation of powers principles. Disclosure would have a chilling effect on agency officials' deliberations about how to respond to inquiries from Congress or the media. Such a chill on internal communications would interfere with our ability to respond as effectively and efficiently as possible to congressional oversight requests.

Letter from Assistant Attorney General Ronald Weich to Chairman Issa at 2 (Oct. 11, 2011).

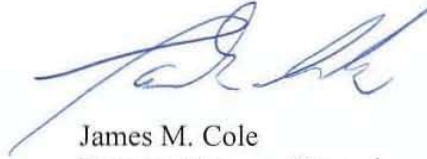
The separation of powers concerns we have previously expressed are particularly acute here because Congress has sought information about open criminal investigations and prosecutions. That has required Department officials to confer candidly about how to

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accommodate Congress' oversight interests while at the same time ensuring that ongoing law enforcement decision-making is free from even the appearance of political influence.

We remain committed to working to accommodate the Committee's legitimate oversight needs and we trust that the Committee will equally understand our position and will work with us to avoid further conflict on this matter, as the Constitution requires.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. M. Cole', is positioned above the printed name and title.

James M. Cole
Deputy Attorney General

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

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

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



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 1, 2012

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

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letter of October 25, 2011, requesting information related to the Department's investigation of the purchase of a firearm used during the fatal attack on Immigration and Customs Enforcement Agent Jaime Zapata.

As noted in our letter dated October 11, 2011, the Department takes seriously your concerns about the death of Agent Zapata and about gun trafficking more generally. We can confirm now that on November 10, 2011, Otilio Osorio, who purchased a firearm that was ultimately used during the attack on Agent Zapata, pleaded guilty to several firearms trafficking offenses, including conspiracy to make a false statement or representation required to be kept in records of a licensed firearms dealer (18 U.S.C. § 371), making a false statement or representation with respect to information required to be kept in records of a licensed firearms dealer (18 U.S.C. § 924(a)(1)(A)), and possession of a firearm bearing a removed or obliterated serial number (18 U.S.C. § 922(k)). On the same date or subsequently, seven other individuals associated with Osorio, including Kelvin Morrison and Ranferi Osorio, also pleaded guilty to firearms trafficking offenses. Sentencing of the defendants in this matter is scheduled to occur in February and March of 2012. These matters are being prosecuted by the U.S. Attorney's Office for the Northern District of Texas.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
Page 2

In addition, related to this matter, you may also already be aware that Julian Zapata Espinoza has been extradited from Mexico to the United States, where he faces charges for his alleged participation in the murder of Agent Zapata and the attempted murder of Immigration and Customs Enforcement Agent Victor Avila. This case is being prosecuted by the Justice Department's Criminal Division with the United States Attorney's Office for the District of Columbia.

These very important events notwithstanding, the investigations related to Agent Zapata's death and the activities of the individuals charged with firearms trafficking offenses are ongoing. Our disclosure at this time of the additional information you requested could compromise the ongoing criminal investigations, including our efforts to hold accountable those responsible for Agent Zapata's death.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of additional assistance regarding this or any on other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Minority Member
House Committee on Oversight and Government Reform

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary

Congress of the United States
Washington, DC 20515

February 8, 2012

The Honorable Eric H. Holder, Jr.
 Attorney General
 U.S. Department of Justice
 950 Pennsylvania Avenue, N.W.
 Washington, D.C. 20530

Dear Mr. Attorney General:

During your testimony before the Committee last week, you pledged to work with Congress to find a way to make the wiretap applications from the Fast and Furious investigation available for congressional review. We appreciate your willingness to work with us on this issue, and we believe these applications will advance the investigation in a meaningful way. The contents of the wiretap applications are central in determining the level of involvement of senior Department officials during the pendency of Operation Fast and Furious. It is indisputable that gunwalking occurred during Fast and Furious, and it is therefore important to know whether any facts in the wiretap applications should have raised concerns that gunwalking, or other ill-advised tactics, were occurring. The contents of the wiretap applications are likely to resolve factual disputes about the level of detail available to senior Department officials during Fast and Furious.

Legal Sufficiency

The Office of Enforcement Operations (OEO), part of the Justice Department's Criminal Division, is "primarily responsible for the Department's statutory wiretap authorizations."¹ Generally, federal prosecutors across the country submit wiretap packages to OEO, whose lawyers ensure that these wiretap packages "meet statutory requirements and DOJ policies."² When OEO deems a wiretap package sufficient, "[t]he Attorney General or his designee" – in practice, a Deputy Assistant Attorney General in the Criminal Division – reviews and authorizes it.³ Each package includes an affidavit which details the factual basis upon which the authorization is sought.

In previous testimony before the Senate Judiciary Committee on November 1, 2011, Assistant Attorney General Lanny Breuer commented that the "one role" Main Justice plays in authorizing wiretap applications is to "ensure there is legal sufficiency to make an application."⁴ The federal wiretap statute describes what this legal sufficiency entails, requiring that the

¹ Letter from James M. Cole, Deputy Att'y Gen., U.S. Dep't of Justice, to Rep. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, et al., at 6 (Jan. 27, 2012) [hereinafter Cole Letter].

² *Id.*

³ 18 U.S.C. § 2516(1).

⁴ *Combating International Organized Crime: Evaluating Current Authorities, Tools and Resources: Hearing Before the Subcomm. on Crime and Terrorism, S. Comm. on the Judiciary*, 112th Cong. (Nov. 1, 2011) (Test. of Assistant Att'y Gen. Lanny Breuer).

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application include **“a full and complete statement of facts and circumstances justifying the application.”**⁵ In addition, for a judge to order the requested wire interception, the application must show that **“[n]ormal investigative procedures have been tried and have failed or will likely fail, or are too dangerous.”**⁶ The Department, therefore, must include specific facts in the application that demonstrate other investigative procedures have been exhausted.

During our investigation into Operation Fast and Furious, several ATF agents have testified about the use of many long-standing and highly effective investigative techniques used in firearms trafficking investigations. These procedures include “knock and talks,” traffic stops conducted by local law enforcement, consensual encounters, sustained surveillance of suspects and investigative targets, search warrants for suspected stash houses, use of undercover informants, and advising federal firearms licensees of their prerogative to refuse to sell weapons to individuals they deem suspicious.

Last week, you testified that wiretap applications “don’t always go into all of the techniques that are used in a particular investigation.”⁷ Yet, a wiretap application *must* include precisely this type of information in order to meet the legal sufficiency standard required by the Criminal Division in its review. Therefore, law enforcement officials would have to include these procedures, and possibly others, in the wiretap applications to meet the statutory requirement and obtain the Criminal Division’s approval.

As such, if the Fast and Furious wiretap applications were accurate and complete, they should contain significant indications of gunwalking. If they were not accurate and complete, then serious questions arise as to why the Criminal Division approved them despite being legally deficient for failing to describe the specific techniques that had been used and failed. Therefore, the content of the applications is crucial in order to gain a complete understanding of the issues surrounding this controversy.

Violations of ATF and Department of Justice Policy

The highly questionable investigative techniques used in Fast and Furious violated both ATF and Department policy. If the Fast and Furious wiretap applications mention ATF breaking off surveillance or allowing illegally purchased guns to be transferred in an uncontrolled manner, then the Criminal Division approved the applications in direct conflict with ATF policy. If the Fast and Furious wiretap applications mention guns crossing the border with ATF’s foreknowledge, then the Criminal Division approved the applications in direct conflict with Department of Justice policy. Congress needs to understand the exact facts and circumstances in detail to conduct adequate oversight and fully inform our legislative functions under the Constitution.

⁵ 18 U.S.C. § 2518(1)(b) (emphasis added).

⁶ 18 U.S.C. § 2518(3)(c) (emphasis added).

⁷ *Fast and Furious: Management Failures at the Department of Justice: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 112th Cong. (Feb. 2, 2012) (Test. of Hon. Eric H. Holder, Jr., Att’y Gen. of the U.S.).

The Honorable Eric H. Holder, Jr.
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The core mission of the Bureau of Alcohol, Tobacco, Firearms, and Explosives is to “protect[] our communities from . . . the illegal use and trafficking of firearms.”⁸ Multiple agents testified last year that in *Fast and Furious*, ATF prematurely broke off surveillance after witnessing illegal weapons purchases and allowed guns to walk. These tactics went against everything ATF stands for.

On March 9, 2011, Deputy Attorney General James M. Cole sent an e-mail to southwest border U.S. Attorneys stating: “I want to reiterate the Department’s policy: We should not design or conduct undercover operations which include guns crossing the border.”⁹ Since this e-mail was a reiteration of Department policy, any operations allowing guns to cross the border would violate Department policy. On January 27, 2012, Deputy Attorney General Cole sent a letter to Congress stating that the Department’s “lawyers help AUSAs and trial attorneys ensure that their wiretap packages meet statutory requirements and DOJ policies.” Thus, Mr. Cole acknowledged that Criminal Division lawyers are responsible for ensuring that wiretap packages comply with both federal law and Department policies, including the policy against designing operations that allow guns to cross the border.

Wiretap Information

We seek to determine whether wiretap applications were approved in contravention of either ATF or Department policy. It is highly likely that information contained in the wiretap applications will provide answers to the following questions:

1. Do the wiretap applications include the number of guns purchased by individual members of the straw purchasing ring? If so, do the applications demonstrate that other investigative techniques, such as “knock and talks,” traffic stops, or search warrants, were attempted and failed, or avoided, so as to not “tip off” the subjects and cause them to cease further illegal activity?
2. Do the wiretap applications include the amount of money spent on weapons by individual members of the straw purchasing ring?
3. Do the wiretap applications include information about the taxable incomes of individual members of the straw purchasing ring?
4. Do the wiretap applications contain any evidence that suspects were acquiring the weapons with the intent to transfer them to another person? If so, why wasn’t such evidence immediately used to arrest and prosecute those suspects for the crime of straw purchasing?
5. Do the wiretap applications include information about whether any of the targets or suspects were attempting to acquire firearms for the purpose of trafficking them to

⁸ Bureau of Alcohol, Tobacco, Firearms, and Explosives, “ATF’s Mission,” <http://www.atf.gov/about/mission> (last visited Feb. 8, 2012).

⁹ E-mail from James M. Cole to Angel Moreno, et al. (Mar. 9, 2011) [HOCR 005811].

The Honorable Eric H. Holder, Jr.
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Mexico? If so, was blanket surveillance initiated to insure that the targets or suspects in question would not be able to effectuate their intent?

6. Do the wiretap applications contain any evidence that ATF allowed straw purchasers to acquire firearms? If so, what safeguards were put in place to protect public safety?
7. Do the wiretap applications contain any evidence of associations among individuals in the straw purchasing ring?
8. Do the wiretap applications include the number of border crossings, including dates, made by individual members of the straw purchasing ring?
9. Do the wiretap applications include the number of weapons recovered, both in the United States and in Mexico, that were bought by individual members of the straw purchasing ring?
10. Do the wiretap applications include the locations of residences where the transfer of firearms took place during the course of the investigation?
11. Do the wiretap applications include specific instances of law enforcement surveillance of illegal weapons purchases and subsequent transfers of those weapons without interdiction by law enforcement?
12. Do the wiretap applications contain any evidence that ATF deemed other investigative techniques, such as the execution of search warrants, not feasible because such techniques would alert the subjects to the investigation? If so, does the failure to execute these search warrants demonstrate a violation of ATF's core mission?

Leave of Court

By their very nature, requests for wiretap applications are intrusions into the privacy of individuals. It is for this reason that the law requires the Justice Department to exercise meaningful supervision over these applications, and one of the reasons why OEO scrutinizes each application before submitting it to federal court. Although we are mindful of the sensitive nature of the information associated with the individuals mentioned in the applications, the grave public concern over Fast and Furious weighs in favor of providing this information in furtherance of our oversight interests under the Constitution.

Recently, the *Arizona Republic* "convinced a [federal] judge to [unseal] some documents [relating to the Brian Terry murder], saying the public had a right to inspect them."¹⁰ This marked the first time in a case relating to Fast and Furious that documents have been unsealed.

¹⁰ Dennis Wagner, *Brian Terry border case: 2nd suspect revealed*, ARIZ. REPUBLIC, Jan. 30, 2012, available at <http://tucsoncitizen.com/arizona-news/2012/01/30/brian-terry-border-case-2nd-suspect-revealed/>.

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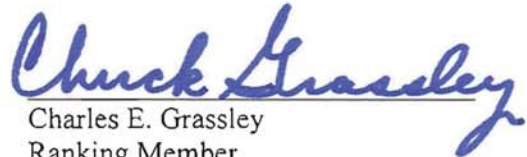
Likewise, in the event that the wiretap applications are sealed, we request that the Department of Justice seek leave of court to unseal them for the purpose of facilitating congressional review. If the Department requires a subpoena in order to take this step, the Committee is willing to provide one.

We look forward to your response as soon as possible, but by no later than noon on February 15, 2012.

Sincerely,



Darrell Issa
 Chairman
 Committee on Oversight
 and Government Reform
 United States House of Representatives



Charles E. Grassley
 Ranking Member
 Committee on the Judiciary
 United States Senate



Patrick Meehan
 Member of Congress
 United States House of Representatives

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

The Honorable Patrick Leahy, Chairman
 Committee on the Judiciary
 United States Senate

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February 14, 2012

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Attorney General:

I received Deputy Attorney General Cole's letter dated February 1, 2012, in which the Department requested an extension past February 9, 2012, to produce documents responsive to the October 12, 2011, subpoena issued to you. This requested extension, nearly four months after you received the subpoena, ignores the reality that the Department has unreasonably delayed producing these documents to the Committee. My staff has been working with Department lawyers assiduously to provide requested clarifications about documents requested in the subpoena and to assist the Department in prioritizing categories of documents for production. On its face, the requested extension demonstrates a lack of good faith. With one exception, the Department has only produced documents responsive to the subpoena on the eve of congressional hearings in which senior Department officials testified. The Department appears to be more concerned with protecting its image through spin control than actually cooperating with Congress.

It is ironic that while the Department's delay tactics have extended this investigation into a presidential election year, you have had the audacity to characterize it as an attempt at "headline-grabbing Washington 'gotcha' games and cynical political point scoring."¹ Congress must complete its work. We cannot wait any longer for the Department's cooperation. As such, please specify a date by which you expect the Department to produce all documents responsive to the subpoena. In addition, please specify a Department representative who will interface with the Committee for production purposes. This individual should also serve as the conduit for dealing with the contempt proceedings, should the Department continue to ignore the Committee's subpoena. Additionally, this individual should be prepared to testify before the Committee about production status. This person's primary responsibility should be to identify for the Committee all documents the Department has determined to be responsive to the subpoena but is refusing to produce, and should provide a privilege log of the documents

¹ Statement of Att'y Gen. Eric Holder Before S. Jud. Comm. (Nov. 8, 2011), *available at* <http://www.justice.gov/iso/opa/ag/testimony/2011/ag-testimony-111108.html>.

The Honorable Eric H. Holder, Jr.
 February 14, 2012
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delineating why each one is being withheld from Congress. Please direct this individual to produce this log to the Committee without further delay.

Unanswered Questions

In February 2011, the Department of Justice assured Congress that nothing improper occurred during Operation Fast and Furious. It took nearly nine months for the Department to take the unprecedented step of withdrawing its February 4, 2011, letter to Congress and publicly acknowledging the assurances it contained were false. Prior to this withdrawal, the Department stood by its February 4, 2011, letter despite overwhelming evidence presented by Congress that the Department had made false statements. We are investigating not just management of the reckless Operation Fast and Furious, but also the Department's efforts to slow and otherwise interfere with our investigation. Many questions remain unanswered with respect to Operation Fast and Furious and the Department's response to the congressional investigation.

In your testimony before the Committee on February 2, 2012, you stated, "[w]ell, I have heard the magic word here, 'cover-up,' and I want to make clear that there is no attempt at any sort of cover-up."² In spite of your assurances, however, the Department has produced only sparse information on the confidential informants that were the primary targets of the Fast and Furious investigation. Fast and Furious was designed to identify a link between the Phoenix-based firearms trafficking ring and the Sinaloa Cartel. Yet, when ATF finally learned of this link, the two individuals turned out to be paid FBI informants – deemed national security assets and said to be unindictable. In June 2011, when the Acting ATF Director brought this serious lack of information-sharing among ATF, DEA, and FBI – all Department components – to the attention of Deputy Attorney General James Cole, Mr. Cole was non-committal: "[w]e will look into it. . . All he said was we will have to look into it. There was very little expression."³ The Committee is very interested to know:

- What steps did the Deputy Attorney General take to "look into it?" What steps did he take to ensure a similar lapse of information-sharing would not occur in the future?

We have grown increasingly frustrated in dealing with the Department's Office of Legislative Affairs (OLA) in attempting to obtain the information we seek. OLA represents the face of the Department to Congress and plays an important role in communicating with Congress. Yet, virtually all congressional requests regarding Fast and Furious have gone unanswered and even unacknowledged. For example, we requested subpoenaed items 11(b) and 22 in a letter dated October 11, 2011. The Department has thus far ignored both the letter request and the subpoenaed items. More recently, we requested a briefing by DEA regarding a front page *New York Times* article about international money laundering schemes. That request is now two months old, and the Department has yet to schedule this briefing. These two

² *Fast and Furious: Management Failures at the Department of Justice: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. (Feb. 2, 2012) (Test. of Hon. Eric H. Holder, Jr., Att'y Gen. of the U.S.) [hereinafter *Holder Testimony*].

³ Transcribed Interview of Kenneth Melson, at 184-185 (July 4, 2011) [hereinafter *Melson Transcript*].

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examples illustrate that OLA is unable or unwilling to work cooperatively with Congress. It is our understanding that the involvement of the Office of the Deputy Attorney General (ODAG) has slowed OLA's response to Committee requests considerably. Again, more questions arise:

- Is ODAG deliberately interfering with OLA's efforts to prevent Congress from getting the information it seeks?
- Why is ODAG exercising so much control over OLA's response to Congress when it completely failed to exercise any proper supervision over ATF and the failed Fast and Furious program?

Another unanswered question revolves around Patrick Cunningham, former Criminal Chief in the U.S. Attorney's Office in Arizona, who recently asserted his Fifth Amendment privilege against self-incrimination with respect to everything except his name and position. It is our understanding that an Associate Deputy Attorney General in ODAG tasked Cunningham with conducting a comprehensive review of Fast and Furious in April 2011:

- What information did Cunningham uncover? To whom did he report this information? What was done with this information?

Deputy Assistant Attorney General Jason Weinstein testified that Cunningham provided him with false information:⁴

- Did Cunningham provide this false information to Weinstein himself, or was Cunningham merely a conduit for false information that he obtained from other witnesses? If it was Cunningham himself, is the Department aware of this, and has it launched a criminal review of Cunningham for possible obstruction of a congressional investigation?⁵
- Were Department lawyers responsible for inaccurately conveying information provided to them by Cunningham?

⁴ Transcribed Interview of Jason Weinstein, at 227-28 (Jan. 10, 2012).

⁵ 18 U.S.C. § 1505 states, in pertinent part:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress . . .

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

The Honorable Eric H. Holder, Jr.
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- Does the investigation undertaken by Cunningham – at the direction of ODAG – have *Brady* implications? If so, has the Department turned over these materials to the defense attorneys in the case?

Many other questions still remain unanswered in our investigation:

- How did the Department move from its initial dismissal of whistleblower complaints to the recognition they were true?
- Exactly how and when did senior Department officials learn the truth of what happened?
- Did Department officials retaliate against whistleblowers?
- Why did Department officials decide to move forward with prosecuting old cases involving highly objectionable tactics when line prosecutors had refused to do so?
- Why did senior Department officials fail to see the clear connection between Fast and Furious and prior flawed operations they have admitted they knew about?
- When did the Department first learn about Assistant Attorney General Lanny Breuer's February 2011 suggestion of gunwalking, and why did the Department wait so long before telling Congress about it?
- A year later, will the responsible senior Department officials be held accountable?

Last summer, the former Acting ATF Director said that “it appears thoroughly to us that the Department is really trying to figure out a way to push the information away from their political appointees at the Department.”⁶

- Is the Department “pushing information away” from its political appointees?

This list of questions is far from exhaustive. You maintain that the Department remains committed to “work[ing] to accommodate the Committee’s legitimate oversight needs.”⁷ Unfortunately, the Department’s actions do not live up to this rhetoric. Instead, it has chosen to prolong the investigation unnecessarily and then impugn the motives of Congressional investigators. Your comment at the February 2 hearing is emblematic of the Department’s posture with respect to the investigation:

But I also think that if we are going to really get ahead here, if we are really going to make some progress, we need to put aside the political

⁶ Melson Transcript at 124.

⁷ Holder Testimony, *supra* note 2.

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gotcha games in an election year and focus on matters that are extremely serious.⁸

This attitude with respect to a legitimate congressional inquiry, which seems to have permeated the Department's ranks, is deeply disappointing. Had the Department demonstrated willingness to cooperate with this investigation from the outset – instead of attempting to cover up its own internal mismanagement – this investigation likely would have concluded well before the end of 2011. In reality, **it is the Department that is playing political gotcha games**, instead of allowing a co-equal branch of government to perform its constitutional duty to conduct oversight of the Executive Branch.

Subpoena Compliance

Complying with the Committee's subpoena is not optional. Indeed, the failure to produce documents pursuant to a congressional subpoena is a violation of federal law.⁹ The Department's letter suggests that its failure to produce, among other things, "deliberative documents and other internal communications generated in response to congressional oversight requests" is based on the premise that "disclosure would compromise substantial separation of powers principles and Executive Branch confidentiality interests." Your February 4, 2011, cut-off date of providing documents to the Committee is entirely arbitrary, and comes from a "separation of powers" privilege that does not actually exist.¹⁰

The Department has not cited any legal authority to support this new, extremely broad assertion. To the contrary, as you know, Congress possesses the "power of inquiry."¹¹ Furthermore, "the issuance of a subpoena pursuant to an authorized investigation is . . . an indispensable ingredient of lawmaking."¹² Because the Department has not cited any legal authority as the basis for withholding documents, or provided the Committee with a privilege log with respect to documents withheld, its efforts to accommodate the Committee's constitutional obligation to conduct oversight of the Executive Branch are incomplete.

By any measure, the Department has obstructed and slowed our work. It has now been a year since the Department sent Senator Grassley the February 4, 2011, letter containing false information. That letter, however, is but one example of interference with our progress. Since then, some documents produced to Congress have been so heavily redacted as to render them

⁸ *Id.*

⁹ 2 U.S.C. § 192 states, in pertinent part:

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before . . . any committee of either House of Congress, willfully makes default . . . shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months.

¹⁰ Transcribed Interview of Gary Grindler at 22 (Dec. 14, 2011).

¹¹ *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).

¹² *Committee on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 75 (D.D.C. 2008) (citing *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 505 (1975)).

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unintelligible. Other documents have been intentionally withheld for months, only to be released on the eve of testimony by Department officials.¹³ Yet others, made available for *in camera* review, have been repetitive, publically available on the Internet, or non-responsive, thus wasting the limited time of Committee staff. There appears to be no rhyme or reason why some documents are redacted, only provided *in camera*, or withheld entirely. Further, it is difficult to understand why the Department took nearly a year to produce documents the Committee had already received from whistleblowers in early 2011.

In May 2011, the Department took the position that the Committee should postpone taking the transcribed interview of a federal firearms licensee (FFL) until the conclusion of an ongoing criminal prosecution -- likely to last for years until all appeals are exhausted. In the original briefing to Senate Judiciary Committee staff on February 10, 2011 -- just days after the now-withdrawn February 4, 2011, letter -- Department representatives suggested that whistleblowers who first brought to light the questionable techniques used in Fast and Furious lacked the requisite experience to make such allegations. They further indicated that FFLs had not expressed concerns about suspicious transactions and that ATF would never compel these gun dealers to make transactions against their better judgment. Both of these statements were completely false.

Transcribed Interviews

With respect to transcribed interviews, the Department's ever-evolving policy seems designed to thwart the progress of the congressional investigation. First, the Department refused to allow line attorneys to testify in transcribed interviews. Next, it prevented first-line supervisors from testifying in such interviews. Most recently, the Department has indicated that the Committee may not take the transcribed interviews of Senate-confirmed Department officials.

Since July, the Committee has been attempting to interview lawyers who were not only involved in Fast and Furious during the pendency of the operation but also those who led the Department-created task force to examine the program *ex post facto*. We requested that the Department make Emory Hurley, Michael Morrissey, and Patrick Cunningham of the U.S. Attorney's Office in Arizona available for transcribed interviews. It was not until January 2012, some seven months after the request was first made, that we were able to arrange an interview date for Cunningham. Shortly thereafter and without warning, Cunningham asserted his Fifth Amendment privilege, refused to testify, and vanished from the Department. The Department will not make Mr. Morrissey available until at least March 2012, and it still refuses to make Mr. Hurley available.

The Department has also refused to schedule dates with several other witnesses. For example, last week we were told that Assistant Attorney General Lanny Breuer was not available

¹³ On Friday January 27, 2012, just days before the Attorney General testified before Congress, documents were delivered to the Senate Judiciary Committee so late in the evening that a disc of files had to be slipped under the door. This is not only an extreme inconvenience for congressional staff but also deprives staff of the ability to review the materials in a timely manner.


The Honorable Eric H. Holder, Jr.
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for a transcribed interview, but rather only for full Committee hearing testimony. These repeated refusals leave us with the strong impression that the Department has no interest in allowing Congress to conduct a complete investigation. Key Department employees possess factual information integral to our investigation. The only way to get this information is through transcribed interviews. Still, the Department continues to deny Congress access to these fact witnesses, and so questions about Fast and Furious continue to linger.

The Committee has been more than patient in dealing with Department representatives to obtain the information it requires. Nearly four months have passed since I authorized your subpoena. During that time, the Department's progress has been unacceptably slow. So far, we have not received a single document in 14 out of 22 categories in the subpoena schedule. Thus, nearly two thirds of these categories remain completely unanswered. Sub-parts of the other 8 categories also remain unanswered.

It is impossible to end our investigation with the current level of cooperation we are receiving from the Department. Rather, the Committee requires the full cooperation of the Department of Justice. This is not an "election year political 'gotcha' game," but rather a bipartisan sentiment. As Ranking Member Cummings promised the family of slain Border Patrol Agent Brian Terry, **"we will not rest until every single person responsible for all of this, no matter where they are, are brought to justice."**¹⁴ I applaud his resolve, and I want to make it clear that Congress will not give up until this accountability has been achieved.

Sincerely,


 Darrell Issa
 Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

¹⁴ *Fast and Furious: Reckless Decisions, Tragic Outcomes: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. (Jun. 15, 2011).

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 15, 2012

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This responds to your letter dated February 8, 2012, which requested information about the content of wiretap applications that may have been generated in the course of the investigation by the Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) known as Operation Fast and Furious. You also asked the Department to move to unseal any such application that may be subject to seal in this pending criminal case.

While we are reviewing your request, we are not in a position to provide a substantive response today as you requested. We will send an identical response to the other Members who joined in your letter to us. We appreciate your patience as we consider the significant issues raised by your letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "m w", likely representing Ronald Weich.

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick Leahy
Chairman

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 15, 2012

The Honorable Patrick Meehan
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Meehan:

This responds to your letter dated February 8, 2012, which requested information about the content of wiretap applications that may have been generated in the course of the investigation by the Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) known as Operation Fast and Furious. You also asked the Department to move to unseal any such application that may be subject to seal in this pending criminal case.

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Ronald Weich
Assistant Attorney General



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 16, 2012

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

Dear Mr. Chairman:

This supplements our previous responses to your subpoena dated October 11, 2011, which requested documents regarding the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigation known as Operation Fast and Furious and related matters, and your letter dated September 1, 2011, requesting documents and communications of six current or former employees in the United States Attorney's Office for the District of Arizona.

We are delivering today to your office 304 pages of material.¹ We have identified an additional 82 pages that we are prepared to make available at the Department for review by staff of your Committee, as well as staff of the Senate and House Committees on the Judiciary. In addition to your letter of September 1, 2011, these documents are responsive to subpoena items 1 and 2. Consistent with established third-agency practice, we have consulted with the Department of Homeland Security about responsive materials in this collection that implicate its equities and they are enclosed here. We are in the process of consulting with the Department of State about documents that implicate its equities and we will supplement this response when that consultation completed.

To assist the Committee in its oversight duties, we also appreciate the opportunity to provide relevant and necessary context for some of the documents in today's production. Last October, we produced documents reflecting an interest on the part of the Arizona U.S. Attorney's Office in December 2010 and January 2011 in having either the Attorney General or the Deputy Attorney General participate in the late-January 2011 press conference announcing the Fast and Furious indictments. Today's production includes similar documents. As we noted back in October, neither the Attorney General nor the Deputy Attorney General attended that press conference and we have been advised that Dennis Burke, the former U.S. Attorney in

¹ These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques or disclose prosecutorial deliberations, plus limited information implicating individual privacy interests, such as employee cellular phone numbers or information about individuals who have been investigated but not prosecuted. In addition, we have redacted text from multi-subject documents that is not responsive to your requests. In response to requests from Chairman Smith and Chairman Leahy, we will deliver to the House and Senate Committees on the Judiciary the same documents that we deliver to you.

The Honorable Darrell E. Issa
Page Two

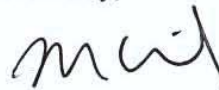
Arizona, has no recollection of raising the issue either with the Attorney General or Deputy Attorney General.

The Committee has already been made aware that, on the same day the Fast and Furious indictment was unsealed, the Department announced indictments in the Arizona case known as Flores. We previously have produced a press release dated January 25, 2011 announcing indictments in those two cases and related emails. Because the Flores case was charged by the Department's Criminal Division, a quote from the Criminal Division was included in the joint press release. Today's production includes additional emails relating to that press release.

Finally, we produce today a January 15, 2011 email among attorneys within the Arizona U.S. Attorney's Office reflecting that Mr. Burke was preparing for a telephone call with the Deputy Attorney General. The email is dated exactly one week after the tragic shooting of Representative Gabrielle Giffords and others in Tucson. In advance of the call, Mr. Burke solicited from attorneys in his office possible subjects to cover with the Deputy Attorney General. The majority of topics related to the Tucson shooting. One suggested topic was the status of the investigation relating to the murder of Customs and Border Protection Agent Brian Terry. As the Committee is aware, Mr. Burke has testified that, during this period, he was unaware of the inappropriate tactics used in Operation Fast and Furious.

We hope that this information is helpful. Our efforts to identify documents responsive to your subpoena are continuing and we will supplement this response when additional documents become available. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 16, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed on CD please find 304 pages of material that we produced to the House Oversight and Government Reform Committee (HOCR) today.¹ We have identified an additional 82 pages that we are prepared to make available at the Department for review by staff of your Committee, as well as staff of the House Committee on the Judiciary. In addition to the September 1, 2011 letter from Chairman Issa and Senator Grassley, these documents are responsive to Chairman Issa's subpoena items 1 and 2. Consistent with established third-agency practice, we have consulted with the Department of Homeland Security about responsive materials in this collection that implicate its equities and they are enclosed here. We are in the process of consulting with the Department of State about documents that implicate its equities and we will supplement this response when that consultation completed.

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The Honorable Patrick Leahy
Page Two

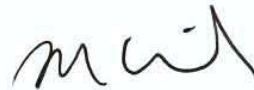
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The Committee has already been made aware that, on the same day the Fast and Furious indictment was unsealed, the Department announced indictments in the Arizona case known as Flores. We previously have produced a press release dated January 25, 2011 announcing indictments in those two cases and related emails. Because the Flores case was charged by the Department's Criminal Division, a quote from the Criminal Division was included in the joint press release. Today's production includes additional emails relating to that press release.

Finally, we produce today a January 15, 2011 email among attorneys within the Arizona U.S. Attorney's Office reflecting that Mr. Burke was preparing for a telephone call with the Deputy Attorney General. The email is dated exactly one week after the tragic shooting of Representative Gabrielle Giffords and others in Tucson. In advance of the call, Mr. Burke solicited from attorneys in his office possible subjects to cover with the Deputy Attorney General. The majority of topics related to the Tucson shooting. One suggested topic was the status of the investigation relating to the murder of Customs and Border Protection Agent Brian Terry. As the Committee is aware, Mr. Burke has testified that, during this period, he was unaware of the inappropriate tactics used in Operation Fast and Furious.

We hope that this information is helpful. Our efforts to identify documents responsive to Chairman Issa's subpoena are continuing and we will supplement this response when additional documents become available. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'm w', likely representing Ronald Weich.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles E. Grassley
Ranking Minority Member

Congress of the United States
Washington, DC 20515

February 24, 2012

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
 Attorney General
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, DC 20530

Dear Mr. Attorney General:

For almost an entire year, we have been requesting that the Department provide information about the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF's) knowledge regarding Otilio Osorio's straw purchasing activities. We are interested in him because he was the straw purchaser of the weapon used in the murder of Immigration and Customs Enforcement (ICE) Agent Jaime Zapata on February 15, 2011.

Letters from Senator Grassley on March 4, 2011, and March 28, 2011, provided documentation that, on September 17, 2010, ATF traced trafficked weapons to Otilio's brother and co-habitant, Ranferi Osorio, as well as the Osorio brothers' next-door neighbor, Kelvin Morrison. Senator Grassley further inquired why these facts did not prompt ATF to conduct a "knock and talk" with these individuals or begin conducting surveillance on them.

On November 9, 2010, as part of a Drug Enforcement Administration (DEA) investigation, ATF witnessed Otilio and Ranferi Osorio providing 40 weapons with obliterated serial numbers to an undercover ATF informant for the purpose of trafficking the weapons to Mexico. Surprisingly, they were not arrested for another three and a half months. Senator Grassley further inquired why they were not arrested at the time they were observed to be in possession of weapons with obliterated serial numbers, which is a crime. He asked whether ATF or DEA continued to surveil the Osorio brothers between early November and their arrest, following the discovery that Otilio Osorio's weapon was used in the murder of Agent Zapata. Inexplicably, the Department has failed to provide substantive responses to any of these letters, including a subsequent follow-up letter on this matter, sent jointly on October 25, 2011.

ATF has tried to distinguish this case from Operation Fast and Furious and to justify its failure to intervene. In one news article on the Osorio brothers, ATF North Texas spokesperson Tom Crowley is quoted as saying: "[T]aking them down and arresting them at that time would have possibly jeopardized that investigation. . . . None of the tactics used in this investigation were anything similar to what was used in Arizona's Fast and Furious, including intentionally walking firearms across the border."¹ Yet failure to conduct surveillance of individuals known to be trafficking weapons to Mexico was a core problem with the tactics used in Fast and

¹ Jack Douglas Jr., "Fort Worth Gun Falls Into Wrong Hands, Kills U.S. Agent," CBS 11 News (Feb. 15, 2011), available at <http://dfw.cbslocal.com/2012/02/15/fort-worth-gun-falls-into-wrong-hands-kills-u-s-agent>.

The Honorable Eric H. Holder, Jr.
 February 24, 2012
 Page 2 of 3

Furious. Lack of surveillance is what allowed such firearms to reach the border. The same irresponsible tactic appears to have been used in this matter.

Now, news reports indicate that this may have been an issue with a purchaser of another one of the weapons found at Agent Zapata's murder scene.² Records indicate that ATF opened a case against Manuel Barba in June 2010,³ approximately two months before he took possession on August 20, 2010, of the rifle which was later trafficked to Mexico and also used in the murder of Agent Zapata.⁴ Additionally, the documents show that ATF had indications in October 2010 that Barba was obliterating serial numbers on weapons, the possession of which would have been a prosecutable offense.⁵ At least as of December 13, 2010, ATF also was aware that Barba was still under indictment for a 2006 state case, and thus had been unlawfully receiving firearms while under indictment.⁶ However, a warrant was not issued for Barba's arrest in this case until February 14, 2011.⁷

To assist us in better understanding of the circumstances leading up to the murder of Agent Zapata, please answer the following questions:

1. Did ATF have any contact with Barba, such as a "knock and talk," between June 7, 2010, when Barba's case was opened, and August 20, 2010, when he received the weapon that would later be used in the murder of Agent Zapata?
2. When did ATF agents first contact Barba in connection with this case?
3. Records indicate Federal Firearms Licensee (FFL) interviews were conducted in this case by early October 2010. When were FFLs first contacted by ATF in this case?
4. What information about Barba or the individuals known to be working with him as straw purchasers was communicated to the FFLs?
5. What cooperation did any FFLs agree to provide ATF in this investigation?
6. Did any FFLs ever provide ATF with advance or contemporaneous (within three days) notice of purchases by the individuals suspected to be working with Barba as straw purchasers?
7. Why was Barba not arrested in October 2010 when ATF obtained audio evidence that Barba was obliterating serial numbers before trafficking weapons to Mexico?

² Sharyl Attkisson, "Second gun used in ICE agent murder linked to ATF undercover operation," CBS News (Feb. 22, 2012), available at http://www.cbsnews.com/8301-31727_162-57383089-10391695/second-gun-used-in-ice-agent-murder-linked-to-atf-undercover-operation.

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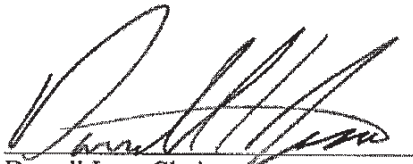
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The Honorable Eric H. Holder, Jr.
 February 24, 2012
 Page 3 of 3

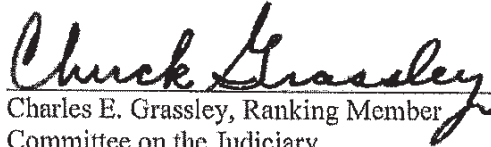
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10. How many weapons purchased between June 7, 2010, and February 14, 2011, by the straw purchasing ring associated with Barba were interdicted?

Thank you in advance for ensuring your response arrives no later than March 9, 2012. Should you have any questions regarding this letter, please contact Tristan Leavitt of Ranking Member Grassley's staff at (202) 224-5225 or Henry Kerner of Chairman Issa's staff at (202) 225-5074.



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

Sincerely,



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

cc: The Hon. B. Todd Jones, Acting Director
 Bureau of Alcohol, Tobacco, Firearms and Explosives

The Hon. Michele M. Leonhart, Administrator
 U.S. Drug Enforcement Administration

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

The Hon. Patrick Leahy, Chairman
 Committee on the Judiciary, U.S. Senate

Congress of the United States
Washington, DC 20510

February 27, 2012

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

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The Honorable Eric H. Holder, Jr.
 February 27, 2012
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The Honorable Eric H. Holder, Jr.
 February 27, 2012
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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

cc: The Hon. B. Todd Jones, Acting Director
 Bureau of Alcohol, Tobacco, Firearms and Explosives

The Hon. Michele M. Leonhart, Administrator
 U.S. Drug Enforcement Administration

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

The Hon. Patrick Leahy, Chairman
 U.S. Senate, Committee on the Judiciary



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 27, 2012

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

Dear Mr. Chairman:

In advance of the Committee's interview scheduled with former Associate Deputy Attorney General Ed Siskel, we are enclosing with this letter two emails related to the Southwest Border Strategy Group. These documents fall outside the terms of the Committee's subpoenas and letter requests, but may pertain to your investigative interests.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate

The Honorable Darrell E. Issa
Page Two

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

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

March 2012

March 2012



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 2, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

In addition to the documents we provided to you on February 27th and February 28th, we are delivering today to your office 26 pages of material that we produced to the House Oversight and Government Reform Committee (HOCR) today.¹ We have identified an additional 17 pages that we are prepared to make available at the Department for review by staff of your Committee, as well as staff of the House Committee on the Judiciary. In addition to the September 1, 2011 letter from Chairman Issa and Senator Grassley, these documents are responsive to Chairman Issa's subpoena items 4 and 5. Consistent with established third-agency practice, we are in the process of consulting with the Department of Homeland Security and the Department of State regarding documents that implicate their equities. We will supplement this response when those consultations are completed.

To assist the Committee in its oversight duties, we appreciate the opportunity to provide relevant and necessary context for some of the documents in today's production. We have previously produced to you documents relating to the Wide Receiver and Medrano investigations. Today's production includes additional documents relating to those matters. For example, an email dated September 22, 2011 from an FFL to the gang unit prosecutor handling the Wide Receiver matter is enclosed. HOCR DOJ 006278.² The email appeared as an exhibit to a motion to dismiss charges that was filed in court by a defendant in one of the Wide Receiver prosecutions. The motion to dismiss was denied by the judge in the case shortly after it was filed. Also included in today's production is an ATF Operational Plan from the Wide Receiver

¹ These documents bear limited redactions to protect law-enforcement sensitive details, including text that would identify targets and sensitive techniques, plus limited information implicating individual privacy interests. In response to requests from Chairman Smith, we will deliver to the House Committee on the Judiciary the same documents that we deliver to you.

² The highlighting in the document appears in the version that the defendant filed with the court.

The Honorable Patrick J. Leahy
Page 2

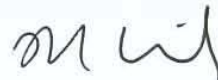
investigation dated May 31, 2007. HOCR DOJ 006279-80. The Operational Plan reflects ATF's intention to conduct surveillance at an FFL where firearms were to be purchased by suspects in the Wide Receiver case and to "subsequently follow these individuals to their border crossing at the U.S./Mexico border, where Mexican enforcement authorities will follow the firearms to their final destination in Mexico." HOCR DOJ 006279.

Also being produced today is a criminal complaint filed in the Medrano matter on December 10, 2008.³ HOCR DOJ 006281-86. Paragraphs 11 and 12 of the Complaint reflect that, on or about June 17, 2008, Medrano and another individual went to an FFL and purchased 6 rifles. HOCR DOJ 006283. The complaint indicates that the two men "placed the six (6) rifles in the back seat of their vehicle" and drove "to the Douglas Port of Entry where they both entered into Mexico with at least" those six rifles "in the vehicle." HOCR DOJ 006283. An ATF Operational Plan dated December 11, 2008 is also included with our production. HOCR DOJ 006288-89. It appears to provide more information about these events. It says that, in June 2008, agents "observed" Medrano and the other individual "place the firearms in the backseat and trunk. Agents and officers surveilled the vehicle to Douglas, AZ where it crossed into Mexico at the Douglas Port of Entry (POE) before a stop at the border could be coordinated with CBP." HOCR DOJ 006289. Finally, we produce today an excerpt from the ATF case management log for the Medrano matter. The log reflects that, in October 2008, an ATF agent discussed the Medrano case with an Assistant United States Attorney, who advised the agent that she was "uneasy with straw cases. Advised [sic] that purchases followed by immediate border crossings and two traces define pc." HOCR DOJ 006287.

The Wide Receiver and Medrano documents discussed above appear to reflect instances where firearms were allowed to cross the border in an uncontrolled fashion with no immediate interdiction by Mexican law enforcement authorities on the other side of the border. Such uncontrolled deliveries to Mexico were and are unacceptable.

We hope this information is helpful. Our efforts to identify documents responsive to Chairman Issa's subpoena are continuing and we will supplement this response when additional documents become available. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles E. Grassley
Ranking Minority Member

³ As noted on the document, the complaint was unsealed by the court on January 8, 2009.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 2, 2012

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

Dear Mr. Chairman:

This supplements our previous responses to your subpoena dated October 11, 2011, which requested documents regarding the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigation known as Operation Fast and Furious and related matters, and your letter dated September 1, 2011, requesting documents and communications of six current or former employees in the United States Attorney's Office of the District of Arizona.

In addition to the documents we provided to you on February 27th and February 28th, we are delivering today to your office 26 pages of material.¹ We have identified an additional 17 pages that we are prepared to make available at the Department for review by staff of your Committee, as well as staff of the Senate and House Committees on the Judiciary. In addition to your letter of September 1, 2011, the documents are responsive to subpoena items 4 and 5. Consistent with established third-agency practice, we are in the process of consulting with the Department of Homeland Security and the Department of State regarding documents that implicate their equities. We will supplement this response when those consultations are completed.

To assist the Committee in its oversight duties, we appreciate the opportunity to provide relevant and necessary context for some of the documents in today's production. We have previously produced to you documents relating to the Wide Receiver and Medrano investigations. Today's production includes additional documents relating to those matters. For example, an email dated September 22, 2011 from an FFL to the gang unit prosecutor handling the Wide Receiver matter is enclosed. HOCR DOJ 006278.² The email appeared as an exhibit to a motion to dismiss charges that was filed in court by a defendant in one of the Wide Receiver prosecutions. The motion to dismiss was denied by the judge in the case shortly after it was

¹ These documents bear limited redactions to protect law-enforcement sensitive details, including text that would identify targets and sensitive techniques, plus limited information implicating individual privacy interests. In response to requests from Chairman Smith and Chairman Leahy, we will deliver to the House and Senate Committees on the Judiciary the same documents that we deliver to you.

² The highlighting in the document appears in the version that the defendant filed with the court.

The Honorable Darrell E. Issa
Page 2

filed. Also included in today's production is an ATF Operational Plan from the Wide Receiver investigation dated May 31, 2007. HOCR DOJ 006279-80. The Operational Plan reflects ATF's intention to conduct surveillance at an FFL where firearms were to be purchased by suspects in the Wide Receiver case and to "subsequently follow these individuals to their border crossing at the U.S./Mexico border, where Mexican enforcement authorities will follow the firearms to their final destination in Mexico." HOCR DOJ 006279.

Also being produced today is a criminal complaint filed in the Medrano matter on December 10, 2008.³ HOCR DOJ 006281-86. Paragraphs 11 and 12 of the Complaint reflect that, on or about June 17, 2008, Medrano and another individual went to an FFL and purchased 6 rifles. HOCR DOJ 006283. The complaint indicates that the two men "placed the six (6) rifles in the back seat of their vehicle" and drove "to the Douglas Port of Entry where they both entered into Mexico with at least" those six rifles "in the vehicle." HOCR DOJ 006283. An ATF Operational Plan dated December 11, 2008 is also included with our production. HOCR DOJ 006288-89. It appears to provide more information about these events. It says that, in June 2008, agents "observed" Medrano and the other individual "place the firearms in the backseat and trunk. Agents and officers surveilled the vehicle to Douglas, AZ where it crossed into Mexico at the Douglas Port of Entry (POE) before a stop at the border could be coordinated with CBP." HOCR DOJ 006289. Finally, we produce today an excerpt from the ATF case management log for the Medrano matter. The log reflects that, in October 2008, an ATF agent discussed the Medrano case with an Assistant United States Attorney, who advised the agent that she was "uneasy with straw cases. Advised [sic] that purchases followed by immediate border crossings and two traces define pc." HOCR DOJ 006287.

The Wide Receiver and Medrano documents discussed above appear to reflect instances where firearms were allowed to cross the border in an uncontrolled fashion with no immediate interdiction by Mexican law enforcement authorities on the other side of the border. Such uncontrolled deliveries to Mexico were and are unacceptable.

We hope this information is helpful. Our efforts to identify documents responsive to your subpoena are continuing and we will supplement this response when additional documents become available. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Minority Member

³ As noted on the document, the complaint was unsealed by the court on January 8, 2009.

The Honorable Darrell E. Issa
Page 3

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate

Congress of the United States
Washington, DC 20510

March 5, 2012

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

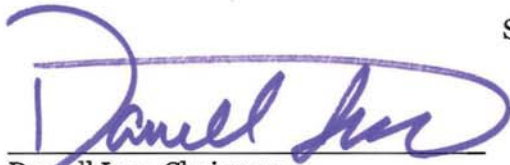
Dear Attorney General Holder:

This letter follows up on information you provided on September 9, 2011, regarding the circumstances in which firearms associated with Operation Fast and Furious were recovered in relation to crimes of violence.¹ As of August 16, 2011, it was our understanding that besides the two weapons found at the Terry murder scene, there had been only one weapon recovered in the U.S. in connection with a violent crime. We also understood that the Department was aware of twenty-eight total weapons recovered in Mexico in connection with violent crimes.

We are interested in learning whether any additional Fast and Furious guns have been seized in the intervening six months since that update. Again, please describe the date and circumstances of each recovery in detail, including the date of each recovery or request, what type of violent crime was indicated on the trace request, the jurisdiction where the firearm was recovered, and its make, model, and serial number.

Thank you in advance for ensuring your response arrives no later than March 12, 2012. Should you have any questions regarding this letter, please contact Tristan Leavitt of Ranking Member Grassley's staff at (202) 224-5225 or Henry Kerner of Chairman Issa's staff at (202) 225-5074.

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

cc: Mr. B. Todd Jones, Acting Director
U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives

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

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

¹ Letter from M. Faith Burton for Ronald Weich, Assistant Attorney General for Legislative Affairs Department of Justice, to Darrell Issa, Chairman, House Committee on Oversight and Government Reform, and Charles Grassley, Ranking Member, Senate Committee on the Judiciary (Sep. 9, 2011).

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March 14, 2012
via E-mail

Jason Foster, Minority Counsel
Senate Judiciary Committee
327 Hart Senate Office Building
Washington, DC 20510

Dear Jason,

Today I hand delivered a letter to you the letter is addressed to Chairman Issa and Senator Grassley. The letter inadvertently included the production of the last two pages at tab 4. As discussed, I would like to claw them back. To that end, please contact my assistant Charlie Amuzie at (202) 661-0936 to make arrangements to retrieve those two pages from your office.

Sincerely,



Joshua Levy

Congress of the United States
Washington, DC 20515

March 15, 2012

The Honorable Cynthia A. Schnedar
 Acting Inspector General
 U.S. Department of Justice
 Office of the Inspector General
 950 Pennsylvania Avenue, NW
 Washington, DC 20530

Dear Ms. Schnedar:

We are writing to obtain clarification as to the parameters of your investigation of the significant management failures that occurred in Operation Fast and Furious. Specifically, we want to find out whether you have decided not to interview any political appointees from the Justice Department's Criminal Division, Office of the Deputy Attorney General, or Office of the Attorney General as part of your investigation. Your investigation has been ongoing for almost a year. The Attorney General has repeatedly cited it as a prime example of steps he has taken to get to the bottom of Operation Fast and Furious.

On February 29, 2012, our staffs conducted a transcribed interview of former Associate Deputy Attorney General Edward Siskel. During this interview, we learned that your office has not yet interviewed him regarding his role in Operation Fast and Furious.¹ Given that Siskel was responsible for managing the ATF portfolio in the Office of the Deputy Attorney General, and that he had frequent contact with ATF leadership in conjunction with his duties, this information came as a surprise.

In the Siskel interview, Department counsel, an Associate Deputy Attorney General, was shocked that we asked this question. On the record, this Department representative stated, "**it demonstrates a total lack of [understanding of] what the IG's jurisdiction is**, but go ahead."² Frankly, his response was puzzling, and we now wonder if there is some reason your office cannot or should not interview Siskel.

The Siskel interview was not the first time we have encountered this issue. Apparently, despite the advanced stage of its review, your office has not interviewed several key figures in Fast and Furious. During the Committee's transcribed interview of former Acting Deputy Attorney General Gary Grindler last December, we learned that your office had yet to interview him.³ Grindler acknowledged that he would be a likely witness in your investigation.⁴ He received detailed briefings about the tactics used in Operation Fast and Furious in March 2010,

¹ Transcribed Interview of Edward Siskel, Transcript at 128 (Feb. 29, 2012).

² *Id.* (emphasis added).

³ Transcribed Interview of Gary Grindler, Transcript at 125 (Dec. 14, 2011).

⁴ See *id.* at 116-18.

The Honorable Cynthia A. Schnedar
 March 15, 2012
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and his handwritten notes appear with a presentation about Fast and Furious.⁵ Additionally, Jason Weinstein, a Deputy Assistant Attorney General in the Criminal Division who authorized Fast and Furious wiretap applications, reported that your office had not interviewed him as of January 10, 2012.⁶

Finally, during a briefing delivered to congressional staff on January 20, 2012, we informed representatives of your office that Patrick Cunningham, Criminal Chief of the Arizona U.S. Attorney's Office, had asserted his Fifth Amendment privilege to Congress a day earlier. The Committee had asked Mr. Cunningham to appear at a deposition on January 24, 2012. Prior to that, the Department had represented to Congress that Mr. Cunningham was the most appropriate person from the U.S. Attorney's Office to interview regarding Fast and Furious. Your staff agreed that Mr. Cunningham's refusal to testify before the Committee and stated intention to take the Fifth was a serious development. Further, your staff told congressional staff present that they would make arrangements immediately to speak with Mr. Cunningham before he left the Department.

We have had previous concerns with the independence of your office with respect to this investigation. On March 8, 2011, Ranking Member Grassley wrote to the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency expressing these concerns about your office's independence. On June 22, 2011, Chairman Issa wrote to you regarding the influence of potentially improper political and other concerns on the investigation. On September 20, 2011, we both wrote to you regarding your decision to turn over audio recordings obtained through the investigation to the Arizona U.S. Attorney's Office.

These recent revelations raise serious questions about your investigation. As such, please provide answers to the following questions as soon as possible, but by no later than noon on March 21, 2012:

- 1) Has your office requested to interview Mr. Siskel? If so, what was his response? If not, why not?
- 2) Has your office requested to interview Mr. Grindler? If not, why not?
- 3) Has your office requested to interview Mr. Weinstein? If not, why not?
- 4) Has your office interviewed any other current or former political appointees in the Justice Department's Office of the Attorney General, Office of the Deputy Attorney General, or Criminal Division in connection with Fast and Furious? If not, please explain why not.

⁵ See *"Operation the Fast and the Furious,"* Mar. 12, 2010 [HOCR 002819 – 002823].

⁶ See Transcribed Interview of Jason Weinstein, Transcript at 197 (Jan. 10, 2012).

The Honorable Cynthia A. Schnedar
 March 15, 2012
 Page 3

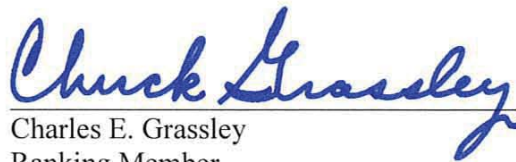
- 5) Did your office request to interview Mr. Cunningham after you were told of his assertion of the Fifth Amendment privilege and before he left the Department? If so, did it complete the interview prior to his departure? If not, why not?
- 6) Are there any restrictions on your ability to interview political appointees?
- 7) Have any other current or former Administration officials declined your request for an interview? If so, why were you denied access to these witnesses and what steps did you take to obtain their testimony?

If you have any questions regarding this letter, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. Thank you for your attention to this important matter.

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

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

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

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 16, 2012

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

Dear Mr. Chairman:

This letter supplements our previous responses to your subpoena dated October 11, 2011, which requested documents regarding the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigation known as Operation Fast and Furious and related matters, and your letter dated September 1, 2011, requesting documents and communications of six current or former employees in the United States Attorney's Office of the District of Arizona. This letter also describes the Department's response to the Committee's subpoenas and numerous other requests regarding Operation Fast and Furious.

As you know, soon after learning in early 2011 of the inappropriate tactics allegedly employed in Fast and Furious, the Attorney General asked the Department's Inspector General to conduct a review. He also directed the Deputy Attorney General to make clear to Department personnel that such inappropriate tactics should not be utilized. Since these events, there is new leadership in place at both ATF and the Arizona United States Attorney's Office (USAO). And, as enumerated in our January 27, 2012 letter, both ATF and the Department as a whole have adopted important reforms, including more rigorous oversight of significant gun trafficking investigations and clarification of ATF's firearms transfer policy. These reforms are designed to ensure that the inappropriate tactics used in Fast and Furious and in operations in the prior administration, including the Wide Receiver, Medrano, and Hernandez matters, will not be utilized in the future. Moreover, the Department remains firmly committed to eliminating illicit gun trafficking networks and bringing the killers of Customs and Border Protection Agent Brian Terry to justice.

The Honorable Darrell E. Issa

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I. Today's Production

We are delivering today to your office 357 pages of material.¹ In addition to your letter of September 1, 2011, the documents are responsive to subpoena items 1, 4, 5, and 21. Consistent with established third-agency practice, we are in the process of consulting with the Department of Homeland Security and the Department of State regarding documents that implicate their equities. We will supplement this response when those consultations are completed.

To assist the Committee in its oversight duties, we appreciate the opportunity to provide relevant and necessary context for some of the documents in today's production. The majority of today's documents relate to the Fidel Hernandez investigation that occurred in 2007, and about which we previously have provided documents. Today's production reflects that, in July 2007, ATF anticipated that Hernandez and his confederates would be prosecuted in Mexico by Mexican authorities. (HOCR DOJ 006300) Consistent with this, a September 26, 2007 ATF Operational Plan anticipated a purchase of weapons by Hernandez from an FFL in Arizona and that ATF would surveil Hernandez "to the border, and Mexico police will continue with the operation." (HOCR DOJ 006305) In an email that same day, ATF's William Newell remarked, "This has the potential to be a very good 'leap of faith' for us and something the Mexicans have been wanting us to do for a long time. I'm all for it and have cleared it with the U.S. Attorney's Office." (HOCR DOJ 006307) Another email that same day prepared by a different ATF official reflected that Hernandez and a confederate "have collectively purchased over 200 firearms" and that four of those weapons were associated with a kidnapping investigation in Mexico. (HOCR DOJ 006336) Today's production reflects, however, that on the day of the operation, ATF agents observed Hernandez's vehicle cross the border but "the ATF MCO did not get a response from the Mexican side until 20 minutes later, who then informed us that they did not see the vehicle cross." (HOCR DOJ 006348)

Today's documents indicate that, by early October 2007, ATF was considering another coordinated effort with Mexico on the case. Newell wrote to an ATF official on October 2, 2007, "We are potentially going to give it another shot this weekend if everything goes as planned." (HOCR DOJ 006364) The initial Operational Plan for this event reflected that ATF would "coordinate with Mexican authorities to conduct a vehicle stop of the target vehicle after it transports the firearms into Mexico" (HOCR DOJ 006396), but a later version of the plan indicated that "agents will direct a uniformed Border Patrol stop. Agents will take subjects into custody and conduct post-arrest interview." (HOCR DOJ 006404) An ATF After Action Report dated October 20, 2007 said that "Surveillance was conducted without incident – no enforcement action taken." (HOCR DOJ 006409) A later Operational Plan dated November 1, 2007

¹ These documents bear limited redactions to protect law-enforcement sensitive details, including text that would identify targets and sensitive techniques, plus limited information implicating individual privacy interests. In addition, we have redacted text that implicates equities of the Departments of State and Homeland Security. In response to requests from Chairman Smith and Chairman Leahy, we will deliver to the House and Senate Committees on the Judiciary the same documents that we deliver to you.

The Honorable Darrell E. Issa
Page 3

indicates that ATF again intended to surveil a purchase of weapons by Hernandez and his confederates in Arizona and “Once the subjects cross into Mexico, ATF attache’s [sic] will liaison with Mexican authorities to coordinate the arrest of the subjects.” (HOCR DOJ 006443) The email covering this Operational Plan says, in part, “keep your fingers crossed maybe we’ll be successful this time.” (HOCR DOJ 006442)

A November 2007 briefing paper prepared by ATF discusses the Hernandez case, saying that “ATF Phoenix has been attempting to complete one of the first Federal cross-border firearms trafficking investigations with ultimate prosecution by the Republic of Mexico Attorney Generals [sic] Office. Unfortunately this case has been a trial and error process.” (HOCR DOJ 006458) The briefing paper goes on to say, “Nonetheless we believe we have made breakthroughs in coordinating such operations through PFP-CENAPI and we want to thank Mexico City Office for the diligence. I think we’re going to ‘knock one out of the park’ soon.” (HOCR DOJ 006458) A November 14, 2007 email among ATF officials reflects that a briefing paper on the case was prepared “For meeting with Mex. Attorney General and U.S. Attorney General.” (HOCR DOJ 006390) The email reflects that ATF “briefed DOJ on this case and told them it is ongoing. They asked for a BP. Attached.” (HOCR DOJ 006390) The attached briefing paper discusses the unsuccessful efforts that ATF had made to that date to enlist the support of Mexican law enforcement authorities in making a stop of Hernandez in Mexico. (HOCR DOJ 006392) The briefing paper nevertheless reflected that ATF’s investigative plan continued to be for Hernandez and a confederate to be “arrested on the Mexican side of the border with a large load of ‘weapons of choice.’” (HOCR DOJ 006393)

The latest Operational Plan for the case in today’s production is dated November 26, 2007, and says that ATF intended to surveil a purchase of weapons in Arizona by Hernandez and confederates and “units will then follow the vehicle and its occupants from the FFL in Phoenix, AZ to the Mexican port of entry in Nogales, Arizona. Once the subjects cross into Mexico, ATF attache’s [sic] will liaison with Mexican authorities to coordinate the arrest of the subjects.” (HOCR DOJ 006489) However, an After Action Report dated that same day indicates that “Contact made w/ F/A trafficking suspects at border, 2 arrested for conspiracy to violate Arms Control Export Act. Nine firearms seized.” (HOCR DOJ 006494)

Also in today’s production is an affidavit and statement of probable cause filed in the Medrano case.² (HOCR DOJ 006603-006606) We previously have produced documents relating to the Medrano matter. The affidavit reflects that, on June 17, 2008, ATF agents and local police officers observed Medrano and an associate “purchase six (6) ‘weapons of choice’ firearms from an FFL in Tucson, Arizona and place them in the back seat of the associate’s vehicle.” (HOCR DOJ 006605) While the agents briefly lost contact with Medrano’s vehicle following the purchase, they ultimately found it in a parking lot in Douglas, Arizona. “The vehicle then exited the parking lot with Alejandro MEDRANO driving and immediately crossed the International Border through the Douglas POE. Your affiant believes that the firearms were still in the vehicle.” (HOCR DOJ 006605) An ATF record documenting the events of that day

² The redactions in the document appear in the version that was unsealed by the court in the Medrano case.

The Honorable Darrell E. Issa
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says, under the heading “Type of Operation,” “Buy Walk/Surveillance.” (HOCR DOJ 006598) An ATF Operational Plan dated August 2008 reflects an ATF operation in the case in which ATF agents would surveil a purchase of weapons by Medrano and his cohorts in Arizona and “Following any purchases, agents and officers will conduct surveillance on the vehicle and the individuals in an attempt to determine the firearms [sic] final destination.” (HOCR DOJ 006602) The Operational Plan indicates that “If determined that the target vehicle intends to cross into Mexico, SA Garcia will coordinate with Mexican law enforcement to continue the surveillance into Mexico.” (HOCR DOJ 006602) However, “if Mexican authorities are unable to respond, SA Garcia will coordinate a stop on the identified vehicle at the Port of Entry into Mexico[.]” (HOCR DOJ 006602)

We previously have produced to you communications between former Arizona U.S. Attorney Dennis Burke and former Deputy Chief of Staff to the Attorney General Monty Wilkinson from the December 2010 time period that relate to whether the Attorney General might attend the January 2011 press conference announcing the Fast and Furious indictments. Today’s production contains an additional email on this subject dated December 21, 2010 in which Mr. Burke tells Mr. Wilkinson “I would not recommend the AG announce this case. I can explain in detail at your convenience. Thx.” (HOCR DOJ 006614) Mr. Wilkinson replies, “Ok. Family obligation tonight. I’ll call tomorrow. Thanks.” (HOCR DOJ 006614) We have previously advised you that neither Mr. Burke nor Mr. Wilkinson recalls the specifics of these exchanges.

Also in today’s production is a draft of a speech delivered by then-Deputy Attorney General David Ogden in Albuquerque, New Mexico on June 30, 2009 at an ATF Firearms Trafficking Summit.³ (HOCR DOJ 006607-006613) The draft in today’s production, and the version prepared for delivery, include the following language:

As you know, firearms trafficking cases take time to develop and are not always glamorous. Prosecuting individual straw purchasers may not seem in isolation to have a lot of jury appeal or to be making a dent in the trafficking problem. But that straw purchase was not a victimless “paperwork” violation – it was the action that provided the guns to the drug trafficker, who used them in horrific acts of violence. [By] purs[u]ing that seemingly unglamorous case each of you – as prosecutors and agents – help reduce violence outside your jurisdictions.

(HOCR 006612)

Finally, we previously have produced weekly reports to the Attorney General from NDIC for a period in 2010 that referenced the Fast and Furious investigation. Today, we produce additional NDIC weekly reports from the period after the Fast and Furious indictments were

³ The version of this speech as prepared for delivery is available on the Department’s website at <http://www.justice.gov/dag/speeches/2009/dag-speech-090630.html>.

The Honorable Darrell E. Issa
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announced in 2011 that refer to that matter. These post-indictment references do not include substantive discussion of the case but simply reflect continued activity by NDIC during the post-indictment phase of the matter.

II. The Department Is Working in Good Faith to Respond to the Committee's Subpoenas and Related Requests for Information

The Department has and will continue to work in good faith to respond to your subpoenas and cooperate with your requests for information about this matter. Indeed, consistent with our recent practice, we intend to continue making documents available on a rolling basis approximately twice a month until our production is complete.

To date, we have provided over 7,200 pages of documents to the Committee as part of more than 40 separate productions. Since our first production in response to the Committee's March 31, 2011 subpoena to ATF, and continuing with the Department's productions in response to the October 11, 2011 subpoena, we have endeavored to produce and make documents available to the Committee on a regular basis; more recently, we have done so on a rolling basis approximately twice each month. In addition, we have provided information informally to Committee staff and provided briefings as requested by the Committee. We intend to continue our rolling production schedule until we have produced all responsive documents to which the Committee is entitled, consistent with longstanding policies of the Executive Branch across administrations of both parties.

The Department has devoted significant information technology resources and personnel to responding to the Committee's numerous requests. We have collected a large volume of emails, documents and data from approximately 240 custodians in various Department divisions and components. In an effort to ensure that we had access to potentially responsive information, we typically collected electronic records of relevant custodians regardless of the date and subject matter of those materials. In addition, we collected and processed electronically stored information that derived from overlapping universes of data (*e.g.*, from active data systems, archival systems or backup tapes), which resulted in significant duplication in our data set. After de-duplication, broad search terms were then used in an effort to identify information to which the Committee is entitled. Because we collected and processed records so broadly, our data set was comprised of an overwhelming number of non-responsive materials.

As part of our effort to be thorough, we have learned, and want to advise you, that there are some gaps in electronic databases of the Arizona USAO and of ATF that date back to 2006 and may relate to some electronic records covered by your requests. Specifically, we understand that email from the Arizona USAO for the periods February 2006 to August 2006 and May 2007 to October 2008 is generally not available because the backup tapes for these periods were maintained pursuant to the then-applicable records retention policy established by the Executive Office of United States Attorneys (EOUSA), which required the preservation of backup tapes for no more than six months. We understand that, pursuant to litigation hold instructions from EOUSA in an unrelated matter, some backup tapes of the Arizona USAO from the period August

The Honorable Darrell E. Issa
Page 6

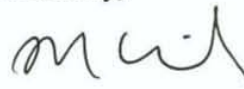
2006 to May 2007 were preserved. After October 2008, the Arizona USAO began using a different Department email system, which automatically archived users' email traffic in real-time and preserved those emails for a period of several years.

We also understand that there are gaps in the data available from ATF's email exchange servers prior to September 2008. Certain backup tapes during that time period are unavailable either because of irrevocable damage to the backup tapes, or, during the period between November 2007 and September 2008, due to procedural errors in the preservation of the tapes. We understand that the damage on certain of these tapes is due to repetitive use of these recycled tapes for backup purposes and physical hardware failures.

III. Conclusion

Our efforts to identify documents responsive to your subpoena are continuing and we will supplement this response when additional documents become available. We will continue to work in good faith to satisfy the Committee's legitimate requests for information. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 16, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner. This letter also describes the Department's response to the Committee's subpoenas and numerous other requests regarding Operation Fast and Furious.

As you know, soon after learning in early 2011 of the inappropriate tactics allegedly employed in Fast and Furious, the Attorney General asked the Department's Inspector General to conduct a review. He also directed the Deputy Attorney General to make clear to Department personnel that such inappropriate tactics should not be utilized. Since these events, there is new leadership in place at both ATF and the Arizona United States Attorney's Office (USAO). And, as enumerated in our January 27, 2012 letter, both ATF and the Department as a whole have adopted important reforms, including more rigorous oversight of significant gun trafficking investigations and clarification of ATF's firearms transfer policy. These reforms are designed to ensure that the inappropriate tactics used in Fast and Furious and in operations in the prior administration, including the Wide Receiver, Medrano, and Hernandez matters, will not be utilized in the future. Moreover, the Department remains firmly committed to eliminating illicit gun trafficking networks and bringing the killers of Customs and Border Protection Agent Brian Terry to justice.

The Honorable Patrick J. Leahy
Page 2

I. Today's Production

We are delivering today to your office 357 pages of material that we produced to the House Oversight and Government Reform Committee (HOCR) today.¹ In addition to the September 1, 2011 letter from Chairman Issa and Senator Grassley, the documents are responsive to Chairman Issa's subpoena items 1, 4, 5, and 21. Consistent with established third-agency practice, we are in the process of consulting with the Department of Homeland Security and the Department of State regarding documents that implicate their equities. We will supplement this response when those consultations are completed.

To assist the Committee in its oversight duties, we appreciate the opportunity to provide relevant and necessary context for some of the documents in today's production. The majority of today's documents relate to the Fidel Hernandez investigation that occurred in 2007, and about which we previously have provided documents. Today's production reflects that, in July 2007, ATF anticipated that Hernandez and his confederates would be prosecuted in Mexico by Mexican authorities. (HOCR DOJ 006300) Consistent with this, a September 26, 2007 ATF Operational Plan anticipated a purchase of weapons by Hernandez from an FFL in Arizona and that ATF would surveil Hernandez "to the border, and Mexico police will continue with the operation." (HOCR DOJ 006305) In an email that same day, ATF's William Newell remarked, "This has the potential to be a very good 'leap of faith' for us and something the Mexicans have been wanting us to do for a long time. I'm all for it and have cleared it with the U.S. Attorney's Office." (HOCR DOJ 006307) Another email that same day prepared by a different ATF official reflected that Hernandez and a confederate "have collectively purchased over 200 firearms" and that four of those weapons were associated with a kidnapping investigation in Mexico. (HOCR DOJ 006336) Today's production reflects, however, that on the day of the operation, ATF agents observed Hernandez's vehicle cross the border but "the ATF MCO did not get a response from the Mexican side until 20 minutes later, who then informed us that they did not see the vehicle cross." (HOCR DOJ 006348)

Today's documents indicate that, by early October 2007, ATF was considering another coordinated effort with Mexico on the case. Newell wrote to an ATF official on October 2, 2007, "We are potentially going to give it another shot this weekend if everything goes as planned." (HOCR DOJ 006364) The initial Operational Plan for this event reflected that ATF would "coordinate with Mexican authorities to conduct a vehicle stop of the target vehicle after it transports the firearms into Mexico" (HOCR DOJ 006396), but a later version of the plan indicated that "agents will direct a uniformed Border Patrol stop. Agents will take subjects into custody and conduct post-arrest interview." (HOCR DOJ 006404) An ATF After Action Report dated October 20, 2007 said that "Surveillance was conducted without incident – no enforcement action taken." (HOCR DOJ 006409) A later Operational Plan dated November 1, 2007

¹ These documents bear limited redactions to protect law-enforcement sensitive details, including text that would identify targets and sensitive techniques, plus limited information implicating individual privacy interests. In addition, we have redacted text that implicates equities of the Departments of State and Homeland Security. In response to requests from Chairman Smith, we will deliver to the House Committee on the Judiciary the same documents that we deliver to you.

The Honorable Patrick J. Leahy
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indicates that ATF again intended to surveil a purchase of weapons by Hernandez and his confederates in Arizona and “Once the subjects cross into Mexico, ATF attache’s [sic] will liaison with Mexican authorities to coordinate the arrest of the subjects.” (HOCR DOJ 006443) The email covering this Operational Plan says, in part, “keep your fingers crossed maybe we’ll be successful this time.” (HOCR DOJ 006442)

A November 2007 briefing paper prepared by ATF discusses the Hernandez case, saying that “ATF Phoenix has been attempting to complete one of the first Federal cross-border firearms trafficking investigations with ultimate prosecution by the Republic of Mexico Attorney Generals [sic] Office. Unfortunately this case has been a trial and error process.” (HOCR DOJ 006458) The briefing paper goes on to say, “Nonetheless we believe we have made breakthroughs in coordinating such operations through PFP-CENAPI and we want to thank Mexico City Office for the diligence. I think we’re going to ‘knock one out of the park’ soon.” (HOCR DOJ 006458) A November 14, 2007 email among ATF officials reflects that a briefing paper on the case was prepared “For meeting with Mex. Attorney General and U.S. Attorney General.” (HOCR DOJ 006390) The email reflects that ATF “briefed DOJ on this case and told them it is ongoing. They asked for a BP. Attached.” (HOCR DOJ 006390) The attached briefing paper discusses the unsuccessful efforts that ATF had made to that date to enlist the support of Mexican law enforcement authorities in making a stop of Hernandez in Mexico. (HOCR DOJ 006392) The briefing paper nevertheless reflected that ATF’s investigative plan continued to be for Hernandez and a confederate to be “arrested on the Mexican side of the border with a large load of ‘weapons of choice.’” (HOCR DOJ 006393)

The latest Operational Plan for the case in today’s production is dated November 26, 2007, and says that ATF intended to surveil a purchase of weapons in Arizona by Hernandez and confederates and “units will then follow the vehicle and its occupants from the FFL in Phoenix, AZ to the Mexican port of entry in Nogales, Arizona. Once the subjects cross into Mexico, ATF attache’s [sic] will liaison with Mexican authorities to coordinate the arrest of the subjects.” (HOCR DOJ 006489) However, an After Action Report dated that same day indicates that “Contact made w/ F/A trafficking suspects at border, 2 arrested for conspiracy to violate Arms Control Export Act. Nine firearms seized.” (HOCR DOJ 006494)

Also in today’s production is an affidavit and statement of probable cause filed in the Medrano case.² (HOCR DOJ 006603-006606) We previously have produced documents relating to the Medrano matter. The affidavit reflects that, on June 17, 2008, ATF agents and local police officers observed Medrano and an associate “purchase six (6) ‘weapons of choice’ firearms from an FFL in Tucson, Arizona and place them in the back seat of the associate’s vehicle.” (HOCR DOJ 006605) While the agents briefly lost contact with Medrano’s vehicle following the purchase, they ultimately found it in a parking lot in Douglas, Arizona. “The vehicle then exited the parking lot with Alejandro MEDRANO driving and immediately crossed the International Border through the Douglas POE. Your affiant believes that the firearms were still in the vehicle.” (HOCR DOJ 006605) An ATF record documenting the events of that day says, under the heading “Type of Operation,” “Buy Walk/Surveillance.” (HOCR DOJ 006598)

² The redactions in the document appear in the version that was unsealed by the court in the Medrano case.

The Honorable Patrick J. Leahy
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An ATF Operational Plan dated August 2008 reflects an ATF operation in the case in which ATF agents would surveil a purchase of weapons by Medrano and his cohorts in Arizona and “Following any purchases, agents and officers will conduct surveillance on the vehicle and the individuals in an attempt to determine the firearms [sic] final destination.” (HOCR DOJ 006602) The Operational Plan indicates that “If determined that the target vehicle intends to cross into Mexico, SA Garcia will coordinate with Mexican law enforcement to continue the surveillance into Mexico.” (HOCR DOJ 006602) However, “if Mexican authorities are unable to respond, SA Garcia will coordinate a stop on the identified vehicle at the Port of Entry into Mexico[.]” (HOCR DOJ 006602)

We previously have produced to you communications between former Arizona U.S. Attorney Dennis Burke and former Deputy Chief of Staff to the Attorney General Monty Wilkinson from the December 2010 time period that relate to whether the Attorney General might attend the January 2011 press conference announcing the Fast and Furious indictments. Today’s production contains an additional email on this subject dated December 21, 2010 in which Mr. Burke tells Mr. Wilkinson “I would not recommend the AG announce this case. I can explain in detail at your convenience. Thx.” (HOCR DOJ 006614) Mr. Wilkinson replies, “Ok. Family obligation tonight. I’ll call tomorrow. Thanks.” (HOCR DOJ 006614) We have previously advised you that neither Mr. Burke nor Mr. Wilkinson recalls the specifics of these exchanges.

Also in today’s production is a draft of a speech delivered by then-Deputy Attorney General David Ogden in Albuquerque, New Mexico on June 30, 2009 at an ATF Firearms Trafficking Summit.³ (HOCR DOJ 006607-006613) The draft in today’s production, and the version prepared for delivery, include the following language:

As you know, firearms trafficking cases take time to develop and are not always glamorous. Prosecuting individual straw purchasers may not seem in isolation to have a lot of jury appeal or to be making a dent in the trafficking problem. But that straw purchase was not a victimless “paperwork” violation – it was the action that provided the guns to the drug trafficker, who used them in horrific acts of violence. [By] purs[u]ing that seemingly unglamorous case each of you – as prosecutors and agents – help reduce violence outside your jurisdictions.

(HOCR 006612)

Finally, we previously have produced weekly reports to the Attorney General from NDIC for a period in 2010 that referenced the Fast and Furious investigation. Today, we produce additional NDIC weekly reports from the period after the Fast and Furious indictments were announced in 2011 that refer to that matter. These post-indictment references do not include

³ The version of this speech as prepared for delivery is available on the Department’s website at <http://www.justice.gov/dag/speeches/2009/dag-speech-090630.html>.

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substantive discussion of the case but simply reflect continued activity by NDIC during the post-indictment phase of the matter.

II. The Department Is Working in Good Faith to Respond to the Committee's Subpoenas and Related Requests for Information

The Department has and will continue to work in good faith to respond to Chairman Issa's subpoenas and cooperate with your requests for information about this matter. Indeed, consistent with our recent practice, we intend to continue making documents available on a rolling basis approximately twice a month until our production is complete.

To date, we have provided over 7,200 pages of documents to the Committee as part of more than 40 separate productions. Since our first production in response to the Committee's March 31, 2011 subpoena to ATF, and continuing with the Department's productions in response to the October 11, 2011 subpoena, we have endeavored to produce and make documents available to the Committee on a regular basis; more recently, we have done so on a rolling basis approximately twice each month. In addition, we have provided information informally to Committee staff and provided briefings as requested by the Committee. We intend to continue our rolling production schedule until we have produced all responsive documents to which the Committee is entitled, consistent with longstanding policies of the Executive Branch across administrations of both parties.

The Department has devoted significant information technology resources and personnel to responding to the Committee's numerous requests. We have collected a large volume of emails, documents and data from approximately 240 custodians in various Department divisions and components. In an effort to ensure that we had access to potentially responsive information, we typically collected electronic records of relevant custodians regardless of the date and subject matter of those materials. In addition, we collected and processed electronically stored information that derived from overlapping universes of data (*e.g.*, from active data systems, archival systems or backup tapes), which resulted in significant duplication in our data set. After de-duplication, broad search terms were then used in an effort to identify information to which the Committee is entitled. Because we collected and processed records so broadly, our data set was comprised of an overwhelming number of non-responsive materials.

As part of our effort to be thorough, we have learned, and want to advise you, that there are some gaps in electronic databases of the Arizona USAO and of ATF that date back to 2006 and may relate to some electronic records covered by your requests. Specifically, we understand that email from the Arizona USAO for the periods February 2006 to August 2006 and May 2007 to October 2008 is generally not available because the backup tapes for these periods were maintained pursuant to the then-applicable records retention policy established by the Executive Office of United States Attorneys (EOUSA), which required the preservation of backup tapes for no more than six months. We understand that, pursuant to litigation hold instructions from EOUSA in an unrelated matter, some backup tapes of the Arizona USAO from the period August 2006 to May 2007 were preserved. After October 2008, the Arizona USAO began using a

The Honorable Patrick J. Leahy
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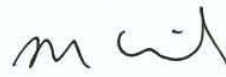
different Department email system, which automatically archived users' email traffic in real-time and preserved those emails for a period of several years.

We also understand that there are gaps in the data available from ATF's email exchange servers prior to September 2008. Certain backup tapes during that time period are unavailable either because of irrevocable damage to the backup tapes, or, during the period between November 2007 and September 2008, due to procedural errors in the preservation of the tapes. We understand that the damage on certain of these tapes is due to repetitive use of these recycled tapes for backup purposes and physical hardware failures.

III. Conclusion

Our efforts to identify documents responsive to Chairman Issa's subpoena are continuing and we will supplement this response when additional documents become available. We will continue to work in good faith to satisfy the Committee's legitimate requests for information. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles E. Grassley
Ranking Minority Member

Congress of the United States

Washington, DC 20510

March 19, 2012

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

We have recently obtained the attached document, which indicates that Manuel Fabian Celis-Acosta, the central target of the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Operation Fast and Furious, was stopped in May 2010 attempting to cross the border into Mexico with ammunition and an illegal alien in his car. The Fast and Furious case agent from Phoenix responded to the border and interviewed Celis-Acosta. However, Celis-Acosta was allowed to go free into Mexico and was not arrested until February 2, 2011—eight months later. In the three months following this May 2010 stop, the top five straw purchasers ATF knew to be working with Celis-Acosta illegally acquired more than 284 more weapons.

Please provide the appropriate senior Justice Department officials to brief the Committees no later than March 26, 2012 as to why Celis-Acosta was not arrested at the time of the above-described border crossing. Additionally, please provide a detailed written explanation of why the Department has (1) failed to produce these documents pursuant to category eight of your October 12, 2011 subpoena, and (2) failed to provide notice that the Department is withholding these documents pursuant to a valid legal privilege. To schedule this briefing, please contact Tristan Leavitt of Ranking Member Grassley's staff at (202) 224-5225 and Henry Kerner of Chairman Issa's staff at (202) 225-5074.

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

ATTACHMENT

cc: The Hon. B. Todd Jones, Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives

The Honorable Eric H. Holder, Jr.
March 19, 2012
Page 2 of 2

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

The Hon. Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

Congress of the United States

Washington, DC 20510

March 22, 2012

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

In our letter to you three days ago, we requested a briefing on why Manuel Celis-Acosta, the central target of the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Operation Fast and Furious, was not arrested after being stopped during a May 29, 2010, border crossing. We have now learned that two months earlier, on April 2, 2010, law enforcement officials recovered a firearm in the possession of Celis-Acosta. ATF documented this firearm recovery in Report of Investigation (ROI) #242.¹ The firearm, a Colt .38 caliber pistol, was one of seven firearms purchased by Uriel Patino on March 26, 2010, and was entered into ATF's Suspect Gun Database on March 30, 2010.² By that date, Patino had purchased at least 434 weapons from cooperating gun dealers, many with contemporaneous notice to ATF. He eventually purchased a total of 720 weapons—more than any other straw buyer in Fast and Furious.³

Please provide the appropriate senior Justice Department officials to brief the Committees as to the circumstances of the April 2, 2010, firearm recovery and why Celis-Acosta was not arrested on that date. This briefing should be conducted at the same time as the briefing we requested in our March 19, 2012, letter. Additionally, please provide a detailed written explanation of why the Department has (1) failed to produce ROI #242 pursuant to category eight of the October 12, 2011, subpoena issued to you, and (2) failed to provide notice that the Department is withholding this document pursuant to a valid legal privilege. To schedule this briefing, please contact Tristan Leavitt of Ranking Member Grassley's staff at (202) 224-5225 and Henry Kerner of Chairman Issa's staff at (202) 225-5074.

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

¹ Overt Acts Document, Operation Fast and Furious (Jun. 8, 2010), at 32 [Attachment 1].

² Suspect Gun Summary, Uriel Patino, March 26, 2010 [Attachment 2].

³ ATF intelligence chart, purchases by indicted targets in Operation Fast and Furious (Jun. 14, 2011) [HOCR ATF 001479] [Attachment 3].

The Honorable Eric H. Holder, Jr.
March 22, 2012
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ATTACHMENT

cc: The Hon. B. Todd Jones, Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives

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

The Hon. Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 23, 2012

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
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letters dated March 19, 2012 and March 22, 2012, which summarize the contents of sensitive law enforcement documents known as Reports of Investigation (ROIs) that were prepared by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The ROIs summarized in your letters relate to an active criminal investigation of a firearms trafficking ring, as well as to the prosecution of Manuel Celis-Acosta, who is under indictment in federal court in Arizona and awaiting trial on serious felony charges.

We began to receive calls from reporters about your letters soon after we received them from you, and they have since been the subject of public reports. While we do not know who provided these letters to reporters, we are deeply disturbed that the sensitive law enforcement information contained in them has now entered the public realm. This public disclosure is impeding the Department's efforts to hold individuals accountable for their illegal acts, including by discouraging cooperation with our efforts in these very cases. Since we know that you share our desire to bring dangerous arms traffickers to justice, we ask that you preserve the confidentiality of sensitive law enforcement information that may come into your possession.

We consider the airing of this information to have been quite unnecessary because we have already acknowledged on numerous occasions that Operation Fast and Furious and operations conducted during the prior Administration employed inappropriate investigative tactics. Indeed, after learning about the allegations relating to Operation Fast and Furious, the Attorney General referred the matter to the Department's Inspector General for review and instructed the Deputy Attorney General to issue a directive making clear that such tactics must not be used again.

The Honorable Darrell E. Issa
 The Honorable Charles E. Grassley
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Your letters seek briefings by the Department relating to the timing of Mr. Celis-Acosta's arrest. Consistent with longstanding Department policy, we have concluded that it would be inappropriate for us to brief Congress about the details of our investigation of this individual while the criminal proceeding against him remains pending. Among other considerations, information from his case may be relevant to other ongoing federal criminal investigations. The Department must avoid disclosures that could compromise pending investigations or prosecutions, and we must also ensure that prosecutorial decisions are free of political influence and the appearance of political influence. That is why, from the beginning of your review, we have provided documents and information about the inappropriate strategy and tactics employed in Operation Fast and Furious while, at the same time, declining to provide details about specific investigative or prosecutorial judgments made with respect to particular individuals.

Finally, your letters ask why the Department has not produced ROIs in response to the Committee's subpoena. ROIs often contain sensitive details about law enforcement matters, especially when they pertain to pending investigations or prosecutions. We have produced and will continue to produce information that relates to the Committee's legitimate oversight interest in the strategies and tactics of these operations, but only consistent with our law enforcement responsibilities. Our efforts to respond to the subpoena are continuing, and we will advise you if we have withheld ROIs and other documents responsive to your subpoena for law enforcement reasons.

We hope that this information is helpful. Please do not hesitate to contact this office if we can provide additional assistance regarding this or any other matter.

Sincerely,



Ronald Weich
 Assistant Attorney General

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

The Honorable Patrick J. Leahy
 Chairman
 Committee on the Judiciary
 United States Senate



U.S. Department of Justice

Office of the Inspector General

March 23, 2012

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

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20515

Dear Chairman Issa and Senator Grassley:

This letter responds to your correspondence dated March 15, 2012, regarding whether we have interviewed political appointees at the Department of Justice (DOJ) in our review of Operation Fast & Furious and other investigations with similar objectives, methods, and strategies.

While a review is ongoing, we generally do not disclose the identities of the DOJ officials that we have interviewed or intend to interview. We follow this policy to preserve the integrity of the ongoing review. However, we can assure you that we will follow the facts and evidence wherever they lead us in this review. We have not refrained from and will not refrain from interviewing any DOJ witness with relevant information, regardless of the witness's status as a political or career employee. In several previous reviews, we have interviewed DOJ personnel at the very highest levels of the Department and we will continue to do so as appropriate.

Thank you for your interest in this matter. If you have further questions, please feel free to contact me or Senior Counsel Jay Lerner at (202) 514-3435.

Sincerely,

A handwritten signature in blue ink, reading "Cynthia A. Schnedar", is positioned above the printed name.

Cynthia A. Schnedar
Acting Inspector General

Congress of the United States
Washington, DC 20515

March 27, 2012

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

We are writing in response to the Department's March 23, 2012, letter refusing to provide a briefing on documents regarding Manuel Celis-Acosta (Acosta) that were recently disclosed by the private attorney for a Department employee. Acosta was the ring leader of the Fast and Furious gun trafficking network, which amassed approximately 2,000 firearms. The new documents indicate that law enforcement agents stopped Acosta twice – in April and May of 2010. On both occasions, agents let him go. The failure to arrest Acosta and put him out of the business of gun trafficking is highly embarrassing for the Department.

Your letter expressing serious concern about the “airing” of newly disclosed information relating to the prosecution of Acosta failed to note that it was the attorney for a Department employee who made the disclosures. It also failed to note that congressional staff consulted with the Department about its employee's disclosures. Yet, the letter states the Department is “deeply disturbed” that information relating to Acosta has “entered the public realm” without explaining that the source of the disclosures was its own employee's counsel.

As Committee staff communicated to Department representatives the day *before* the Department sent the letter, the information in question became public on March 14, 2012. On that date, Joshua Levy, counsel to David Voth, the ATF Group Supervisor who oversaw Fast and Furious, delivered a 27-page letter to us. We received press inquiries about his letter on that date. It is available in its entirety on the website *Townhall.com*. Levy also provided the Committee with hundreds of pages of documents, most of which were called for by the subpoena served on you on October 12, 2011. The Department still has not produced most of these documents, has provided no notice that it is withholding them, and has cited no valid legal privilege to authorize doing so. Failure to produce documents pursuant to the subpoena merely because they would prove embarrassing for the Department runs contrary to principles of transparency and the Department's obligation to cooperate with the congressional investigation in good faith.

The Department's concern rings particularly hollow in light of its attempts to generate publicity for its March 23, 2012, letter. Just hours after we received the letter, CNN ran a story

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The Honorable Eric H. Holder, Jr.
 March 27, 2012
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about it online. Fox News Channel discussed it in a live broadcast shortly thereafter. If the Department were genuinely interested in avoiding attention for its failures to arrest Acosta as documented in ATF Reports of Investigation (ROI), then it would not have sought additional coverage of its letter from national news outlets. Any threat to the ongoing criminal prosecution of Acosta is a direct result of the actions of Department personnel. The suggestion that any actions by Congress are the cause is unfounded.

Congress treats disclosures of information to Congress, such as those provided by Joshua Levy, very seriously. Individuals with information on specific cases often wish to share the information with Congress or news organizations on a confidential basis to sound the alarm about a particular issue. The Department initially ignored the allegations of Fast and Furious whistleblowers, calling their allegations “false.” Not until media outlets such as *CBS News*, *Fox News*, *CNN*, *Los Angeles Times*, *Wall Street Journal*, *Washington Post*, *National Public Radio*, *Daily Beast* and *Daily Caller*, among others, started reporting on these allegations were you forced to retreat from your initial stance. These media outlets have informed the public about the Fast and Furious investigation.

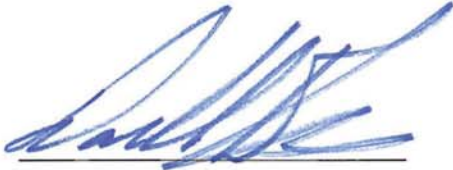
These recent disclosures of information raise serious questions regarding the Department’s mishandling of the Acosta case and the Fast and Furious investigation. Instead of publicly chastising Congress for asking to be briefed on it, you should address these questions directly. We did not write to you until *after* the *Los Angeles Times* published a story on March 19, 2012, referencing a ROI describing law enforcement’s failure to arrest Acosta. This ROI was among the documents disclosed by Voth’s attorney. The Department’s March 23, 2012, complaint about this information reaching the “public realm” is an issue that should be addressed internally.

The Department’s professed outrage at the airing of this information is confusing. The ROIs in question regarding the failure to arrest Acosta were dated April and May 2010 – five months *after* DEA gave ATF enough information on Acosta to provide probable cause to arrest Acosta or at least disrupt his firearms trafficking network. In fact, former ATF Deputy Director Billy Hoover told our staff on October 5, 2011, that ATF had dropped the ball in December 2009 regarding the information DEA provided to ATF about Acosta. Hoover said that David Voth and the ATF Phoenix Field Division failed to use the information about Acosta’s activities, which DEA provided on several occasions. ATF’s failure to arrest or disrupt Acosta in December 2009 and again in April and May 2010 should be of far greater concern to the Department than the public airing of the two embarrassing ROIs.

According to the letter, the Department “ha[s] produced and will continue to produce information that relates to the Committees’ legitimate oversight interest in the strategies and tactics of these operations, but only consistent with our law enforcement responsibilities.” This position hampers our ability to conduct a proper investigation and is untenable. Since the Teapot Dome scandal in the early 1920s, the Supreme Court has consistently ruled that the Department must cooperate with congressional oversight – irrespective of the Department’s views about its law enforcement responsibilities. It is not for you to determine our oversight

The Honorable Eric H. Holder, Jr.
March 27, 2012
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interests – that is for Congress to decide. We are investigating mismanagement and potential wrongdoing at the highest levels of the Department during Fast and Furious, pursuant to our constitutionally mandated duty to do so.



Darrell Issa
Chairman
Committee on Oversight and
Government Reform
United States House of Representatives

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

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

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

Congress of the United States
Washington, DC 20515

March 28, 2012

The Honorable Kathryn Ruemmler
 Counsel to the President
 The White House
 Washington, D.C. 20500

Dear Ms. Ruemmler:

The congressional investigation into Operation Fast and Furious has revealed communications between Kevin O'Reilly, a former member of the National Security Staff, and William Newell, the ATF Special Agent in Charge of the Phoenix Field Division. It is our understanding that it is unusual for an agent in charge of a field division of a subcomponent of the Justice Department to have direct communication with the White House. Newell's communications seem to recognize the unusual nature of the contact. For instance, in a September 3, 2010, e-mail to O'Reilly referring to Fast and Furious, Newell stated, "You didn't get these from me. . ."¹ Another e-mail shows Newell's intent to circumvent his leadership structure in talking with O'Reilly: "Just don't want ATF HQ to find out, especially since this is what they should be doing (briefing you)!"² During the Committee's July 26, 2011, hearing on Fast and Furious, Newell was unable to explain why these e-mails were inappropriate, or why he had direct contact with O'Reilly about an ongoing criminal investigation.³

To this day, Newell has failed to disown Fast and Furious or admit the flawed nature of the program. This failure has raised new questions. Was Newell looking for authorization outside of his chain-of-command in order to continue this deadly program? What did O'Reilly know about the objectives and tactics used in Fast and Furious and with whom did he share his knowledge? These questions are germane to the Committee's investigation. O'Reilly is the only person capable of supplying accurate answers to them.

To date, the White House has not complied with multiple congressional requests to interview O'Reilly. Our staffs have had extensive discussions with lawyers in your office, who have represented that the White House does not perceive any need for us to interview O'Reilly and consequently will not make arrangements for him to speak to us. Although O'Reilly is currently stationed in Iraq, our staffs have made it clear that a telephonic interview would be acceptable. O'Reilly's personal lawyer has represented to the Committee that he would permit his client to speak with the Committee in the absence of any objections from the White House.

O'Reilly's testimony is necessary to allow us to begin to determine the extent of the involvement – if any – of White House staff in Operation Fast and Furious. As such, we strongly

¹ E-mail from William Newell to Kevin O'Reilly (Sept. 3, 2010) [HOCR DOJ 002559].

² E-mail from William Newell to Kevin O'Reilly (July 28, 2010) [HOCR 002664].

³ *Operation Fast and Furious: The Other Side of the Border: Hearing Before the H. Comm. on Oversight and Gov't Reform*, 112th Cong. (July 26, 2011) (Test. of William Newell).

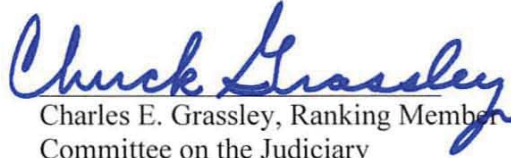
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March 28, 2012
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urge you to reverse your position and facilitate an interview with O'Reilly without further delay. Please inform us as soon as possible, but by no later than April 4, 2012, of the date on which you plan to make him available for an interview. Should you have any questions, please call Ashok Pinto or Henry Kerner of Chairman Issa's staff at (202) 225-5074 or Tristan Leavitt of Ranking Member Grassley's staff at (202) 224-5225.

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

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20503

March 28, 2012

The Honorable Charles E. Grassley
Co-Chairman
Senate Caucus on International Narcotics Control
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

Enclosed, please find my responses to your Questions for the Record pertaining to the December 7, 2011 hearing before the Senate Caucus on International Narcotics Control, entitled, "Exploring the Problem of Domestic Marijuana Cultivation." Please note that, while your questions were dated December 14, 2011, our office did not receive the e-mail containing the questions until January 25, 2012.

I appreciated the opportunity to testify before the Caucus. Should you have any further questions, please do not hesitate to contact me directly at (202) 395-6700, or have your staff contact Rob Reed, Director of ONDCP's Office of Legislative Affairs, at (202) 395-6912.

Respectfully,

A handwritten signature in dark ink, reading "R. Gil Kerlikowske".

R. Gil Kerlikowske
Director

cc: Senator Dianne Feinstein, Chairman, Senate Caucus on International Narcotics Control

April 2012

April 2012



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 3, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner. This letter also describes the Department's response to the Committee's subpoenas and numerous other requests regarding Operation Fast and Furious.

Enclosed are 116 pages of documents responsive to subpoena categories 7, 13, and 14 that we produced to the House Oversight and Government Reform Committee (HOCR) today. We have an additional 46 pages responsive to these same categories available for review by Committee staff at the Department.¹ Some of these pages reflect the completion of our consultations with the Departments of State and Homeland Security that have been described in prior letters.

To assist the Committee in its oversight duties, we appreciate the opportunity to provide relevant and necessary context for one of the documents in today's production. We produce today a memorandum dated August 19, 2009, setting forth recommendations of an interagency firearms trafficking working group that was formed in response to a high-level U.S.-Mexico meeting in Cuernavaca, Mexico, in April 2009. The working group, which put forward joint Department of Justice (DOJ) and Department of Homeland Security (DHS) recommendations, was led by DOJ's Criminal Division and included representatives from DOJ's Bureau of Alcohol, Tobacco, Firearms and Explosives, the Federal Bureau of Investigation, the National Security Division, the Drug Enforcement Administration, the Executive Office of U.S. Attorneys, and the Office of Legal Policy; from DHS, the group included representatives from

¹ These documents bear limited redactions to protect law-enforcement sensitive details, including text that would identify targets and sensitive techniques, plus limited information implicating individual privacy interests. In addition, there are limited redactions resulted from our consultations with the Departments of State and Homeland Security. In response to requests from Chairman Smith, we will deliver to the House Committee on the Judiciary the same documents that we deliver to you.

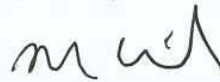
The Honorable Patrick J. Leahy
Page Two

U.S. Immigration and Customs Enforcement, Customs and Border Protection, and the DHS General Counsel. (HOCR DOJ 006706-6717)

In part, the interagency memorandum, which was addressed to the Attorney General through the Deputy Attorney General, recommended the formation of a multi-agency umbrella strategy group to be co-chaired by officials of components of DOJ and DHS. (HOCR DOJ 006708) The memorandum indicates that the purpose of the group would have been to monitor and respond to emerging threats and challenges related to illegal firearms trafficking. (HOCR DOJ 6706) It does not appear that this memorandum was actually forwarded to the Attorney General by the Deputy Attorney General. Rather, the Deputy Attorney General responded to the specific proposals in this memorandum by forming the Southwest Border Strategy Group, which he chaired. We previously have produced documents to the Committee relating to the Southwest Border Strategy Group.

Our efforts to identify documents responsive to Chairman Issa's subpoena are continuing and we will supplement this response when additional documents become available. We will continue to work in good faith to satisfy the Committee's legitimate requests for information. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc: The Honorable Charles E. Grassley
Ranking Minority Member

THE WHITE HOUSE
WASHINGTON

April 5, 2012

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Issa and Ranking Member Grassley:

I am writing in response to your letter dated March 28, 2012 seeking further information from a former member of the National Security Staff (NSS), Kevin O'Reilly, as it relates to "Operation Fast and Furious," a criminal investigation led by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

Over six months ago, the White House produced documents responsive to your prior request for communications between Mr. O'Reilly and ATF agent William Newell that relate to "Operation Fast and Furious" or any ATF gun trafficking cases in Phoenix, AZ. At the time we produced these documents, you had already received many of those same documents from the Department of Justice. And what was true then remains true today: none of these limited communications between Mr. O'Reilly and Mr. Newell revealed the existence of any of the inappropriate investigative tactics at issue in your inquiry, let alone any decision to allow guns to "walk."

In light of the important Executive Branch confidentiality interests and institutional prerogatives implicated by your request, including those of NSS, and in the absence of any evidence that suggests that Mr. O'Reilly had any involvement in "Operation Fast

and Furious” or was aware of the existence of any inappropriate investigative tactics, there is an insufficient basis to support the request to interview Mr. O’Reilly.

Sincerely,

A handwritten signature in blue ink, reading "Kathryn Ruemmler", with a long horizontal flourish extending to the right.

Kathryn Ruemmler
Counsel to the President

Cc: The Honorable Elijah E. Cummings
Ranking Member
House Committee on Oversight and Government Reform

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary



OFFICE OF THE VICE PRESIDENT
WASHINGTON

April 6, 2012

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley:

I write in response to your letter dated March 16, 2012, regarding the Vice President's interview with Univision's "Al Punto." Specifically, you reference the Vice President's comment during the interview that the tactics underlying Operation Fast and Furious have "ceased to exist" and inquire as to the basis of this statement.

As your Committees are aware and as the Vice President's statement reflects, for over a year the Attorney General has stated clearly and publicly that certain investigative tactics used in Operation Fast and Furious were inconsistent with Department of Justice policy and that he instructed the Deputy Attorney General to issue a directive making clear that such tactics must not be used again. The Attorney General has also made clear in testimony before Congress that he takes the allegations that have been raised about strategies used in Operation Fast and Furious very seriously and that he has referred the matter to the Department's Inspector General for review.

The Attorney General has also indicated that the Department of Justice will continue to investigate any criminal activity by straw purchasers identified during Operation Fast and Furious and will continue to work with Congress to stem the dangerous flow of firearms and violence along the Southwest border.

Sincerely,



Cynthia C. Hogan
Counsel to the Vice President

cc: The Honorable Elijah E. Cummings
Ranking Member
House Committee on Oversight and Government Reform

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 17, 2012

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
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letter, dated November 3, 2011, to the Attorney General seeking additional information pertaining to a shared network drive developed to house documents responsive to inquiries being undertaken related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigation known as Operation Fast and Furious. The focus of your inquiry pertains to an allegation that a particular document relating to ATF Special Agent John Dodson was provided to news media.

Our letter dated September 19, 2011, provided significant details to the Committee regarding the staffing and operation of the shared network drive. We included substantial descriptive information about the use of the shared network drive to house or produce records made available to the Committee, and the access given to certain Department employees and contractors assigned tasks related to the Committee's March 31, 2011 subpoena and related document requests. The shared network drive continues to be utilized by ATF as a repository of records that may be responsive to pending inquiries. As of April 13, 2012, ten Department employees have access to the contents of the shared network drive. These individuals are professional and information technology systems staff assigned tasks relating to preserving, searching, organizing, and reviewing documents that may be responsive to the Committee's inquiry and other matters, including ongoing investigations by the Department's Office of Inspector General and the Office of Special Counsel, as well as a lawsuit filed by the Judicial Watch organization. Additional individuals employed by ATF contractors who provide systems security and database administrator services also have access to the shared network drive in order to carry out their technical duties.

We are not in a position to provide you with any information about leak investigations that may be ongoing in the Department's Office of Inspector General and Office of Professional Responsibility. We do know that former U.S. Attorney Dennis Burke, in a letter from his

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
Page Two

counsel to the Department's Acting Inspector General that was released publicly on or about November 8, 2011, acknowledged that he disclosed to a reporter "a memorandum written by Agent Dodson." Based on review of the letter from Mr. Burke's counsel, we believe that the "memorandum" may be the same document made available for review by your staff pursuant to our letter dated May 2, 2011, and which Committee staff thereafter reviewed at the Department. The document pertains to ATF strategy and operations that we understand to be central to your inquiry. Accordingly, it was made available for review in redacted form notwithstanding our substantial confidentiality interests in an investigation that did not result in public charges.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of additional assistance regarding this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 19, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner. This letter also describes the Department's response to the Committee's subpoenas and numerous other requests regarding Operation Fast and Furious.

Enclosed are 188 pages of documents responsive to subpoena categories 1, 4, 5, 12, 13, and 14 that we produced to the House Oversight and Government Reform Committee (HOCR) today. We have an additional 2 pages responsive to these same categories available for review by Committee staff at the Department.¹ Some of these pages reflect the completion of our consultations with the Departments of State and Homeland Security that have been described in prior letters. The records we are providing today include some documents with reduced redactions, when compared to the versions that were previously produced to you.

The material we are providing today constitutes another installment in the Justice Department's rolling production of information to the Committee. We have provided documents to the Committee at least twice every month since late last year as part of the Department's ongoing efforts to comply with the Committee's subpoenas and other requests for information. In addition to producing or making available over 7,300 pages of documents to the Committee, we have provided briefings for the Committee staff as requested, and have facilitated staff interviews of numerous Department officials. We intend to continue our rolling production

¹ These documents bear limited redactions to protect law-enforcement sensitive details, including text that would identify targets and sensitive techniques, plus limited information implicating individual privacy interests. In addition, there are limited redactions resulted from our consultations with the Departments of State and Homeland Security. In response to requests from Chairman Smith, we will deliver to the House Committee on the Judiciary the same documents that we deliver to you.

The Honorable Patrick J. Leahy
Page Two

schedule until we have accommodated the Committee's information needs to the fullest extent possible, consistent with longstanding policies of the Executive Branch.

During the House Oversight Committee's February 2 hearing on this subject, Members asked why the Department has produced more documents to its Inspector General than it has produced to the Committee. This comparison is inapposite. As a component of the Justice Department, the Office of the Inspector General is entitled to review material that is not appropriate for further disclosure, such as transcripts of grand jury proceedings and other law enforcement sensitive materials. In the course of its investigation of Operation Fast and Furious and operations that occurred during the prior Administration, the Office of the Inspector General has reviewed a large volume of such material.

Our efforts to identify documents responsive to Chairman Issa's subpoena are continuing and we will supplement this response when additional documents become available. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'm w', likely representing Ronald Weich.

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles E. Grassley
Ranking Minority Member

Congress of the United States

Washington, DC 20510

April 23, 2012

VIA ELECTRONIC TRANSMISSION

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
301 7th Street, NW
Washington, D.C. 20528

Dear Secretary Napolitano:

On December 6, 2011, we wrote to you to request a copy of the U.S. Immigration and Customs Enforcement (ICE) case file on Operation Fast and Furious. In a December 15, 2011, briefing, ICE officials informed our staffs that ICE was in the process of preparing that case file for production, after which the Department of Homeland Security (DHS) and then the Department of Justice (DOJ) would review it for consideration of their respective equities.

It is our understanding that as of today – nearly five months after our initial letter – the case file has yet to go to DHS or DOJ and is still in ICE's possession. We now request you expedite this process and provide this case file to our Committees as soon as possible, but by no later than May 9, 2012. We sincerely hope that further requests for this information will not be necessary.

In addition, we ask that you provide the following documents and information:

1. All e-mails between you and Attorney General Eric Holder regarding the death of Border Patrol Agent Brian Terry.
2. All e-mails between you and any other DOJ employee regarding the death of Agent Terry.
3. All communications and documents relating to the connection of the firearms at the scene of Agent Terry's death to any case or investigation within the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) or any DOJ component.
4. All documents, including e-mails, relating to Operation Fast and Furious.
5. All documents and communications involving the May 29, 2010, encounter between law enforcement agents and Manuel Celis-Acosta.

Please also provide these documents as soon as possible, but by no later than May 9, 2012. Should you have any questions regarding our request, please contact Tristan

The Honorable Janet Napolitano
April 23, 2012
Page 2 of 2

Leavitt of Ranking Member Grassley's staff at (202) 224-5225 or Henry Kerner of Chairman Issa's staff at (202) 225-5074.



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

Sincerely,



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

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

The Hon. Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

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BLAKE FARENTHOLD, TEXAS
MIKE KELLY, PENNSYLVANIA

LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
<http://oversight.house.gov>

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RANKING MINORITY MEMBER

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PETER WELCH, VERMONT
JOHN A. YARMUTH, KENTUCKY
CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPIER, CALIFORNIA

April 27, 2012

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

Dear Mr. Chairman:

According to a Los Angeles Times story published yesterday, you have drafted a 48-page contempt citation for the Attorney General relating to the Committee's investigation into Operation Fast and Furious, and a copy of this document has already been provided to the press and to House Speaker John Boehner's office even before being distributed to Members of our own Committee.¹

Holding someone in contempt of Congress is one of the most serious and formal actions our Committee can take, and it should not be used as a political tool to generate press as part of an election-year witch hunt against the Obama Administration. Leaking a draft contempt citation that Members of our Committee have never seen suggests that you are more interested in perpetuating your partisan political feud in the press than in obtaining any specific substantive information relating to the Committee's investigation. These actions undermine the credibility of the Committee, as well as the integrity and validity of any contempt actions the Committee ultimately may choose to adopt in the future.

Unfortunately, your latest actions appear to be part of a larger and more troubling pattern. Last July, you boasted with respect to a different investigation that your aggressive actions against the President and the White House would be "good theater."² Similarly, one of your

¹ *Republicans Seek to Hold Attorney General in Contempt Over Fast and Furious*, Los Angeles Times (Apr. 26, 2012) (online at www.latimes.com/news/nationworld/nation/la-na-holder-contempt-20120427,0,3641424.story).

² *House Panel to Probe DNC's Obama Ad*, Washington Times (July 25, 2011) (online at www.washingtontimes.com/news/2011/jul/25/issa-panel-will-probe-dnc-obama-campaign-video/).

The Honorable Darrell E. Issa
Page 2

subcommittee chairmen asserted that investigating Solyndra was designed to influence the upcoming Presidential election, stating, "Ultimately, we'll stop it on Election Day."³

I strongly believe in fair and even-handed oversight if there are credible allegations of wrongdoing—regardless of whether those implicated are Democrats or Republicans—but the official resources provided to this Committee by U.S. taxpayers must not be used for partisan political purposes.

As you know, in January, I issued a 90-page staff report documenting in detail how Operation Fast and Furious was the latest in a series of misguided gunwalking operations that originated in 2006 in the Phoenix Field Division of the Bureau of Alcohol, Tobacco, Firearms, and Explosives. As the report explained, these operations continued for five years until our Committee exposed and ended them, an accomplishment for which I have commended you.⁴

Contrary to your repeated claims, the report explained that the Committee has obtained no evidence that the Attorney General authorized, approved of, or was aware of gunwalking. None of the two dozen witnesses interviewed by the Committee contradict that finding.

For all of these reasons, I request that you immediately provide to me and all other Members of the Committee a copy of the same draft contempt citation that was provided to Speaker Boehner's office and the Los Angeles Times, and that you strive to ensure the fairness and legitimacy of our proceedings and actions.

I continue to hope that we can work together to obtain any additional information necessary to our investigation in a cooperative and bipartisan manner that does not compromise ongoing criminal investigations and prosecutions. Thank you for your consideration of this request.

Sincerely,



Elijah E. Cummings
Ranking Member

³ *Jim Jordan Suggests Elections Drive Solyndra Investigation*, Huffington Post (Apr. 27, 2012) (online at www.huffingtonpost.com/2012/03/22/jim-jordan-solyndra-investigation-elections_n_1372205.html).

⁴ Report of the Minority Staff, House Committee on Oversight and Government Reform, *Fatally Flawed: Five Years of Gunwalking in Arizona* (January 2012) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5575&Itemid=104).



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

May 3, 2012

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

Dear Mr. Chairman:

The Department strongly disputes the contention that we have failed to cooperate with the Committee's review of Operation Fast and Furious as asserted in the staff briefing paper and draft contempt of Congress resolution that the Committee released today.

We have provided or made available to the Committee more than 7,600 pages of material as part of 46 separate productions of documents and we have continued to produce materials twice a month since last year. We have made available numerous officials for testimony, interviews and briefings, including testimony by senior Department officials such as the Attorney General, the Assistant Attorney General for the Criminal Division and the Assistant Attorney General for Legislative Affairs. Indeed, the Attorney General has testified no fewer than seven times in the last year and a half on the subject of Fast and Furious. We have also responded to dozens of letters from members of Congress seeking information on a wide range of issues relating to the Committee's review and we remain committed to cooperating with the Committee's legitimate oversight interests. This record reflects the Department's consistent efforts to cooperate with the Committee's investigation.

Viewed fairly, the disagreements between the Committee and the Department over the scope of the documents to be produced stem not from a lack of cooperation, but from our sincere and unwavering belief that disclosure of materials related to ongoing criminal investigations and prosecutions could well jeopardize our core law enforcement mission, which must remain free from political pressure or even the appearance of political pressure. This is not a novel concept. As Attorneys General and heads of the Office of Legal Counsel during Administrations of both political parties have articulated, "the policy of the Executive Branch throughout our Nation's history has generally been to decline to provide committees of Congress with access to, or copies of, open law enforcement files except in extraordinary circumstances." Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act, Charles J. Cooper, Assistant Attorney General, 10 Op. O.L.C. 68, 76 (1986). Thus, "[s]ince the early part of the 19th century, Presidents have steadfastly protected the confidentiality and integrity of investigative files from untimely, inappropriate, or uncontrollable access by the other branches, particularly the legislature." Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege, Theodore B. Olson, 8 Op. O.L.C. 101 (May 30, 1984).

The Honorable Darrell E. Issa
 May 3, 2012
 Page 2

Some have questioned why the Department's Inspector General has received a greater number of documents than have been provided to the Committee. The answer lies in the fact that the Office of the Inspector General, as a component of the Department, is entitled in these circumstances to review material that is not appropriate for disclosure outside the Department – materials such as transcripts of grand jury proceedings, reports of investigations and prosecutions, wiretap materials and FBI interview transcripts. As noted above, these are precisely the kinds of materials that the Department, across Administrations, has not provided to Congress.

The Committee's request for documents created after the inappropriate tactics in Operation Fast and Furious became public likewise is inconsistent with precedent across Administrations. During the prior Administration, the Acting Assistant Attorney General for the Office of Legislative Affairs explained to Congress that "[t]he appropriate functioning of the separation of powers requires that Executive Branch officials preserve the ability to communicate confidentially as they discuss how to respond to inquiries from a coordinate branch of government. Such robust internal communications would be effectively chilled, if not halted, if they were disclosed, which could substantially impede any agency's ability to respond to congressional oversight requests." Letter to the Honorable John Conyers and the Honorable Linda T. Sanchez, from Richard A. Hertling, Acting Assistant Attorney General, Office of Legislative Affairs, at 3 (Mar. 19, 2007). Indeed, the prior Administration advised Congress that the production of such materials "would introduce a significantly unfair imbalance to the oversight process if committees were able to obtain internal Executive Branch documents that are generated in order to assist Executive Branch officials in determining how to respond to an inquiry by the very committee seeking the documents or other information." *Id.*

The suggestion in your draft resolution of contempt that the Department has failed to accommodate the Committee's interests in this matter is contradicted by the fact that the Department accommodated the Committee's interest in understanding how inaccurate information came to be transmitted to Congress as part of our now-withdrawn February 4, 2011 letter. Late last year, the Department provided the Committee with over 1,300 pages of documents and other information relating to the preparation of that letter. This extraordinary accommodation was based solely on our acknowledgement that the letter contained inaccurate information and on our acknowledgement that Congress had a legitimate interest in understanding the source of that inaccurate information.

Despite the differing views currently held by the Committee and the Department, we continue to believe that efforts to arrive at a mutually acceptable resolution have not been fully exhausted. The Committee, in our view, has not taken sufficient steps to define the categories of documents it deems essential to its review of Fast and Furious and its decision to issue a draft contempt citation appears to express a preference for confrontation over resolution. The Constitution establishes co-equal branches of government with interlocking responsibilities and imposes on the officials of those branches the obligation to resolve conflicts in good faith. We remain willing to work with the Committee in good faith in an effort to avoid this impasse.

The Honorable Darrell E. Issa
May 3, 2012
Page 3

We look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. M. Cole", is positioned above the printed name.

James M. Cole
Deputy Attorney General

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

May 2012

May 2012



Assistant Secretary of Legislative Affairs
 U.S. Department of Homeland Security
 Washington, DC 20528

**Homeland
 Security**

May 4, 2012

The Honorable Darrell 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
 United States Senate
 Washington, DC 20510

Dear Chairman Issa and Senator Grassley:

I am writing in response to your April 23, 2012 letter to Secretary Napolitano regarding the Operation Fast and Furious investigation.

Since your first inquiry into this matter, the U.S. Department of Homeland Security (DHS) has endeavored to respond expeditiously to your requests. On seven different occasions, U.S. Immigration and Customs Enforcement (ICE) employees have briefed Congressional offices and, on three separate occasions, have briefed members of your staff about the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)-led investigation. ICE has also responded to written questions posed by your staff. DHS has been gathering the information you requested and will continue to keep your staff apprised of our progress.

With regard to the case file you reference, ICE and your staff continue to be in regular contact. As you know, producing a law enforcement case file of this type can be particularly challenging for the following reasons:

- The investigation was run by an interagency task force, rather than by one agency;
- The task force was led by an agency other than ICE;
- As this investigation is currently under an ongoing prosecution in Federal Court, divulging any information prior to a thorough and substantive vetting could jeopardize the success of the prosecution;
- The file contains a substantial amount of law enforcement and investigation sensitive information that must be protected; and
- The file contains information received from confidential sources whose security would be compromised if their involvement is revealed.

ICE is working expeditiously to make the case file available for review, and ICE and U.S. Customs and Border Protection (CBP) are gathering the other information requested in your letter. While they gather this information, ICE and CBP employees remain prepared to brief your staff on the contents of the documents, where possible, to assist you in your investigation. As to requests 3-5 in your letter, we will continue to work diligently and expeditiously to get this material to you.

With regard to your requests for emails between the Secretary and the Attorney General or other DOJ employees about the death of Border Patrol Agent Brian Terry, we have determined that no such emails exist. In the meantime, if I can be of assistance in any other way, please do not hesitate to contact me at 202-447-5890.

Respectfully,

A handwritten signature in black ink, appearing to read "Nelson Peacock", with a stylized, flowing script.

Nelson Peacock
Assistant Secretary for Legislative Affairs

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

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

**U.S. Department of Justice****Federal Bureau of Investigation**

Washington, D.C. 20535

May 4, 2012

The Honorable Darrell 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
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Grassley:

Thank you for your letter to Director Mueller dated October 20, 2011 concerning the FBI's investigation of the murder of Border Patrol Agent Brian Terry and allegations that a third weapon was recovered from perpetrators at the crime scene. We apologize for the delay in providing you a written response to your letter. As you know, there are criminal charges pending in connection with Agent Terry's murder and the trafficking of weapons, which limit our ability to respond specifically to many of your questions.

In September 2011, the FBI issued a public statement making it clear that allegations concerning a third weapon were "inaccurate." Senior FBI officials met personally with your staff in early October to clarify and reinforce these facts. While we appreciate the Committee's interests, we are not in the position to disclose the detailed information you seek about crime scene evidence or the government's view of what happened at the crime scene. Disclosure of these types of investigative details at this time would pose unacceptable risk to our law enforcement efforts.

Similarly, consistent with our need to protect the integrity of the prosecution of this matter, we cannot comment on the forensic examinations of the ballistic evidence from the crime scene. A number of the questions that you pose would require forensic examiners to offer new opinions or prematurely disclose the results of their forensic tests. Although we are not in the position to provide this information, the FBI has posted general information about firearms and toolmark testing at FBI Laboratory, which may answer a number of your questions. See <http://www.fbi.gov/about-us/lab/forensic-science-communications/fsc/april2000/schehl1.htm>

The Honorable Darrell Issa and Honorable Charles E. Grassley

Your letter further asks how many suspects were encountered at the crime scene and how many of the suspects were carrying weapons. As you know, the public court documents indicate that there were five suspected illegal aliens encountered by the U.S. Border Patrol agents on December 14, 2010 at approximately 11:15 p.m. According to the court records, at least two of the suspected aliens were observed carrying weapons by one of the U.S. Border Patrol agents using thermal binoculars. One of the suspected illegal aliens was later detained at the scene and he provided a statement after waiving his Miranda warnings indicating that he was traveling with four individuals, and he stated that all of five of them were armed. However, as noted previously, only two weapons were recovered from the perpetrators at the crime scene and only one of the individuals was detained at the scene.

Your letter also asks a number of additional, detailed questions about how the investigation is being conducted and about the progress of the investigation to date. As set forth above, there are criminal charges pending related to this matter and the investigation is continuing. As a result, the FBI cannot provide the detailed information about the evidence in the case requested in your letter. Once the case is concluded it may be possible for the FBI to provide you with additional information.

Thank you for your interest in this important matter.

Sincerely,



Stephen D. Kelly
Assistant Director
Office of Congressional Affairs

Larry A. Dever
Sheriff

Office of the Sheriff Cochise County



Rodney W. Rothrock
Chief Deputy

May 10, 2012

Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Attn: Investigator Brian M. Downey
Fax: 202-224-3799

Dear Mr. Grassley/Investigator Downey,

Pursuant to your public records request dated June 2, 2011, the following information is being provided to your office for review. Please note that although the original request was reportedly dated in June of 2011, the actual request was not received into this office until May 2, 2012 hence the delay.

In response to specific records information outlined in item number 1 of your request, the Cochise County Sheriff's Office does not have any reports in which we have reason to believe may be connected to Operation Fast and Furious.

In response to specific records information outlined in item number 2 of your request, the Cochise County Sheriff's Office does not have any reports that list Assistant U.S. Attorney Emory Hurley as a point of contact.

In response to specific records information outlined in item number 3 of your request, the Cochise County Sheriff's Office has several reports from September 2009 to present where firearms were recovered attendant to investigations into homicide, aggravated assault, kidnapping, or home invasions. These reports have been included in this correspondence for your review.

If you have any questions regarding this information please contact me at 520-432-9504.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carol A. Capas".

Carol A. Capas
Communications Program Coordinator
Cochise County Sheriff's Office

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LAWRENCE J. BRADY
STAFF DIRECTOR

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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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May 10, 2012

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Mr. Attorney General:

I am in receipt of the Department's letter dated May 3, 2012. It was disappointing. The letter regurgitated misleading numbers and irrelevant internal memoranda disguised as legal opinions to make the case that the Department has cooperated with the Committee's investigation. The Department should have instead pledged to work with the Committee to provide documents shedding light on the most significant outstanding issues – including retaliation against whistleblowers and how the Department officials learned the true nature of a reckless operation that contributed to the death of a Border Patrol Agent.

The Committee has been able to advance the Fast and Furious investigation even this far despite the Department dragging its feet every step of the way. To make the case that the Department has been cooperative, the May 3, 2012 letter bragged that it provided or made available "more than 7,600 pages of material as part of 46 separate productions of documents."¹ In fact, the best metric for measuring the Department's commitment to cooperating is not how many documents have been made available to the Committee. Rather, it is how many have been withheld. The 7,600 pages shared with the Committee are a small fraction of the documents related to Fast and Furious made available to the Office of the Inspector General and a fraction of those brought to the Committee's attention by other sources.

Beyond this, the Justice Department should expect its compliance to be measured by not merely the quantity of documents, but their quality. The documents you shared with the Committee were heavily redacted, to the point that the redactions were laughable. Literally. On *The Daily Show*, comedian Jon Stewart described a stack of pages that consisted almost entirely of large black boxes as "prized Mondrians from his famed black period."²

¹ Letter from Deputy Att'y Gen. James M. Cole to Chairman Darrell Issa, May 3, 2012, at 1 [hereinafter May 3, 2012 letter].

² Jon Stewart, *The Daily Show*, Comedy Central, June 21, 2011.

The Honorable Eric H. Holder, Jr.
 May 10, 2012
 Page 2

WAITING FOR GODOT

In the May 3, 2012, letter, the Department noted that the Executive Branch provides committees of Congress with access to open law enforcement files “in extraordinary circumstances.”³ This is in fact an extraordinary circumstance. Congress is investigating the Justice Department for helping arm the Sinaloa Cartel – the most powerful and dangerous drug cartel in the world. The full extent of the casualties of Fast and Furious may never be known.

Had Department leadership not authorized the sale of arms to people working for the Sinaloa Cartel, then Congress would not need the documents specified in the subpoena to understand what went wrong. Had the Department not lied to gun store owners about the scope of the firearms trafficking investigation, then Congress would not need the documents specified in the subpoena to understand what went wrong. The documents we seek correlate precisely with the enormity of the Department’s failure with respect to all aspects of Fast and Furious.

For those of us on the Committee, waiting for the Department to move off its misguided position and produce the documents we seek has been like waiting for Godot. Like Vladimir and Estragon, we held out hope despite mounting evidence that nothing is going to show up. We cannot wait any longer.

Fortunately for us, the Department of Justice is not the arbiter of what the Committee’s legitimate oversight interests are. There is a mechanism for resolving cases that challenge the limits of the congressional prerogative. The contempt process is part of that mechanism. The Department’s unwillingness to recognize that an investigation into Fast and Furious is in fact a legitimate oversight interest signals we have reached an impasse and that contempt proceedings are necessary.

“The Committee . . . has not taken sufficient steps to define the categories of documents it deems essential to its review of Fast and Furious”

The Department’s assertion that “[t]he Committee . . . has not taken sufficient steps to define the categories of documents it deems essential to its review of Fast and Furious” has no basis in reality.

For over a year, Committee staff have identified for the Department specifically what documents the Committee is seeking. The draft contempt report released last week delineates the Department’s understanding of exactly what the Committee is seeking for each of the 22 categories in the subpoena. The draft report also describes three specific categories of documents covered by the subpoena for which no documents have been produced. The Committee has repeated this information to senior Department lawyers on numerous occasions.

³ *Id.*, citing 10 Op. O.L.C. 68, 76, “Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act,” Ass’t Att’y Gen. Charles J. Cooper (1986).

The Honorable Eric H. Holder, Jr.
 May 10, 2012
 Page 3

The Department has failed to produce any documents related to these three categories. The documents produced by the Department to date do not address the substance of the Committee's major concerns. Only full compliance with the Committee's subpoena will restore the faith of the American public that you intend to cooperate fully with Congress. Considering you are the Nation's highest ranking law enforcement official, it is important that such faith exists.

"The Committee's request . . . is inconsistent with precedent across Administrations"

For over a year, the Department has failed to cite a single piece of legal authority or case law that supports its refusal to produce documents to Congress. Instead, the Department has the audacity to cite internal memoranda – drafted by the Department's own lawyers – to support the position that DOJ does not have to produce documents to a co-equal branch of government when they are related to ongoing criminal investigations. Most recently, in the May 3, 2012, letter, the Department cited a letter from a former Assistant Attorney General for Legislative Affairs to justify withholding documents.⁴

The May 3, 2012, letter apparently signaled for the first time that the President may assert the Executive Privilege to withhold agency documents from Congress. In the letter, the Department cited an internal opinion from 1984 that said "Presidents have steadfastly protected the confidentiality and integrity of investigative files from untimely, inappropriate, or uncontrollable access by the other branches, particularly the legislature."⁵ That opinion referred to an Executive Branch official who asserted a claim of executive privilege. Is the President in fact asserting executive privilege over these documents?

The Department's position that ongoing criminal investigations preclude the production of documents appears at this point to be a red herring meant to stall the Committee's investigation. The Department has not sought to find alternative means to provide the Committee with the information necessary to complete its investigation.

GOING FORWARD

Recently, in the earliest stages of a highly public scandal, the leadership of the U.S. Secret Service took immediate action. The Secret Service readily acknowledged a problem, began a thorough and extensive internal investigation, and immediately placed a dozen employees on administrative leave. All this occurred within four days, and with Congress being briefed constantly.

In contrast, when faced with the Fast and Furious scandal, the Department of Justice battened down the hatches and began developing a public relations strategy. The Fast and Furious scandal will be your legacy as Attorney General. If the Justice Department, however, decides to change course and make a serious effort to cooperate in order to halt contempt

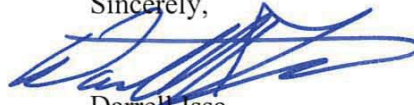
⁴ May 3, 2012 letter at 2.

⁵ *Id.* at 1.

The Honorable Eric H. Holder, Jr.
May 10, 2012
Page 4

proceedings, the Committee stands ready to work with you to ensure that the congressional investigation does not harm legitimate Department interests.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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

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

Dear Mr. Chairman:

This responds to your letter to the Attorney General dated May 10, 2012. We believe that a contempt proceeding would be unwarranted given the information the Department has disclosed to the Committee to date; unprecedented given the law enforcement sensitivities at issue; and ill-advised given the damage it would cause to relations between the Executive and Legislative Branches. The Committee's concerns about the Department's response to the October 11 subpoena appear predicated on a misunderstanding both of the extraordinary lengths to which the Department has gone to respond to the Committee's requests, and of the threat that disclosures of sensitive law enforcement information would pose to open criminal investigations and prosecutions. Furthermore, we believe that the core questions posed by the Committee about Operation Fast and Furious have been answered.

The Department continues to believe, however, that efforts to arrive at a mutually acceptable resolution of this matter have not been fully exhausted and that both the Committee and the Department must continue to work constructively to avoid conflict. We note that the Committee does not appear to have completed other aspects of its investigation and that the results of the Department's Inspector General review have not yet been reported. Such alternative means for obtaining information would provide the Committee with clearer insight into the need for additional documents and whether harmful conflict between co-equal Branches of government is avoidable. In any event, we remain willing to work with the Committee in good faith to avoid this impasse.

At the outset, I want to reiterate what we have said previously: Operation Fast and Furious was a fundamentally flawed response to the problem of gun trafficking on the Southwest Border. While the goal of stopping gun trafficking is important, the tactics employed in Fast and Furious, as well as in investigations in the prior Administration, like Wide Receiver and Hernandez, were inappropriate and should not have been used. Shortly after the Attorney General learned of the inappropriate tactics used in Operation Fast and Furious, he asked that the Department's Acting Inspector General conduct a review. Moreover, the Attorney General instructed me to issue a directive to the field making clear that those tactics should not be used again. In addition, the Department has implemented a number of reforms in the wake of Fast and Furious, and the investigations conducted in the prior Administration, including the

requirement of closer supervision by ATF management of significant gun trafficking cases. There have also been broad changes in leadership and staffing at ATF and the Arizona U.S. Attorney's Office.

Because the Committee's review of this matter is focused on open criminal investigations and prosecutions, the Department is required to balance the Committee's oversight interests against the Department's need to maintain the absolute independence and integrity of its ongoing and sensitive law enforcement activities. Accordingly, the Department has provided the Committee with documents and information showing how the inappropriate tactics in Fast and Furious, Wide Receiver and the other operations under review came to be employed while, at the same time, preserving the confidentiality of core law enforcement documents relating to ongoing matters. Although the Committee has expressed concern about the length of time it has taken the Department to respond to the Committee's October 11, 2011 subpoena, its oversight of open criminal investigations and prosecutions has required the Department to undertake painstaking reviews of documents so we could be confident that we were addressing the Committee's legitimate concerns while, at the same time, not compromising our ability to hold accountable those who violate our laws.

The Committee has also raised questions about the lack of documents produced by the Department reflecting the participation of senior Department officials in devising the inappropriate tactics used in Fast and Furious. Far from reflecting a "cover-up," as some have claimed, the lack of documents makes clear that these tactics had their origin in the field in Arizona and not among Department leaders in Washington. This reality was expressly recognized in the Memorandum ("Memorandum") recently issued by the Committee as a companion to the Committee's Draft Resolution of Contempt ("Draft Resolution"). *Memorandum at 4*. It therefore is not surprising that the documents sought by the Committee do not exist.

We continue to be concerned about statements that conflate knowledge by Department officials that there was a regional investigation in Arizona called Fast and Furious with knowledge of the inappropriate tactics used in the matter. In this regard, the Draft Resolution for the first time expresses a Committee view that a Washington-based stamp of approval exists in this matter because the Operation was OCDETF-funded. *Memorandum at 8*. However, as the Committee knows, the OCDETF approval process is regional and not centralized in Washington. Moreover, none of the documents submitted in support of the request for OCDETF funding of Fast and Furious described the inappropriate tactics used. Indeed, the OCDETF Investigation Initiation Form submitted in connection with the Operation – which the Department allowed the Committee to review – makes repeated references to *seizures of weapons* that law enforcement made in connection with the investigation. *OCDETF Investigation Initiation Form at 3-4*. Thus, to the extent Department personnel in Washington may have reviewed the forms, they would have been left with the clear understanding that law enforcement was actively *seizing weapons* in this matter.

Below, we explain the extraordinary efforts we have undertaken in this matter; the critical confidentiality interests implicated by the Committee's requests; the information that has come to light as a result of the ongoing inquiry into inappropriate tactics used in several law enforcement operations; and the steps the Department has taken to eliminate the unnecessary risk to public safety by prohibiting such tactics.

I. The Department Has Made Extraordinary Efforts to Respond to the Committee's Requests

The Department has undertaken extraordinary efforts over the last year to cooperate in this matter. To respond to the Committee's March 31, 2011, subpoena, a team of attorneys from ATF and other Department components was deployed to search for and review potentially responsive records. We searched the records of 20 separate custodians and reviewed over 140,000 documents to find responsive materials. After receiving the Committee's October 11, 2011, subpoena, a separate team of attorneys was specially assigned from various Department divisions to review potentially responsive documents and to perform tasks necessary to respond to the Committee's oversight requests.

In all, the Department has collected data from approximately 240 custodians in relevant divisions and components. To ensure the completeness of the data, multiple files for each custodian were collected and processed. In total, the Department has processed millions of electronic records, including a substantial volume of duplicate records that derived from processing overlapping universes of data (*e.g.*, from active data systems, archival systems or backup tapes), even though only a small fraction of these documents has proven to be responsive. The Department has made significant investments in information technology and staffing resources in order to meet the Committee's requests, and the experienced information technology personnel assisting us in this project, and the subcontractors hired by them, have indicated that the volume of data processed during this review has been extraordinary.

Even beyond our document production efforts, the Department has made available numerous senior officials and employees for testimony, interviews, and briefings. The Attorney General, the Assistant Attorney General for the Criminal Division, and the Assistant Attorney General for Legislative Affairs have all testified before Congress on this matter. In fact, the Attorney General has answered questions about Operation Fast and Furious at seven congressional hearings, including for four hours before this Committee on February 2, 2012. In addition, a former Acting Deputy Attorney General and the Attorney General's current Chief of Staff, the Attorney General's former Deputy Chief of Staff, a Deputy Assistant Attorney General for the Criminal Division, and other officials, have been made available for transcribed interviews by Committee investigators.

In addition, the former United States Attorney for the District of Arizona was interviewed twice in order to accommodate the Committee's information needs. The Department also made available six ATF employees, including the Special Agent in Charge of the Phoenix Field

Division, to answer the Committee's questions, in addition to ATF Agents who have been interviewed independently by the Committee. Furthermore, the Department has provided eight briefings on matters of interest to the Committee, including virtually unprecedented briefings by the FBI, ATF, and DEA, on highly sensitive topics. These comprehensive efforts were undertaken to respond to your questions and concerns.

II. The Department Has Provided the Committee with a Large Volume of Documents, Including Materials That the Department Does Not Normally Disclose To Congress

Your May 10, 2012, letter acknowledges that the Department has produced a large volume of documents relating to open investigations and prosecutions, but takes issue with the "quality" of the documents on grounds that some were redacted. We do not believe this to be a fair criticism because both the documents and witness testimony provided to the Committee have gone to the central issue in this matter – how inappropriate tactics came to be used in Operation Fast and Furious and other investigations in the prior Administration. To the extent the Department has redacted documents provided to the Committee, it has done so to preserve Department interests that do not go to what we understand to be the core of the Committee's review.

The Department has received 58 letters from you and Senator Grassley regarding this matter, 35 of which requested documents or other information, in addition to the Committee's two subpoenas. To date, we have provided the Committee over 7,600 pages of documents from both ATF and the Department as part of 47 separate productions. We have provided documents to the Committee at least twice every month since late last year as part of the Department's ongoing efforts to comply with the Committee's subpoenas and other requests for information.

The assertion in the Draft Resolution (p. 14) that the Department has provided documents only for 10 of the 22 subpoena items is incorrect. In fact, the Department has produced or made available for review documents responsive to 16 of the 22 subpoena items. As to 13 of these items, we delivered the documents to the Committee or made them available for staff review (subpoena items 1, 2, 4, 5, 6, 7, 10, 11, 12, 13, 14, 20, and 21). We provided access to documents responsive to three additional items (subpoena items 15, 17, and 18) in the course of briefings on sensitive law enforcement matters on October 5, 2011, and on subsequent occasions, as referenced in Section IV(C) below. We have not located any documents responsive to a 17th item (subpoena item 3). The documents responsive to the five remaining items (subpoena items 8, 9, 16, 19, and 22), as well as additional documents responsive to the other 16 items of the October 11 subpoena, pertain to sensitive law enforcement activities, including ongoing criminal investigations and prosecutions that raise significant concerns for the Department, as discussed in Section III(A) below, or are materials generated by Department officials in the course of responding to congressional investigations or media inquiries about this matter that are generally not appropriate for disclosure, as discussed in Section III(B) below.

Members of the Committee continue to express concern that the Department's Office of the Inspector General (OIG) has received more documents in connection with its review of this matter than the Committee has received. But, as I explained in my May 3, 2012, letter to you, that comparison is inapposite. First, the OIG, while independent, is a component of the Department and, in pursuit of its mission, is authorized: (a) to review transcripts of grand jury proceedings and wiretap applications whose disclosure to third parties is prohibited by law; and (b) to review Reports of Investigation and other sensitive law enforcement information relating to ongoing investigations and prosecutions that generally are not appropriate for disclosure outside the Department. Second, in responding to your requests, the Department took steps to manually de-duplicate documents, including lengthy email chains, as a courtesy and in order to facilitate the Committee's efforts to review information efficiently. We did not take those same time-consuming steps in processing documents for the OIG. While we could have increased the number of pages provided to the Committee and increased our speed by eliminating this step, we thought this manual de-duplication effort would be more helpful to the Committee. Finally, we understand that the OIG has obtained documents from sources other than the Department. Thus, it is not accurate to suggest that the Department has not complied with Committee requests for information because the OIG reportedly has obtained a larger number of documents as part of its investigation.

Indeed, as evidence of our good faith in this process, the Department on December 2, 2011, took the highly unusual step of delivering to the Committee 1364 pages of material that were generated in the course of preparing our now-withdrawn February 4, 2011, letter to Senator Grassley. While Executive Branch agencies have not historically provided such deliberative material to Congress (*see* Section III(B) below), we determined in this instance that it was important for the Department to respond to the Committee's requests for these documents in order to demonstrate that the February 4 letter was developed in good faith, based on information provided by those believed to know the true facts. The production of these materials was a significant effort by the Department to work cooperatively with the Committee and was directed by the Attorney General himself.

III. The Department's Concerns About Highly Sensitive Documents That Go To The Core Of the Department's Mission and Independence

A. Documents That Implicate Ongoing Law Enforcement Matters

Multiple items in the Committee's October 11 subpoena seek core investigative materials from significant ongoing criminal investigations and prosecutions. They include the murder of Customs and Border Protection Agent Brian Terry, the murder of Immigration and Customs Enforcement Special Agent Jaime Zapata, the ongoing Fast and Furious investigations and prosecutions, as well as other investigative matters that the Department has not publicly disclosed. Our disclosure to this oversight Committee of some material sought by the October 11 subpoena, such as records covered by grand jury secrecy rules and federal wiretap applications and related information, is prohibited by law or court orders. Moreover, disclosure outside the judicial process

of other non-public information, such as core investigative material, poses significant risks to those efforts and to the individuals involved in them. For these reasons, the Department's long-standing policy across Administrations is to decline congressional requests for non-public information relating to pending law enforcement matters in order to protect the independence and integrity of those efforts.

The Department's non-partisan commitment to protecting ongoing criminal investigations and prosecutions runs deep. As Attorneys General and heads of the Office of Legal Counsel during Administrations of both political parties have articulated, "the policy of the Executive Branch throughout our Nation's history has generally been to decline to provide committees of Congress with access to, or copies of, open law enforcement files except in extraordinary circumstances." *Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act*, Charles J. Cooper, Assistant Attorney General, 10 Op. O.L.C. 68, 76 (1986) ("*Cooper Opinion*"). This policy is grounded in the constitutional separation of powers and the Department's need to protect the independence, effectiveness, and integrity of our law enforcement actions. Thus, "[s]ince the early part of the 19th century, Presidents have steadfastly protected the confidentiality and integrity of investigative files from untimely, inappropriate, or uncontrollable access by the other branches, particularly the legislature." *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, Theodore B. Olson, Assistant Attorney General, 8 Op. O.L.C. 101 (May 30, 1984).

There are two fundamental bases for this longstanding policy. First, disclosure to Congress of information from open criminal files creates the "danger that congressional pressure will influence, or will be perceived to influence, the course of the investigation." *Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations*, Douglas W. Kmiec, Assistant Attorney General, 13 Op. O.L.C. 93 (Mar. 24, 1989). Second, such disclosure could also "seriously prejudice law enforcement." *Position of the Executive Department Regarding Investigative Reports*, Robert Jackson, Attorney General, 40 Op. Att'y Gen. 45, 46 (1941). Specifically, it could reveal "sensitive techniques, methods, or strategy," providing a road map of our efforts to current and future targets of criminal investigations and prosecutions; it could raise "concern over the safety of confidential informants and [thus have a] chilling effect on other sources of information"; and it could impinge "the rights of innocent individuals who may be identified in law enforcement files but who may not be guilty of any violation of law." *Cooper Opinion*, 10 Op. O.L.C. at 23-25.

In your letter to the Attorney General dated May 10, 2012, you discount the significance of the authorities discussed above. As you know, however, these opinions set forth the official legal positions of Administrations that span both political parties in their dealings with Congress. It is very significant, in our view, that there is no instance in which Congress has held an Attorney General in contempt based on a failure to provide materials relating to ongoing criminal investigations and prosecutions. Nor, in our view, are there extraordinary circumstances present in this matter that would justify giving the Committee documents relating to our open criminal

investigations and prosecutions. As we explain in Section IV below, the Committee already has answers to the questions that it asserts necessitate the production of these materials.

B. Documents Generated in the Course of Efforts to Respond to Congressional and Media Inquiries Relating to This Matter

The Committee demands the production of internal Department communications dated after congressional review of this matter commenced. These communications took place after the flawed tactics used in Operation Fast and Furious were terminated and made public. Thus, they were not generated as part of the Fast and Furious operation but instead were made later in the course of responding to congressional or media inquiries about the operation. Administrations of both parties consistently have recognized that materials generated by Executive Branch officials in the course of responding to congressional investigations are generally not appropriate for disclosure to the congressional committee conducting the oversight. Congressional demands for such information implicate heightened Executive Branch confidentiality interests and “significant separation of powers concerns” by threatening to compromise the Executive Branch’s ability to respond independently and effectively to congressional investigations. *Assertion of Executive Privilege Regarding White House Counsel’s Office Documents*, Janet Reno, Attorney General, 20 Op. O.L.C. 2, 3 (1996).

It has been the Department’s longstanding view across Administrations of both parties that candid Executive Branch deliberations regarding how to respond to a congressional inquiry would be substantially chilled if such deliberations were disclosed to Congress. *See, e.g., id.* (advising that compliance with a congressional subpoena seeking White House Counsel’s Office documents generated in response to oversight requests “would compromise the ability of [the] Office to advise and assist the President in connection with the pending Committee and Independent Counsel investigations”); Letter to the President from Paul D. Clement, Solicitor General and Acting Attorney General, at 5-7 (June 27, 2007) (“Clement Letter”) (stating the same concern); Letter to Chairman Conyers and Chairwoman Sanchez, from Richard Hertling at 3 (Mar. 19, 2007) (“The appropriate functioning of the separation of powers requires that Executive Branch officials preserve the ability to communicate confidentially as they discuss how to respond to inquiries from a coordinate branch of government. Such robust internal communications would be effectively chilled, if not halted, if they were disclosed, which could substantially impede any agency’s ability to respond to congressional oversight requests.”).

Just as the confidentiality of internal communications between and among the Chairman, Members of the Committee and their staffs is essential to the Committee’s ability to conduct oversight, the confidentiality of internal communications among Department officials is essential to our ability to respond to matters under congressional review. This is a substantial government-wide concern. As the Department stated during the prior Administration, “it would introduce a significantly unfair imbalance to the oversight process if committees were able to obtain internal Executive Branch documents that are generated in order to assist Executive Branch officials in determining how to respond to an inquiry by the very committee seeking the

documents or other information.” Letter to the Honorable John Conyers and the Honorable Linda T. Sanchez, from Richard A. Hertling, Assistant Attorney General, Office of Legislative Affairs, at 3 (Mar. 26, 2007); *see also* Clement Letter at 6 (“the ability of the Office of the Counsel to the President to assist the President in responding to [congressional and media] investigations ‘would be significantly impaired’ if a congressional committee could review ‘confidential documents prepared in order to assist the President and his staff in responding to an investigation by the committee seeking the documents’”) (quoting 20 Op. O.L.C. at 3). By threatening to compromise the ability of the Executive Branch to respond effectively to congressional inquiries, oversight targeted at this category of deliberative documents raises grave constitutional concerns regarding the separation of powers.

Moreover, an additional, particularized separation of powers concern is presented here because the Committee has sought information about open criminal investigations and prosecutions. In responding to oversight in such a sensitive area, officials within the Department necessarily have conferred about how to respond to Congress while ensuring that critical ongoing law enforcement actions are not compromised and law enforcement decision-making is not infected by even the appearance of political influence. The confidentiality of such candid internal deliberations must be protected in order to preserve the independence, integrity, and effectiveness of the Department’s law enforcement activities.

For these reasons, and for those set forth in Section IV(B) below, the Department has not provided these materials to the Committee. The one exception is that the Department provided the Committee with materials relating to the preparation of the now-withdrawn February 4 letter. This limited exception was based solely on the Department’s acknowledgment that that letter contained inaccurate information. This was consistent with the position the Department took in the last Administration during the oversight regarding the resignation of United States Attorneys. *See* Letter to Chairman Conyers and Chairwoman Sanchez from Richard Hertling, at 3 (Mar. 19, 2007) (informing House Judiciary Committee that Department would “provid[e] deliberative documents concerning the preparation of the [inaccurate] congressional testimony by Department officials in order to clarify the integrity of our process for preparing the testimony” but stating that the Department would “not provid[e] other documents generated within the Executive Branch for the purpose of responding to the congressional (and media) inquiries about the resignations”).

IV. The Information Already Provided By the Department Answers Each of the Remaining Questions Identified in the Draft Resolution

In its Draft Resolution, the Committee identifies “three main categories” of documents that it says have not been provided in response to the October 11 subpoena, and that it argues are necessary to answer remaining questions about Fast and Furious. *Draft Resolution at 37*. First, the Committee asserts that it lacks documents showing who at the Department “should have known of the reckless tactics” used in the Operation. *Id.* With respect to this issue, the Committee seeks the production of federal wiretap applications and sensitive criminal

investigative reports that were prepared by law enforcement agencies. Second, the Committee contends that it lacks documents showing “how the Department concluded that Fast and Furious was ‘fundamentally flawed.’” *Id.* at 38. More specifically, the Committee seeks documents created after the inappropriate tactics used in Fast and Furious were made public and had terminated. Finally, the Committee argues that it has not received documents about a supposed “lack of information-sharing among DEA, FBI, and ATF.” *Id.* The Committee’s spokesperson recently explained that documents in this category contain “information about informants and their roles.” As such, these documents directly implicate the Department’s most sensitive law enforcement operations.

In both the Draft Resolution and your letter to the Attorney General dated May 10, 2012, the claim is made that the Committee has not received any information on these topics. In fact, the Committee has received documents and information on each of these topics and those materials provide the answers that the Committee says it still needs.

A. Wiretap and Core Law Enforcement Materials

The Memorandum argues that Department officials in Washington obtained unspecified “documents from the field” that should have alerted those officials of the inappropriate tactics being used in Fast and Furious, and the Committee therefore seeks the production of those materials. *Memorandum* at 8. The Draft Resolution clarifies that the unspecified documents referenced in the Memorandum are federal wiretap applications that have been filed under seal in federal district court. *Draft Resolution* at 37. The argument that the Department should produce these applications ignores the fact that the Department is *prohibited by law* from providing them. As the Committee knows well, the sealing and disclosure of materials relating to electronic intercepts authorized under federal law are governed by a federal statute and a court sealing order, both of which prohibit the Department from disclosing the materials that the Committee seeks. Indeed, disclosure of these materials in violation of these provisions, including by Department personnel to the Committee, is punishable as a criminal offense, as the Attorney General made clear when he testified before the Committee on February 2, 2012. The failure to produce something whose production is prohibited by law cannot serve as the basis for a finding of contempt. Even beyond these concerns, disclosing such core law enforcement materials while criminal investigations and prosecutions arising out of them remain pending would be damaging to the Department’s efforts to hold accountable those who violate the law, as discussed above. *See* Section III(A).

The Committee also seeks core law enforcement documents relating to open criminal investigations and prosecutions in an effort to determine who “should have known of the reckless tactics.” However, senior management officials at ATF and the Arizona U.S. Attorney’s Office have already provided recorded statements to the Committee that they did not alert Department leadership of the tactics used in Fast and Furious because those senior management officials themselves were unaware of them. Thus, the documents sought by the Committee will not answer the question it poses. Moreover, we have already explained the settled practice of

Administrations of both political parties to protect such materials from congressional review and the compelling reasons underlying that policy. *See* Section III(A) above. In any event, the material that the Department has already provided, and the witnesses it has made available to the Committee, amply respond to the question. The record reflects that the inappropriate tactics used in Fast and Furious were initiated and carried out by personnel in the field over several years and were not initiated or authorized by Department leadership in Washington.

B. Documents Reflecting How The Department Concluded that Operation Fast and Furious Was Fundamentally Flawed

The Committee argues that it does not understand how the Department concluded that Operation Fast and Furious was fundamentally flawed and that communications generated after congressional review of this matter commenced are required to answer that question. The reality is that the Committee knows the answer to the question it poses. The record makes clear that Department leadership was unaware of the inappropriate tactics used in Fast and Furious until allegations about those tactics were made public in early 2011. The record further reflects that after those public allegations were raised, the heads of Department components believed to know the true facts assured Department leadership that the allegations were “categorically false.” However, over a period of months, as documents to be provided to the Committee were collected and reviewed, and as witness testimony before the Committee was evaluated, Department leadership was able to assess facts independently.

Throughout last year, Department officials made numerous public statements or took actions reflecting these realities and their increasing concern about what actually had happened in Fast and Furious. Those statements and actions include:

- On February 28, 2011, the Attorney General asked the Department’s Acting Inspector General to review these issues.
- On March 9, 2011, the Attorney General issued a public statement explaining his rationale for requesting the Inspector General investigation: “[Q]uestions [that] have been raised by ATF agents about the way in which some of these operations have been conducted . . . have to be taken seriously, and on that basis, I’ve asked the inspector general to look into that.”
- On March 10, 2011, in testimony before the Senate Appropriations Committee, the Attorney General stated that “there have been concerns expressed about the way in which this operation was conducted – and I took those allegations . . . very seriously, and asked the inspector general to try to get to the bottom of it.”
- On May 2, 2011, the Department wrote to Senator Grassley stating that “[i]t remains our understanding that [Fast and Furious] did not knowingly permit straw buyers to take guns into Mexico,” but informing the Senator that that we had referred his letters to the Acting Inspector General “so that she may conduct a thorough review and resolve your allegations.”

- On May 3, 2011, in response to a question from Chairman Issa at a House Judiciary Committee hearing, the Attorney General advised that the Acting Inspector General was reviewing “whether or not Fast and Furious was conducted in a way that’s consistent with” Department policy, stating “that’s one of the questions that we’ll have to see.”
- On May 4, 2011, in response to a question from Senator Grassley at a Senate Judiciary Committee hearing about allegations that ATF had not interdicted weapons, the Attorney General said: “I frankly don’t know. That’s what the [Inspector General’s] investigation . . . will tell us.”
- On May 5, 2011, in a briefing to Committee and other congressional staff, Department officials made clear that we had questions about the initial assurances from relevant components regarding allegations of non-interdiction, and that was why the Attorney General had referred the matter to the Acting Inspector General.
- On June 15, 2011, Assistant Attorney General Weich testified as follows before the Committee: “[O]bviously allegations from the ATF agents . . . have given rise to serious questions about how ATF conducted this operation.” He also noted that “we’re not clinging to the statements” in the February 4 letter.
- On October 7, the Attorney General made clear in his letter to the Committee that the tactics used in Fast and Furious were “fundamentally flawed” and “completely unacceptable.”
- In November 2011, both the Attorney General and Assistant Attorney General Breuer testified before the Senate Judiciary Committee in separate hearings that the February 4 letter inadvertently included inaccurate information.

In short, the Department’s understanding of the facts underlying Fast and Furious became more developed as evidence came to light that was inconsistent with the initial denials provided to Department personnel. Over time, Department leadership came to recognize that Fast and Furious was fundamentally flawed. In part, considerations of public safety do not appear to have been taken into account in formulating and carrying out the investigative plan for the Operation. Likewise, in light of the significant risks to public safety, Fast and Furious remained operational far too long. We trust that the Committee’s understanding of what happened in Fast and Furious has also evolved based on its review of the evidence and testimony that has been accumulated. On this well-developed record, there is no basis for the Committee to demand additional documents relating to this issue, particularly since, as we have already discussed in Section III(B) above, the kinds of documents sought by the Committee have not historically been provided to Congress regardless of which party controls the Executive Branch.

C. Documents About Informants And Their Roles

Finally, the Committee seeks documents regarding “informants and their roles.” More specifically, the Committee posits the existence of an intelligence-sharing failure among ATF, DEA and FBI that is predicated on the relationship that the Committee asserts those agencies had with certain cooperating witnesses. However, the Committee has been provided with information during confidential law enforcement briefings that answers the questions it claims remain outstanding.

As the Committee knows, the Department neither confirms nor denies its relationships with cooperating witnesses. Assuming solely for purposes of this discussion that the relationships alleged by the Committee exist, the production of the materials sought by the Committee would raise very significant concerns going to the heart of our law enforcement mission. It is often true that the only way to build cases against violent and dangerous criminal kingpins who have insulated themselves from their unlawful activities is by obtaining information from those in their inner circles.

Those in control of the Mexican drug cartels are among the most dangerous and violent criminals operating anywhere in the world. Disclosure of information about cooperating witnesses not only eliminates the ability of law enforcement to continue using such sources, it imperils the lives of the cooperators and their families and friends. Even where the fact of an individual’s cooperation with the Department somehow becomes known, exposing details about the nature or extent of that cooperation would provide valuable information to the targets of the Department’s investigative efforts and make more difficult our sworn goal of bringing them to justice.

Moreover, our ability to maintain the confidentiality of information about cooperating witnesses strongly influences the likelihood that we will be able to recruit cooperating witnesses in future investigations. If future cooperating witnesses understand that the Department does not protect relationships with those assisting our law enforcement efforts, and further see that the result of cooperating with the Department is unspeakable violence against the families and friends of those who assist us, our law enforcement mission will be severely impacted. We take as a given that the Committee does not intend such a result here.

Despite these very real concerns, and in an effort to answer Committee questions, the Department organized a briefing on this subject on October 5, 2011, that was conducted by officials of ATF, DEA and FBI. During this briefing, the Committee was allowed to review sensitive law enforcement documents in redacted form. The Committee also received follow-up briefings from some of these agencies that responded to the Committee interests. While the documents sought by the Committee go to the heart of the Department’s law enforcement mission, we have pursued alternative means to provide the Committee with information on this issue. The Department’s reasonable efforts to balance these competing interests should not give rise to a finding of contempt.

V. The Department Has Instituted Reforms To Ensure That The Flawed Tactics of Operation Fast and Furious Are Not Repeated in The Future

As I described in my letter to you of January 27, 2012, the Department has instituted a number of reforms to ensure that mistakes like those made in Operation Fast and Furious, and in operations in the prior Administration, do not happen again. These improvements were made even while we await the Inspector General's report, and additional reforms may be appropriate depending on the Inspector General's conclusions.

ATF has in place new leadership. Since last August, the agency has been operating under the direction of Acting Director B. Todd Jones, who has put in place his own management team. Last summer, ATF implemented a program to enhance ATF headquarters oversight regarding certain categories of investigations, including investigations in which more than 50 firearms have been straw-purchased or trafficked. It also issued a memorandum to all Special Agents in Charge requiring, and reinforcing the importance of, de-confliction and information sharing in every investigation.

Additional reforms have included clarification last fall of ATF's firearms transfer policy to remind agents that, during the course of an investigation, public safety is the primary consideration and that interdiction or other early intervention may be necessary to prevent a firearm's criminal misuse. ATF also issued revised policies last fall regarding undercover operations and the use of confidential informants that establish review committees for such sensitive issues and restrict the use of Federal Firearms Licensees as confidential informants. In addition, ATF has established SAC Advisory and Special Agent Advisory Committees to share agency issues, concerns, and recommendations; provided targeted training for Phoenix Field Division personnel regarding techniques, strategies, and the law applicable to firearms trafficking investigations; and expanded the opportunities for employees to raise work-related concerns with supervisory level officials without fear of retaliation or reprisal.

In addition to these ATF measures, the Criminal Division has refined the process for reviewing wiretap authorization requests by its Office of Enforcement Operations (OEO). Among other things, the Criminal Division has enhanced its efforts to ensure that relevant supervisory AUSAs are notified when the Criminal Division's review of wiretap applications raises concerns about operational tactics being used in a matter, rather than rely on the fact that supervisory AUSAs should already be aware of the tactics used in their own office's cases. The goal of these revised procedures is to ensure that supervisory level personnel in the relevant litigating components are familiar with, and approve of, the operational tactics being used in the investigations being conducted by their offices in which authorizations for electronic intercepts are requested. In addition, OEO now requires two levels of supervisory review (as opposed to one) in cases involving multiple extensions of Title III wiretaps. Thus, after 90 days of interception in a particular case, if an AUSA requests a further extension of the wiretap, two

OEO supervisors must now review the application before it is submitted to a Criminal Division DAAG for authorization.

Further, in light of the inaccurate information provided to Congress in the Department's February 4, 2011, letter to Senator Grassley, on January 26, 2012, I issued direction to component heads emphasizing the need for the Department to provide accurate information in response to congressional requests and setting forth both the Attorney General's and my expectations in that regard. In particular, the directive makes clear that in responding to congressional requests for information, affected components must solicit information directly from employees with detailed personal knowledge of the subject matter at issue. In some instances, those employees will be those who have made protected disclosures on the subject to Congress. The directive makes clear that our commitment to protecting the rights of whistleblowers is not inconsistent with seeking information in an appropriate manner from employees who have made protected disclosures and that it is our responsibility to do so when necessary to ensure the accuracy and completeness of our responses to Congress.

VI. Contempt is an Extraordinary Step that is Unwarranted and Inappropriate Here

Congress has *never* held an Attorney General in contempt based on a failure to provide documents relating to open criminal investigations and prosecutions. Here, the Department has gone to great lengths to accommodate the Committee's oversight interests in the context of pending criminal investigations and prosecutions. Our responses to Congress have exceeded the boundaries that usually define our responses to oversight as we have disclosed information from open law enforcement files in an effort to meet the Committee's needs. We have briefed the Committee on extremely confidential matters and provided access to documents relating to those sensitive subjects. We note that the Committee does not appear to have completed other aspects of its investigation and that the results of the Department's Inspector General review have not yet been reported. Such alternative means for obtaining information would provide the Committee with insight into the need for additional documents and therefore whether harmful conflict between the Branches of government is avoidable.

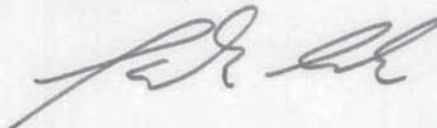
We readily acknowledge that, like our predecessors in Administrations of both parties, we have protected documents where we have believed that their disclosure would jeopardize the independence, integrity, and effectiveness of our continuing law enforcement efforts. We are absolutely committed to bringing the killers of Brian Terry and Jaime Zapata to justice. And, we are committed to seeing the continuing investigations and prosecutions arising out of Operation Fast and Furious to a successful conclusion. We know that the Committee shares these goals and we ask that the Committee work with us to ensure that we are able to hold accountable those who violate the law.

Moreover, while we have acknowledged an error in our February 4 letter to Senator Grassley (and disclosed the internal deliberations surrounding the preparation of that letter), consistent with long-standing Executive Branch practice across Administrations we have not

produced all of the other internal communications we generated following the commencement of congressional review of this matter. We recognize the Committee's broad oversight authority, as well as the contribution that the Committee's investigation has made to ensuring that the tactics used in Fast and Furious, Wide Receiver and other similar matters, are not used again. That said, we also believe that the Committee already has answers to the questions posed in the Draft Resolution. Production of the additional materials sought would undermine the Department's independence and effectiveness.

To the extent the Committee continues to have concerns, we are willing to meet with you to address those concerns and look forward to doing so.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. M. Cole', with a stylized flourish at the end.

James M. Cole
Deputy Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Minority Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 15, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed are 29 pages of documents responsive to subpoena categories 1, 6, and 13 that we produced to the House Oversight and Government Reform Committee (HOCR) today.¹ To date, we have provided the Committee over 7,600 pages of documents from both ATF and the Department as part of 47 separate productions. We have provided documents to the Committee at least twice every month since late last year as part of the Department's ongoing efforts to comply with the Committee's subpoenas and other requests for information.

Included in this production are emails relating to a previously produced policy directive sent to the field by Deputy Attorney General Cole on March 9, 2011. Today's emails reflect a telephone conversation between Deputy Attorney General Cole and Southwest Border U.S. Attorneys, and a follow-up communication in which the Deputy Attorney General set forth the Department's policy to interdict weapons before they cross the border into Mexico. The Deputy Attorney General's email was forwarded without comment to staffers in the Office of the Attorney General, who then forwarded it to the Attorney General. HOCR DOJ 006982. As the Committee knows, the Deputy Attorney General's directive was also shared with all U.S. Attorney's offices.

Other documents produced today show that the message was forwarded by the U.S. Attorney for the Southern District of Texas to other law enforcement components in that region, including to ATF officials in the Southern District of Texas. The response from the ATF Special Agent in Charge in the District was that "As far as I know, we have never let any firearms walk

¹ These documents bear limited redactions of text outside of the scope of your inquiry or to protect information implicating individual privacy interests. Some of these pages reflect the completion of our consultations with the Departments of State and bear limited redactions resulting from those consultations. In response to requests from Chairman Smith, we will deliver to the House Committee on the Judiciary the same documents that we deliver to you.

The Honorable Patrick J. Leahy
Page 2

to Mexico in this division. And while we have discussed controled [*sic*] deliveries to Mexico in our joint cases with ICE, we have never made controled [*sic*] deliveries of firearms to Mexico.” HOCR DOJ 006984. That response was forwarded to officials in ATF headquarters in Washington, D.C., and ultimately to the Deputy Attorney General and the Attorney General. HOCR DOJ 006983-6984.

Also included in today’s production is a background briefing paper prepared for then-Attorney General Mukasey in advance of his trip to Mexico in 2008. These documents reference discussions with Mexican officials regarding arms trafficking across the Southwest Border and specifically note that “ATF has developed a Southwest Border strategy, with domestic and international strategic components designed to simultaneously attack the firearms trafficking problem on both sides of the border.” HOCR DOJ 006961. As in documents previously produced regarding Attorney General Mukasey’s trip, the background briefing paper notes that ATF had recently attempted an unsuccessful controlled delivery of weapons into Mexico and that “ATF would like to expand the possibility of such joint investigations and controlled deliveries[.]” HOCR DOJ 006962. A briefing paper prepared in April 2008 prior to a scheduled meeting in Washington between the prior Administration’s Deputy Attorney General and Assistant Attorney General for the Criminal Division and visiting senior Mexican officials likewise discusses recent failed efforts at a controlled delivery and ATF’s desire to expand those efforts. HOCR DOJ 006967-006969.

Finally, today’s production includes communications between Department of Justice and Department of State officials in the U.S. Embassy in Mexico regarding the appearance of Mexican Foreign Secretary Espinosa in September 2011 before the Senate of Mexico, as well as a subsequent meeting between Secretary Espinosa and Secretary of State Hillary Clinton that included a reference to the Department’s investigation of Operation Fast and Furious. Those communications were forwarded to staffers in the Office of the Attorney General who then forwarded them to the Attorney General. HOCR DOJ 006986-6988.

We hope this information is helpful. We will supplement this production if we identify additional records responsive to Chairman Issa’s subpoena. Please do not hesitate to contact us if we can provide additional assistance regarding this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles E. Grassley
Ranking Minority Member

Congress of the United States
Washington, DC 20515

May 18, 2012

The Honorable Eric H. Holder, Jr.
 Office of the Attorney General
 U.S. Department of Justice
 950 Pennsylvania Avenue, Northwest
 Washington, DC 20530

Dear Attorney General Holder:

We write to express our concerns with the lack of full cooperation from the Department of Justice (“the Department”) with the ongoing Congressional investigation into the operation known as “Fast & Furious” and the related death of Border Agent Brian Terry. While we recognize that the Department has provided some documents in response to some aspects of the October 11, 2011, subpoena from the Chairman of the Oversight & Government Reform Committee (“the Committee”), two key questions remain unanswered: first, who on your leadership team was informed of the reckless tactics used in Fast & Furious prior to Agent Terry’s murder; and, second, did your leadership team mislead or misinform Congress in response to a Congressional subpoena?

We are troubled by the Department’s assertions that the Executive Branch possesses the ability to determine whether inquiries from the Legislative Branch have been fully complied with. As the Supreme Court has noted, each co-equal branch of our Government is supreme in their assigned area of Constitutional duties.¹ Thus, the question of whether the Executive Branch has sufficiently complied with a Congressional subpoena requesting specific information pursuant to Congress’ Article I responsibilities is one only the Legislative Branch can answer.

One fact appears to be undisputed by all concerned: Fast & Furious was a fundamentally flawed operation. It was taken to an extreme that resulted in at least one death of a U.S. Border Patrol agent and unknown other consequences, because U.S. law enforcement agencies allowed thousands of firearms to be illegally “walked” into Mexico and into the hands of drug cartels. Beyond the horrific impact on the Terry family, there is no doubt that this operation has done serious harm to one of the United States’ most important bilateral relationships. It is our hope that, in finding the truth, we can both provide closure to the Terry family, begin to repair our relationship with Mexico, and take steps to make necessary changes at the Department.

Clearly, the Department must take steps to ensure that tragic mismanagement like Fast & Furious does not occur in the future. Unfortunately, without the disclosure of the information requested in the October 11, 2011, subpoena regarding which members of your leadership team were informed of the reckless tactics that were used in the operation, the American people cannot be confident that any remedial steps you implement will accomplish this goal. For example,

¹ United States v. Nixon, 418 U.S. 683 (1974).

your leadership team recently asserted that “Department leadership was unaware of the inappropriate tactics used in Fast and Furious until allegations about those tactics were made public in early 2011.”² Yet, Federal law requires that you, or a member of your leadership team, approve the application to a Federal judge for use of a wiretap.³

In approving such an application, you or your designee would – or should – have reviewed the accompanying materials and affidavits that provided the basis for the wiretap application prior to affixing the Department’s approval to the application. We understand that the Fast & Furious operation may have included seven such wiretaps between March and July 2010. Whether the information used to justify the wiretap application or the information gained from the wiretaps is being used in any ongoing criminal prosecution is immaterial to the question of who on your leadership team reviewed and approved the wiretaps and was therefore privy to the details of the Fast & Furious operation. The assertion that your leadership team could approve wiretaps in 2010 and yet not have any knowledge of the tactics used in Fast & Furious until 2011 simply cannot be accurate and furthers the perception that the Department is not being forthright with Congress.

We would note that correspondence between your Deputy and Chairman Issa raises concerns that further Congressional actions might cause damage between the Legislative and the Executive branch.⁴ We would submit that the damage to that relationship began with a February 4, 2011, letter from the Department to the Congress that was subsequently withdrawn because it provided Congress with false information. The means to repair the damage caused by your Department lies within your powers to work with the Committee to find a mutually satisfactory level of compliance with the subpoena and avoid further confrontation.

While we are disappointed that a Senior Department official would provide false information to Congress, we are also concerned that it took your Department ten months to acknowledge the inaccuracy and ultimately withdraw the letter. In light of the letter and its subsequent withdrawal, it is critical for Congress to understand whether the letter was part of a broader effort by your Department to obstruct a Congressional investigation. We are unaware of any assertions of executive privilege that would prevent compliance with the Congressional subpoena. We are also unaware of any national security concerns or diplomatic sensitivities that would preclude compliance with the subpoena. Finally, as these post-February 4, 2011, communications concern the Department’s response to Congress, their disclosure to Congress would not impact any ongoing criminal investigations or prosecutions.

If the Office of Legal Counsel has provided a legal opinion that takes into account the specific circumstances of this investigation and you are relying on that opinion to maintain your current position, we would request that the opinion be provided to Congress at the earliest possible opportunity. Similar to arrangements previously made between your Department and Congressional investigators, we are confident that you possess adequate means to provide

² Letter from Deputy Att’y Gen. James M. Cole to House Oversight & Government Reform Chairman Darrell Issa, May 15, 2012, at 10 [hereinafter DAG Cole Letter].

³ See 18 U.S.C. § 2516(1).


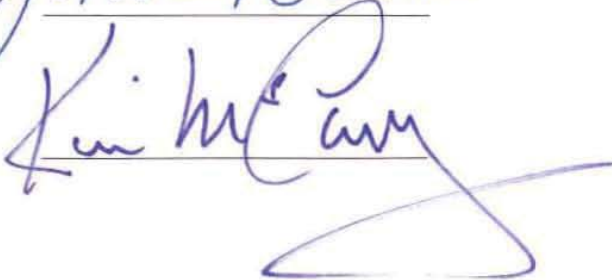
⁴ DAG Cole Letter at 1.

substantive compliance with a Congressional subpoena while protecting the integrity and confidentiality of specific documents.

We firmly believe and hope that you agree that a mutually acceptable resolution to this matter may yet be achieved. The Terry family deserves to know the truth about the circumstances that led to Agent Terry's murder. The whistle-blowers who brought these issues to light deserve to be protected, not intimidated, by their government. And, the American people deserve to know how such a fundamentally flawed operation could have continued for so long and have a full accounting of who knew of and approved an operation that placed weapons in the hands of drug cartels.

As co-equal branches of the U.S. Government, the relationship between the Legislative and Executive branches must be predicated on honest communications and cannot be clouded by allegations of obstruction. If necessary, the House will act to fulfill our Constitutional obligations in the coming weeks. It is our hope that, with your cooperation, this sad chapter in the history of American law enforcement can be put behind us.

Sincerely,






Association of
Prosecuting Attorneys

12 JUN -4 AM 11:50

Washington DC Office – 1615 L Street NW, Suite 1100 (202)861-24280

May 23, 2012

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

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight
and Government Reform
2235 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Patrick J. Leahy
Chairman
Senate Judiciary Committee
437 Russell Senate Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Issa, Chairman Leahy, Congressman Cummings, and Senator Grassley,

The Association of Prosecuting Attorneys (APA) is a private non-profit whose mission is to support and enhance the effectiveness of prosecutors in their efforts to create safer communities. We are the only national organization to include and support all prosecutors, including both appointed and elected prosecutors, as well as their deputies and assistants, whether they work as city attorneys, city prosecutors, district attorneys, state's attorneys, attorneys general or US attorneys. On behalf of APA, we believe that the Committee's ongoing investigation into an operation which the Deputy Attorney General has identified as the ATF's flawed response to the problem of gun trafficking impacts prosecutors and other law enforcement agencies. Because of this issue and out of concern for the integrity of the process and our profession we present the prosecutor's perspective.

As professional prosecutors, we believe it is important to hold dangerous offenders fully accountable, especially when the allegations include the murder of at least two law enforcement officers. Those responsible for the murder of Brian Terry, for example, must face consequences that ensure justice and deter other criminal enterprises and offenders from similar conduct. Prosecutors throughout this country are handling cases every day which include information from confidential informants, wiretaps and witnesses, who are reluctant to come forward out of fear for their safety as well as their family and friends.

Our mission is to support and enhance the effectiveness of prosecutors in their efforts to create safer communities.

Further, it is common practice for prosecutors to refuse to disclose the identity of their informants as well as the identity and whereabouts of key witnesses who are likely to be executed by the accused or his criminal enterprise. Every effort is made by prosecutors to comply with criminal discovery yet ensure the legal protections our justice system affords.

Therefore, in cases where witnesses may be intimidated by Mexican drug cartels, where informants may be compromised (thereby jeopardizing ongoing criminal investigations and prosecutions, as well as future leads), and where releasing photographs and other sensitive information may hinder prosecutors' ability to proceed in a current criminal trial or be unable to file future cases, it is logical to delay release of information until all of the related investigations are closed and related cases have been finally adjudicated.¹ Not only is it necessary, we have been provided the legal basis that it is indeed against the law to disclose core investigative materials, such as transcripts of grand jury proceedings and wiretap applications, from ongoing criminal investigations and prosecutions.² As a former California prosecutor, I am fully aware that ethical prosecutors are prevented from publically releasing evidence pre-trial. This preclusion includes information concerning confidential informants, photographs, and wiretaps. Prosecutors are only allowed to release the name of the accused, the charges and the maximum penalty.³ They are forbidden to discuss the evidence or provide information which is not contained in the charging document or included in a public record. The discussion about the case, the investigation, and other criminal acts by the accused is only proper after verdict and sentencing.

As prosecutors, we are accustomed to doing the public's business in the public. Prosecutors' offices throughout the country respond to requests for information, hold press conferences, testify before grand juries and appear before committees and commissions. It is important that those with oversight responsibility are fully informed as to the basis for the actions of the public prosecutor's office. However, since "providing open investigative files in response to a congressional subpoena could give rise to a claim, by defense counsel or others, of improper congressional influence over the criminal justice process . . ."⁴, we at the APA encourage congress to delay those aspects of its investigation that necessitate disclosure of trial-related documents until all related investigations and prosecutions have been finally adjudicated.

¹ See Letter from James M. Cole, Deputy Attorney General, to Darrell E. Issa, Chairman, Committee on Oversight and Government Reform (May 15, 2012), at 1.

² *Id.* at 5.

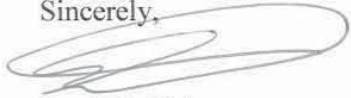
³ As the Terry trial is set to commence in California, federal prosecutors are bound to California's rules of ethics. 28 CFR 77.3. ("In all criminal investigations and prosecutions . . . attorneys for the government shall conform their conduct and activities to the state rules and laws . . . governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State.")

⁴ Letter from Janet Reno, Attorney General, to Orrin Hatch, Chairman, Committee on the Judiciary (May 17, 2000).

Our mission is to support and enhance the effectiveness of prosecutors in their efforts to create safer communities.

Thank you for your consideration of this important matter and please feel free to contact me or my staff if we may be of any assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read 'David LaBahn', with a large, stylized loop at the end.

David LaBahn
President and CEO

*Our mission is to support and enhance the effectiveness of prosecutors in their efforts
to create safer communities.*

June 2012

June 2012

DARRELL E. ISSA, CALIFORNIA
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STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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June 1, 2012

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Attorney General:

On October 12, 2011, I wrote to you to express serious concerns about retaliation by the Department against whistleblowers who provided information in the Fast and Furious investigation.¹ I now write regarding reports that another whistleblower, Special Agent Jay Dobyns, has also been retaliated against for speaking out about mismanagement and abuse at ATF. Agent Dobyns has been helpful to Congress throughout the Fast and Furious investigation in providing information related to your fatal gun trafficking program. He was also instrumental in encouraging several whistleblowers with firsthand knowledge of Fast and Furious to come forward and speak with Congress. I urge supreme caution when disciplining a Department employee for alerting the public about internal misconduct.

ATF has earned a reputation for vindictiveness when it comes to retaliating against its employees. Unfortunately, despite prior assurances from senior ATF officials, it appears that Acting Director B. Todd Jones has yet to change this reputation, as he recently upbraided Special Agent John Dodson in a private meeting at ATF headquarters. These apparent attempts to silence critics of the Bureau are potentially illegal and certainly counter-productive.² As I have previously stressed, direct communications with Congress are both vitally important and protected by law.³

¹ Letter from Senator Charles Grassley and Chairman Darrell Issa to Attorney General Eric Holder (Oct. 12, 2011).

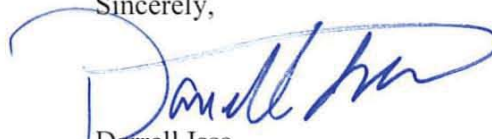
² See 5 U.S.C. § 7211 ("The rights of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House or Congress, or to a committee or a Member thereof, may not be interfered with or denied.").

³ See Consolidated Appropriations Act, 2010, P.L. 111-117, 123 Stat. 3034, § 714 (2010) (setting prohibitions on restricting communications of federal government employees with Congress); *see generally*, Government Accountability Office, "Department of Health and Human Services-Chief Actuary's Communications with Congress," B-302911 (Sep. 7, 2004) (discussing the history and background in support of the government-wide prohibition on attempts to prevent direct communications with Congress); *see also* 18 U.S.C. § 1505 (providing that obstructing or impeding a Congressional inquiry is also a criminal violation).

The Honorable Eric H. Holder, Jr.
June 1, 2012
Page 2

It appears that ATF has not received instructions from Department leadership that retaliation is not to be tolerated in any Department component. Please ensure that ATF receives the necessary instructions reiterating this policy.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", with a large, sweeping initial "D" and a stylized "I".

Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform



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

June 5, 2012

The Honorable John Boehner
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Majority Whip
U.S. House of Representatives
Washington, DC 20515

The Honorable Eric Cantor
Majority Leader
U.S. House of Representatives
Washington, DC 20515

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

Dear Mr. Speaker, Mr. Leader, Congressman McCarthy, and Mr. Chairman:

This letter updates you on the matters raised in your May 18, 2012 letter to the Attorney General. Following the receipt of your letter, the Department has had a number of constructive conversations with staff aimed at satisfying the legitimate goals of congressional oversight while, at the same time, ensuring the integrity and independence of the Department's law enforcement efforts.

Your May 18 letter, which identified the two key questions that you believe remain unanswered in this matter, was a helpful step toward reaching a resolution of the issues in dispute. We are hopeful that these ongoing conversations will lead to a mutually acceptable resolution of these issues and continue to provide the kinds of information that would answer your questions. While our staffs continue to discuss these issues, I want to reiterate that I remain available to meet with you personally.

These conversations stand in contrast with the tone and content of the letter that Chairman Issa made public today. Chairman Issa's letter makes clear that sealed court documents relating to pending federal prosecutions being handled by the U.S. Attorney's Office for the Southern District of California have been disclosed to the Committee on Oversight and Government Reform in violation of law. This is of great concern to us. While we are legally prohibited from commenting on the content of sealed court documents, we disagree with the Chairman's assertions.

The Honorable John Boehner, The Honorable Eric Cantor,
The Honorable Kevin McCarthy, The Honorable Darrell Issa
Page 2

As I have stated on a number of occasions, the Department of Justice remains committed to addressing your two key questions and to continuing to work cooperatively with you and your staffs.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Cole', written over a horizontal line.

James M. Cole
Deputy Attorney General

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CHAIRMAN

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JACKIE SPEIER, CALIFORNIA

June 5, 2012

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

On February 8, 2012, Senator Grassley, Congressman Meehan and I wrote to you requesting the Department's assistance in obtaining the wiretap applications from Operation Fast and Furious. We did so because we believed their contents would shed additional light on senior Department officials' level of knowledge of the unacceptable tactics used in Fast and Furious. Other than having acknowledged receipt of the letter, the Department has not responded to the February 8 request. In a May 15, 2012 letter, the Deputy Attorney General reiterated the Department's position that the "inappropriate tactics used in Fast and Furious . . . were not initiated or authorized by Department leadership in Washington."¹ We now know that statement is false.

The Committee has obtained copies of six wiretap applications in support of seven wire intercepts utilized during Fast and Furious. I recently provided these materials to Ranking Member Cummings in a series of three letters that outlined their extraordinary contents. The wiretap applications show that immense detail about questionable investigative tactics was available to the senior officials who reviewed and authorized them. The close involvement of these officials – much greater than previously known – is shocking.

These six applications were approved by senior Justice Department officials in March, April, May, June and July 2010. Each application included a memorandum from Assistant Attorney General Lanny A. Breuer to Paul M. O'Brien, Director, Office of Enforcement

¹ Letter from Deputy Att'y Gen. James Cole to Chairman Darrell Issa, H. Comm. on Oversight and Gov't Reform (May 15, 2012) [hereinafter DAG Cole letter].

The Honorable Eric H. Holder, Jr.
 June 5, 2012
 Page 2

Operations, authorizing the wiretap applications on behalf of the Attorney General.² The memoranda from Breuer are marked specifically for the attention of Emory Hurley, the lead prosecutor for Operation Fast and Furious.

Repeated Department Denials

Throughout the course of the congressional investigation into Operation Fast and Furious, the Department has consistently denied that any senior officials were provided information about the tactics used in Operation Fast and Furious. The wiretap applications obtained by the Committee show such statements made by senior Department officials regarding the wiretaps to be false and misleading.

You have repeatedly either denied involvement by senior officials in Fast and Furious, or asserted that the wiretap applications do not contain rich detail about irresponsible investigative tactics. In a press conference on September 7, 2011, you stated:

The notion that somehow or other this thing reaches into the upper levels of the Justice Department is something that . . . I don't think is supported by the facts. It's kind of something I think certain members of Congress would like to see, the notion that somehow or other high-level people in the department were involved. As I said, I don't think that is going to be shown to be the case – which doesn't mean that the mistakes were not serious.³

One month later, in a letter to three Committee Chairmen, you wrote:

I now understand some senior officials within the Department were aware at the time that there was an operation called Fast and Furious although they were not advised of the unacceptable operational tactics being used in it.⁴

In congressional testimony, you have repeatedly stated that you did not believe that the wiretap applications included any discussion of operational tactics. Specifically, on November 8, 2011, you testified:

I don't think the wiretap applications -- I've not seen -- I've not seen them. But I don't know -- I don't have any information that indicates that those

² See, e.g., Memorandum from Lanny A. Breuer, Assistant Attorney General, Criminal Division to Paul M. O'Brien, Director, Office of Enforcement Operations, Criminal Division, Authorization for Interception Order Application, (Mar. 10, 2010).

³ Mike Levine, *Holder Denies Prior Knowledge of 'Fast and Furious,'* FOXNEWS, Sept. 7, 2011, available at: <http://www.foxnews.com/politics/2011/09/07/holder-denies-prior-knowledge-fast-and-furious/>.

⁴ Letter from Att'y Gen. Eric H. Holder, Jr. to Chairman Darrell Issa, H. Comm. on Oversight and Gov't Reform, et al. (Oct. 7, 2011).

The Honorable Eric H. Holder, Jr.
 June 5, 2012
 Page 3

wiretap applications had anything in them that talked about the tactics that have made this such a bone of contention and have legitimately raised the concern of members of Congress, as well as those of us in the Justice Department. I -- I'd be surprised if the tactics themselves about gun walking were actually contained in those -- in those applications. I have not seen them, but I would be surprise[d] [if] that were the case.⁵

In sworn testimony before this Committee on February 2, 2012, you also denied that any information relating to tactics appeared in the wiretap applications. You said:

I think, first off, there is no indication that Mr. Breuer or my former deputy were aware of the tactics that were employed in this matter until everybody I think became aware of them, which is like January February of last year. The information -- I am not at this point aware that any of those tactics were contained in any of the wiretap applications.⁶

We now know that all of these statements are not accurate.

The remarkable level of detail about these objectionable tactics contained in the applications renews concerns that senior Department officials failed to perform their jobs. It also raises concerns about the veracity of your testimony before Congress, and the accuracy of recent letters sent to Congress by senior Department officials. Not insignificantly, this is not the first time that the Department presented inaccurate information to Congress during this investigation. Having seen the wiretap applications, we now know that the information coming from the Department has been misleading. That must stop.

Senior Officials Authorized Unacceptable Tactics at the Expense of Public Safety

While I am mindful of the legal restrictions that limit the Department's ability to comment on documents potentially under seal, it is disingenuous for Department officials to publicly claim that senior officials were unaware of the unacceptable tactics used in Fast and Furious. Even a perfunctory review of the wiretap applications amply demonstrates the immense detail documenting gun walking tactics that should have prompted senior officials in the Criminal Division to shut down the program immediately.

Senior officials in the Justice Department, including Assistant Attorney General Lanny Breuer, Deputy Assistant Attorney General Jason Weinstein, and Deputy Assistant Attorney General Kenneth Blanco, were responsible for authorizing these wiretap applications. The applications discussed -- in no uncertain terms -- the reckless tactics used in Operations Fast and

⁵ *Oversight of the Dept. of Justice, Hearing before Sen. Comm. on the Judiciary*, 112th Cong. (Nov. 8, 2011) (testimony of Eric H. Holder, Jr., Att'y Gen., U.S. Dep't of Justice).

⁶ *Operation Fast and Furious: Management Failures at the Department of Justice: Hearing Before the Comm. on Oversight and Gov't Reform*, 112th Cong. (Feb. 2, 2012) (testimony of Eric H. Holder, Jr., Att'y Gen., U.S. Dep't of Justice).

The Honorable Eric H. Holder, Jr.
 June 5, 2012
 Page 4

Furious. In light of the information contained in these wiretap applications, senior Department officials can no longer disclaim responsibility for failing to shut down Fast and Furious because they were unaware of the tactics used.

As early as March 2010, senior officials in the Criminal Division were aware of important facts about Fast and Furious. For example, these officials received information showing that ATF had identified a specific gun trafficking ring led by an individual who had demonstrated the specific intent to transport weapons from the United States to Mexico. This straw purchasing ring was uncomplicated, with just one man at the center and only a few key individuals purchasing 1,300 of the more than 2,000 weapons trafficked.

Throughout the winter, spring, and summer of 2010, these same senior officials received information that ATF decided to break off surveillance of key suspects because a variety of acceptable investigative tactics ATF agents tried had failed. These officials were told that although ATF had contemporaneous knowledge of illegal weapons purchases and knew the leader of the straw purchasing ring had the present intent to take the weapons to Mexico, ATF still broke off surveillance of the suspects right after they purchased firearms illegally.

These officials were given partial transcripts from a previous DEA wire intercept. On that wiretap, participants in the firearms trafficking ring discussed purchasing, stashing, and transporting weapons to Mexico. The senior Department officials received reports that people who had no steady source of income were purchasing large volumes of expensive weapons and paying exclusively in cash. This information provided further evidence that they were acting illegally on behalf of an organized crime ring. Provided with this information, senior Department officials could have asked questions about the questionable tactics exposed in the applications and halted this fundamentally flawed operation. Instead, they simply authorized the wiretap applications. Tragically, this failure to halt Fast and Furious had deadly consequences.

On May 15, 2012, the Deputy Attorney General wrote that “considerations of public safety do not appear to have been taking into account in formulating and carrying out the investigative plan for the Operation.”⁷ He was right. Senior Department officials, including Lanny Breuer, Jason Weinstein, and Kenneth Blanco, did not take public safety into account when they approved the wiretap applications.

It was top ATF officials, and not leaders in Department headquarters, who were concerned about the number of weapons purchased during Fast and Furious and the impact those weapons would have on the surrounding community. ATF Deputy Director William Hoover became so concerned about the volume that he demanded an exit strategy so that Fast and Furious would be shut down sooner. Yet, when presented with this same information – the large volume of high powered weapons, short time-to-crime, repeated straw purchasing, and the termination of surveillance – Department leadership simply rubber-stamped the operation and authorized its unacceptable tactics.

⁷ DAG Cole letter, at 11.

The Honorable Eric H. Holder, Jr.
 June 5, 2012
 Page 5

Accountability

The wiretap applications are a crucial component of the Fast and Furious investigation, and establish a direct link between what was happening on the ground in Phoenix and senior Justice Department officials in Washington, D.C. The approval of wiretap applications, replete with details of the investigative techniques used, reveals a major failure of leadership within the Department and requires scrutiny.

During your December 8, 2011 testimony before the House Judiciary Committee, you stated:

There is an impatience here, and in some ways, I understand it. The reality is that we have to do these things on the basis of evidence, on the basis of findings that are factually grounded. . . . I want to assure you and the American people, people will be accountable for the mistakes that were made in Fast and Furious.⁸

The new information contained in the wiretap applications places us in a position to begin the process of assigning accountability among senior Department officials, some of whom were responsible for approving the wiretap applications. After having reviewed these applications, we now understand why the Department has been resisting our efforts to secure full cooperation and compliance with the subpoena. It is because, as former ATF Acting Director Kenneth Melson testified, "it appears thoroughly to us that the department is really trying to figure out a way to push the information away from their political appointees at the department."⁹

With the wiretap applications in possession of the Committee, the Department can no longer push such information away from its political appointees. These appointees were responsible for approving the reckless tactics used during Fast and Furious. Because of the wiretap applications, we now know which senior Department officials made these serious mistakes. It is time for you to honor your commitment to Congress and the American people by holding these individuals accountable.

Sincerely,


 Darrell Issa
 Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

⁸ *Oversight Hearing on the United States Department of Justice: Hearing Before the H. Comm. on the Judiciary*, 112th Cong. (Dec. 8, 2011) (testimony of Eric H. Holder, Jr., Att'y Gen., U.S. Dep't of Justice).

⁹ Transcribed interview of Acting Director Kenneth E. Melson, at 130 (July 4, 2011).

The Honorable Eric H. Holder, Jr.
June 5, 2012
Page 6

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

The Honorable John Boehner, Speaker of the House

The Honorable Eric Cantor, House Majority Leader

The Honorable Kevin McCarthy, House Republican Whip



Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 05 2012

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

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

Dear Chairman Issa and Senator Grassley:

This responds to your letter of October 11, 2011, requesting documents and information related to the threat assessment undertaken by the United States Marshals Service on behalf of Mr. Andre Howard. We apologize for our delay in responding. We had hoped to communicate the results of the assessment first to Mr. Howard, but his attorney has not responded to repeated messages regarding the assessment left for him by representatives of the United States Attorney's Office for the Southern District of California.

With regard to the questions raised by your letter, at the request of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and the United States Attorney's Office for the District of Arizona (USAO), the United States Marshals Service undertook an assessment of potential danger to Mr. Howard in the spring of 2011. This assessment resulted in a Protective Intelligence Brief dated July 20, 2011. The Department has certain confidentiality interests in that document and the informal notes from meetings that occurred in the course of the assessment process because they contain law enforcement sensitive information. We recognize the Committee's interest in understanding the assessment, however, and we are prepared to make those documents available for review at the Department by Committee staff, with redactions of particularly sensitive information and of limited text implicating Mr. Howard's privacy interests. We hope that this significant accommodation addresses the Committee's questions regarding this matter.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
Page Two

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional information about this or any other matters.

Sincerely,

A handwritten signature in dark ink, appearing to read "Judith C. Appelbaum", with a long, sweeping horizontal line extending to the right.

Judith C. Appelbaum
Acting Assistant Attorney General

cc:

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

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

Steve Caster**City of Phoenix**

OFFICE OF THE POLICE CHIEF

June 7, 2011

Congressman Darrell Issa
U.S. House of Representatives
Washington, D.C 20515-6143

Dear Congressman Issa,

I am in receipt of your letter requesting information pertaining to aspects of investigations and reports regarding matters relating to the Bureau of Alcohol, Tobacco, Firearms and Explosives program known as Operation Fast and Furious dated June 2, 2011.

Your letter constitutes a public information request. As such, it has been forwarded to Patti Rea, the Unit Manager of our Code Enforcement Unit, Public Records Section. She will review your request for appropriate response actions and protocol.

If you have any further need for assistance, please contact our Public Records Section at 602-534-6613.

Sincerely,

JOSEPH G. YAHNER
Acting Police Chief

MICHAEL KURTENBACH, Lieutenant
Office of Administration

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**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 07 2012

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

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Issa and Senator Grassley:

This responds to your letter dated March 5, 2012, which requested updated information about any firearms recovered in relation to crimes of violence that are associated with an investigation by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) known as Operation Fast and Furious. Based on information collected and reviewed by ATF, there do not appear to have been any such recoveries since we last provided you information on this subject on September 9, 2011.

ATF advises that between September 2011 and May 2012, 49 firearms associated with Fast and Furious have been recovered and successfully traced, 10 in the United States and 39 in Mexico. In all of these recoveries, the trace requests for these firearms provided a crime code indicating that the firearm had not been recovered in connection with violent crime.

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Judith C. Appelbaum".

Judith C. Appelbaum
Acting Assistant Attorney General

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
Page Two

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

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate



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

June 11, 2012

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

Dear Mr. Chairman:

We were surprised to learn earlier today that the Committee has scheduled a hearing to consider its draft contempt resolution arising out of the Fast and Furious investigation. As you know, over the past few weeks our staffs have met twice and had other communications in an effort to address the questions set forth in the May 18, 2012 letter from House Leadership and you to the Attorney General, and at the same time preserve the Department's legitimate interests. The conversations between our staffs have been productive and we believe that an amicable resolution of these matters is achievable. Because of this, the Committee's decision to set a hearing on its draft contempt resolution is premature.

In prior letters that the Department has sent you, I have offered to meet with you to discuss how we can reach a resolution of this matter. However, you have not responded to those offers. I continue to believe that such a meeting could be productive. I once more suggest that you and I meet to discuss these remaining issues. I am confident that the two of us, working in good faith, can bring this matter to a close.

Sincerely,

James M. Cole
Deputy Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

DAN BURTON, INDIANA
JOHN L. MICA, FLORIDA
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June 13, 2012

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Mr. Attorney General:

I write to respond to the Deputy Attorney General letter from Monday, and to comments you made yesterday, expressing a desire to meet. As our staffs have discussed, the House Oversight and Government Reform Committee and the Department of Justice are at an impasse over documents the Department has refused to produce. Let me be clear – if the Department of Justice submits a serious proposal for how it intends to alter its refusal to produce critical documents subpoenaed by the Committee, I am ready and willing to meet to discuss your proposal.

As you may recall, a May 3, 2012, Committee memo identified three categories of documents necessary for Congress to complete its investigation into Operation Fast and Furious. On May 18, House leaders and I narrowed this request to two categories: (1) information showing the involvement of senior officials during Operation Fast and Furious, and (2) documents from after February 4, 2011, related to the Department's response to Congress and whistleblower allegations. In a June 5, 2012 letter, Deputy Attorney General James Cole described this narrowing as, "a helpful step toward reaching a resolution of the issues in dispute." The Department did not, however, indicate a willingness to comply or offer the committee *any* proposal for altering its objections to providing subpoenaed documents.

As a result of discoveries made by the Committee independent of the Justice Department's document production, on Monday, June 11, the Committee further narrowed the focus of what the Justice Department needed to produce to avoid contempt. This further accommodation, made in an effort to resolve this matter short of contempt, focused on the aforementioned relevant materials created after February 4, 2011 –after Operation Fast and Furious ended. This accommodation by the Committee effectively eliminated the dispute over information gathered during the criminal investigation of Operation Fast and Furious, prior to the announcement of indictments. Despite this proposed compromise by the Committee, the Department has not indicated a willingness to accept these terms nor has it responded with *any* offer to alter its objections to providing subpoenaed documents.

The remaining aspects of our dispute concern documents the Department refuses to produce on the grounds that they reflect internal Department deliberations. I remind you that

The Honorable Eric H. Holder, Jr.
 June 13, 2012
 Page 2


while courts have found that the President of the United States can exert executive privilege over materials and conversations that play a role in advising the President, Department officials – including the Attorney General – enjoy no such privilege. Putting this aside for the moment, the Department has already acknowledged that exceptions to protecting internal deliberations can be justified. The Department made such an exception when it chose to make materials available to Congress, related to the issuance of a false denial of reckless conduct in Operation Fast and Furious. During the previous Administration, the Department made similar materials available to Congress. These materials also reflected internal deliberations made available in response to a congressional investigation of the firing of several U.S. Attorneys. If the Department wishes to settle this dispute short of contempt, the Committee has offered it a clear path to do so without the need to disclose sensitive documents created during Operations Fast and Furious.

Many factors in this matter invoke not only a right, but an obligation, for Congress to do all that it can to examine the Department's mismanagement of its response to Operation Fast and Furious: the Department's false February 4 denial of improper conduct; the fact that an attorney assigned by the Justice Department to investigate whistleblower allegations has since asserted his Fifth Amendment privilege in refusing to speak with congressional investigators; the admission by former Arizona U.S. Attorney Dennis Burke that he leaked sensitive information portraying a whistleblower in a distorted and negative light; continued complaints by whistleblowers that they have faced retaliation since blowing the whistle on reckless conduct; allegations by the former Acting Director of the ATF that the Department is managing its response in a way intended to protect its political appointees; and the nine month delay before the Department formally withdrew its false February 4 denial to Congress.

In making repeated accommodations, the Committee has made a good faith effort to allow the Department to meet its obligations to comply with the Committee's subpoena. For the Department to argue otherwise without making a serious offer to alter its opposition to producing subpoenaed documents is highly disingenuous. If the Department is prepared to engage in discussions based upon a stated willingness to drop its opposition to providing material from after February 4, 2011, that may reflect internal deliberations, I ask that you indicate such intention. If the Department has another proposal for altering its objections to providing subpoenaed materials, I ask that you promptly submit that proposal for consideration as a basis for productive discussions.

Again, I appreciate your effort to resolve this dispute. I believe the interests of the Department, Congress, and those directly affected by reckless conduct in Operation Fast and Furious are best served by an agreement that renders the process of contempt unnecessary.

Sincerely


 Darrell Issa
 Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

June 14, 2012

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

Tuesday, in response to Senator Cornyn's call for your resignation, you responded, in part, with the following statement:

If you want to talk about Fast and Furious, I'm the Attorney General that put an end to the misguided tactics that were used in Fast and Furious. An Attorney General who I suppose you would hold in higher regard was briefed on these kinds of tactics in an operation called Wide Receiver and did nothing to stop them – nothing. Three hundred guns, at least, walked in that instance.

This is a serious charge. However, as far as I'm aware, the Justice Department has produced nothing to date that indicates any former Attorney General was briefed on Operation Wide Receiver.

I am aware that the Justice Department produced a memorandum to Attorney General Mukasey in preparation for a November 16, 2007, meeting with Mexican Attorney General Medina Mora.¹ At no point does this memo mention Operation Wide Receiver, in which over 300 guns were allowed to walk to Mexico. Instead, the memo appears to refer to a case called Hernandez, which involved a planned controlled delivery – not intentional gunwalking.

¹ Memo to the Attorney General, "Meeting of the Attorney General with Mexican Attorney General Medina Mora" (Nov. 16, 2007) [HOCR HRNDZ 003240].

The Honorable Eric H. Holder, Jr.
June 14, 2012
Page 2 of 2

Documents the Justice Department has produced *have* indicated that the gunwalking in Operation Wide Receiver was brought to the attention of Assistant Attorney General Lanny Breuer in April 2010 by his deputy, Jason Weinstein. Breuer's response, according to a contemporaneous e-mail from Criminal Division Gang Unit Chief James Trusty, was simply that he "want[ed] us to meet with [ATF] at some point so they know *the bad stuff that could come out*."² Weinstein subsequently indicated to ATF Deputy Director William Hoover: "The reason we wanted to meet with you before charging is that the case has [two] aspects that could create media challenges and we wanted to talk through them first."³ I have called for Breuer's resignation in part because, the evidence so far shows that he is the highest-ranking government official who was personally informed about gunwalking in any case, and he did nothing to put a stop to it.

If the Justice Department has documentation about Operation Wide Receiver which it has not yet produced and which indicate a higher level of awareness of gunwalking than has previously been indicated, such evidence should be produced immediately. Given the gravity of these allegations, I would appreciate a response by Monday, June 18, 2012. If you have any questions concerning this matter, please contact Tristan Leavitt of my staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

² E-mail from James Trusty, Acting Chief, Gang Unit, Criminal Division, DOJ, to Kevin Carwile, Chief, Capital Case Unit, Criminal Division, DOJ (Apr. 19, 2010) [HOCR 003451] (emphasis added).

³ E-mail from Jason Weinstein, Deputy Assistant Attorney General, Criminal Division, DOJ, to William Hoover, Deputy Director, ATF (Apr. 20, 2010) [HOCR 003452].



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

June 14, 2012

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

Dear Mr. Chairman:

Thank you for your letter dated June 13, 2012. I appreciate that the Committee has narrowed its request for information related to its review of Operation Fast and Furious and now no longer seeks sensitive law enforcement information arising out of that investigation. We have repeatedly expressed concern that the production of such materials would undermine the integrity and independence of the Department's core law enforcement operations. The Committee's decision not to insist on the production of those materials is an important step forward in this accommodation process.

In the last week, I have testified before both the House and Senate Judiciary Committees that the Department is prepared to compromise with the Committee in order to answer the questions set forth in the May 18, 2012, letter to me from you and House Leaders. I reiterate that offer today with a specific focus on the collection of documents to which you referred in your letter to me of June 13. More specifically, the Department is prepared to provide documents that, while outside the scope of the Committee's interest in the inappropriate tactics used in Fast and Furious, are responsive to how the Department's understanding of the facts regarding that matter evolved throughout 2011 and how the Department came to withdraw its February 4, 2011, letter to Senator Grassley. The Department is willing to accommodate the Committee's interest in those materials.

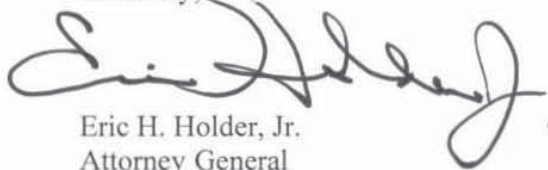
The record in this matter reflects that until allegations about the inappropriate tactics used in Fast and Furious were made public, Department leadership was unaware of those tactics. Indeed, as the documents we provided to the Committee relating to the drafting of the February 4 letter reflect, Department leaders were assured by the heads of Department components in the best position to know the true facts that the allegations being made were "categorically false." However, over a period of months in 2011, as documents to be provided to the Committee were collected and reviewed, and as witness testimony before the Committee was evaluated, Department leadership learned more and began to assess the facts of this matter independently. The Department's understanding of the facts underlying Fast and Furious became more developed, particularly as evidence came to light that was inconsistent with the initial denials

provided to Department personnel. Over time, Department leadership came to recognize that Fast and Furious was fundamentally flawed, as I noted in my October 7, 2011, letter to you and other members of Congress. And, notwithstanding numerous public statements and communications to the Committee throughout 2011 reflecting our increasing concern about what actually had happened in the operation and the accuracy of the February 4 letter, the Department took the extraordinary step of formally withdrawing that letter in early December of last year and providing unprecedented access to deliberative materials reflecting how the letter came to be drafted.

Over the past few weeks, our staffs have had productive conversations aimed at identifying relevant documentation that would respond to remaining congressional concerns about the post-February 4 period. The Department is prepared to offer an extraordinary accommodation of the Committee's interest in those issues by providing a briefing, based on documents that the Committee could retain, explaining how the Department's understanding of the facts of Fast and Furious evolved during the post-February 4 period, and the process that led to the withdrawal of the February 4 letter. We believe that this briefing, and the documents we are prepared to provide – which will include information you have requested regarding whistleblowers – will fully address the remaining concerns identified in the recent letters to me from you and House Leadership.

The Department's willingness to provide these materials is a serious, good faith effort to bring this matter to an amicable resolution. However, because as the Chairman only you have the authority to bind the committee, I continue to believe that a meeting is required both to assure that there are no misunderstandings about this matter and to confirm that the elements of the proposal we are making will be deemed sufficient to render the process of contempt unnecessary. I seek your direct engagement for precisely that reason, and I propose that the meeting occur by Monday, June 18, 2012.

Sincerely,



Eric H. Holder, Jr.
Attorney General

cc: Speaker John Boehner
Majority Leader Eric Cantor
Majority Whip Kevin McCarthy
The Honorable Elijah E. Cummings
Ranking Minority Member
Minority Leader Nancy Pelosi
Minority Whip Steny Hoyer
The Honorable James E. Clyburn
Deputy Attorney General James M. Cole

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June 15, 2012

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

Thank you for your June 14, 2012, letter recognizing the substantial efforts made by the House Oversight and Government Reform Committee to narrow the scope of differences between our positions over documents created after February 4, 2011, related to Operation Fast and Furious and the Department's response to whistleblower accusations. In your letter, you repeated your readiness to produce a new subset of documents detailing how the Department's understanding of the facts of Fast and Furious evolved during the post-February 4 period and information sought by the Committee related to the treatment of whistleblower accusations, the whistleblowers themselves, and other concerns expressed by the Committee.

In a meeting yesterday, the Department offered some additional details about the subset of post-February 4 documents you are willing to produce pursuant to the Committee's October 12, 2011, subpoena. While I do have substantial concerns that these documents may not be sufficient to allow the Committee to complete its investigation, delivery of these documents to the Committee before the scheduled consideration of contempt at 10:00 a.m. on Wednesday, June 20, 2012, would be sufficient to justify the postponement of the proceeding to allow for the review of materials. Senator Grassley and I are also willing to meet with you as soon as Tuesday, June 19, 2012. It would best facilitate a constructive dialogue if the Department would produce the documents you have outlined prior to this discussion.

While I do appreciate your willingness to drop objections to providing some materials reflecting internal deliberations, I do have some remaining concerns. The Department indicated that the subset of pages it is prepared to produce numbers less than the 1,300 pages that were previously delivered to the Committee concerning the preparation of the February 4, 2011, letter that falsely denied reckless tactics. The Department has also so far declined to note how many pages from this period the Department intends to withhold from the full category of documents between February 4 and December 2, 2011. The Department has also not provided a log that includes descriptions of documents, the dates they were created, who created them, and

The Honorable Eric H. Holder, Jr.
June 15, 2012
Page 2

individualized explanations for why the Department believes these documents should not be produced pursuant to the subpoena. Only the Department knows what it possesses. A full understanding of the post February 4, 2011, documents under subpoena that the Department is not prepared to produce is essential for the Committee to determine whether or not the Department has substantially met its obligations.

Again, production of the documents noted in your letter and outlined yesterday in a meeting with Committee staff would be sufficient for me to justify a postponement of the Committee's scheduled vote on contempt to facilitate their review and discussions with the Department. I am prepared to announce this delay once the Department produces these documents. Please contact my staff to arrange a mutually agreeable time for us to meet.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

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June 18, 2012

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Mr. Attorney General:

Thank you for today's letter and your willingness to meet tomorrow. The Committee will make its facilities in 2157 Rayburn available at 5 p.m. for this discussion.

So that expectations for this meeting are clear, and as I previously indicated in my June 15, 2012, letter, only the delivery of documents outlined and offered by the Department of Justice last Thursday to staff will be sufficient to justify a postponement of Wednesday's scheduled vote. As the Department has not yet produced these documents – and unless it does so tomorrow morning – I will not be able to offer you the Committee's assessment of them at tomorrow's meeting.

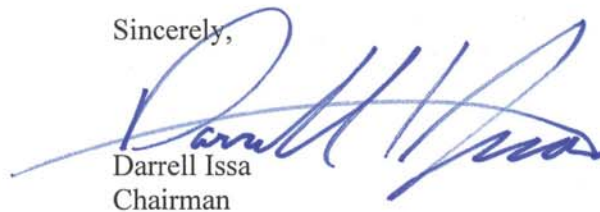
The Department earlier indicated that the subset of pages it is prepared to produce numbers less than the 1,300 pages that were previously delivered to the Committee concerning the preparation of the February 4, 2011, letter that falsely denied reckless tactics. Thus far, the Department has also declined to specify how many pages from this period it intends to withhold from the full category of documents between February 4 and December 2, 2011.

The Department has also failed to provide a log that includes descriptions of documents, the dates they were created, who created them, and individualized explanations for why the Department believes these documents should not be produced pursuant to the subpoena. Only the Department knows what it possesses. A full understanding of the post-February 4, 2011, documents under subpoena that the Department is not prepared to produce is essential for the Committee to determine whether the Department has substantially met its obligations.

The Honorable Eric H. Holder, Jr.
June 18, 2012
Page 2

As the Committee lacks this information, I will not be in a position tomorrow to negotiate over whether certain actions – short of full compliance – are sufficient to warrant more than a delay of contempt proceedings. There is nothing extraordinary about an offer from a Federal agency to fully or partially respond to a subpoena. I do, however, hope the Department will decide to produce the documents that would justify a postponement and will use tomorrow's discussion to better understand what steps it can take if it sincerely seeks an outcome other than the continuation of contempt proceedings.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", is written over the typed name and title.

Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary, United States Senate



Office of the Attorney General

Washington, D.C. 20530

June 18, 2012

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

Dear Chairman Issa:

Thank you for your letter of June 15, 2012 and your agreement to meet on Tuesday, June 19, 2012. The Department has offered a serious, good faith proposal to bring this matter to an amicable resolution in the form of a briefing based on documents that the Committee could retain. These documents explain how the Department's understanding of the facts of Operations Fast and Furious, Wide Receiver and similar Arizona-based investigations evolved during the post-February 4 period, and the process that led to the withdrawal of the February 4 letter. We expect that this extraordinary accommodation will fully address the remaining concerns that you and House Leadership have identified in your written and oral communications to the Department over the last few weeks.

We propose to meet at 11 am on Tuesday, June 19, 2012. In light of your inclusion of Senator Grassley, and in keeping with the protocols of this investigation, we expect that Chairman Leahy and Ranking Member Cummings would also participate in order to finalize our accommodation agreement with the Committee and avoid an unnecessary Constitutional confrontation.

Sincerely,

Eric H. Holder, Jr.
Attorney General

cc: Speaker John Boehner
Majority Leader Eric Cantor
Majority Whip Kevin McCarthy
The Honorable Elijah E. Cummins
Ranking Minority Member

Minority Leader Nancy Pelosi
Minority Whip Steny Hoyer
The Honorable James E. Clyburn
Chairman Patrick J. Leahy
Senator Charles E. Grassley



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 18, 2012

The Honorable Charles E. Grassley
 Ranking Minority Member
 Committee on the Judiciary
 United States Senate
 Washington, DC 20510

Dear Senator Grassley:

This responds to your letter dated June 14, 2012, in which you asked about Attorney General Holder's recent testimony that a previous Attorney General had been briefed on misguided operational tactics and taken no action in response. Attorney General Holder's testimony referred to a briefing paper prepared for Attorney General Mukasey in advance of a November 16, 2007, meeting with the Mexican Attorney General. That briefing paper notes that "ATF has recently worked jointly with Mexico on the first-ever attempt to have a controlled delivery of weapons being smuggled into Mexico by a major arms trafficker" and that "the first attempts at this controlled delivery have not been successful." It further states that "ATF would like to expand the possibility of such joint investigations and controlled deliveries – since only then will it be possible to investigate an entire smuggling network, rather than arresting simply a single smuggler." (HOCR HRNDZ 003240).

As we explained in a letter to Chairman Issa on March 16, 2012, and as you note, this briefing paper concerned the case of Fidel Hernandez, not Wide Receiver as the Attorney General inadvertently stated at the hearing. Other documents produced by the Department indicated that in the Hernandez case, ATF agents observed Hernandez's vehicle cross the border on September 27, 2007 but "the ATF MCO did not get a response from the Mexican side until 20 minutes later, who then informed us that they did not see the vehicle cross." (HOCR DOJ 006348). ATF reported that it could "still pursue U.S. prosecution if necessary (the targets returned [sic] to the U.S. within 90 minutes of the crossing)." (HOCR DOJ 006347). These documents also reflect that on October 4, 2007 "ATF agents attempted to coordinate with Mexican authorities through ATF attache's [sic] to apprehend the suspects [including Hernandez] in Mexico. The attempts were unsuccessful. Case agents believe the subjects are continuing to traffick [sic] firearms to Mexico." (HOCR DOJ 006397, HOCR DOJ 006444, HOCR DOJ 6405, and HOCR DOJ 006411).

As Attorney General Holder also noted in his testimony, and as we have set forth in prior correspondence and testimony, he took measures and instituted a series of important reforms designed to ensure that the inappropriate tactics used in Fast and Furious, Wide Receiver, Hernandez, and other matters about which the Department has informed Congress are not repeated. These measures include asking the Department's Acting Inspector General to open an investigation in response to the allegations regarding inappropriate tactics in Fast and Furious,

The Honorable Charles E. Grassley
Page 2

directing the Deputy Attorney General to make clear to Department personnel that such inappropriate tactics should not be utilized, and replacing the leadership at both ATF and the Arizona U.S. Attorney's Office.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Judith C. Appelbaum", followed by a horizontal line.

Judith C. Appelbaum
Acting Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

June 19, 2012

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

Dear Mr. Chairman:

During our meeting today, the Attorney General and I reiterated our concerns about the inappropriate tactics used in Operation Fast and Furious and expressed our appreciation for the whistleblowers who brought these issues to public attention. The Department also made the good faith offer of an extraordinary accommodation to the Committee that will respond to the single outstanding question posed by House Leadership and you in your May 18, 2012 letter to the Attorney General, namely, whether the Department's February 4, 2011 letter to Senator Grassley "was part of a broader effort by your Department to obstruct a Congressional investigation." The answer to that question is an emphatic "no" and we have offered the Committee the opportunity to satisfy itself that that is so.

Today, we offered the Committee documents to answer the question it posed, as well as a briefing, information that would provide greater insight into the documents not being provided, and the ability to ask follow-up questions about these issues. We regret that the Committee rejected our proposal. Our offer would have provided the Committee with unprecedented access to these documents, many of which are not covered by the Committee's subpoenas in this matter.

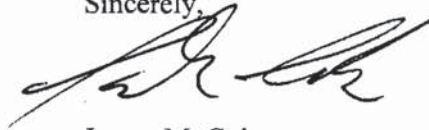
At the end of last year, the Department produced documents showing that leaders of both ATF and the Arizona U.S. Attorney's Office told Department personnel that allegations being made about Operation Fast and Furious were false and that Department personnel relied on those assertions in drafting the Department's February 4, 2011 letter to Senator Grassley. Eventually, Department leaders concluded that those assertions could not be reconciled with the information being provided by Congress and the media, and the Department therefore undertook significant efforts to understand the true facts about Operation Fast and Furious. What our review showed was that Operation Fast and Furious was just one in a series of Arizona-based investigations dating back to 2006 in the prior Administration that had used such tactics. The Department acted reasonably in waiting to formally withdraw the February 4 letter to review a large volume of electronic materials relating to these matters and to understand the full range of the issues presented.

Even before the formal withdrawal of the February 4 letter, however, Department leaders publicly indicated that the facts surrounding Operation Fast and Furious were uncertain and that

the Department did not continue to rely on the assertions in its letter to Senator Grassley. In late February, the Attorney General referred the matter to the Department's Acting Inspector General for review. And, the Department's concerns about these issues were conveyed in a variety of other ways, including in multiple appearances before congressional committees by the Attorney General and by Assistant Attorneys General. And, as you are aware, in October 2011 the Attorney General told the Committee and other congressional leaders that he believed Fast and Furious was "fundamentally flawed." Finally, the Attorney General and I implemented a series of reforms designed to ensure that the tactics used in Operation Fast and Furious and the other investigations dating back to the prior Administration are not used again.

We had hoped that you shared our interest in bringing this matter to an amicable resolution and we regret that you rejected our extraordinary proposal to do so.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Cole', with a stylized flourish at the end.

James M. Cole

cc: The Honorable Patrick J. Leahy
The Honorable Charles E. Grassley
The Honorable Elijah E. Cummings

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

June 20, 2012

VIA ELECTRONIC TRANSMISSION

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

This morning, the House Committee on Oversight and Government Reform began considering a contempt citation against Attorney General Holder for his refusal to deliver documents related to Operation Fast and Furious. As you know, two guns that federal law enforcement allowed to be illegally purchased and trafficked to Mexico as part of that operation were found at the murder scene of Border Patrol Agent Brian Terry on December 14, 2010. I have been seeking documents related to this matter from the Justice Department since January 2011.

At the last minute before the House Committee proceedings began this morning, I received notice that you were claiming executive privilege. After 18 months of investigation and interaction with Justice Department officials on this matter, this was the first indication that anyone at the Department or the White House believed the documents being sought were subject to executive privilege claims. Last week, I questioned the Attorney General about a specific example of a document that I and the House Committee have been seeking and whether there could be a legitimate claim of executive privilege over that document and others like it. The document I referenced is an internal email from the then-Acting Director of ATF to people at ATF and DOJ headquarters.

The Attorney General was not clear in response to my question whether he believed that executive privilege could be asserted with regard to that document or others like it. Rather than executive privilege, the Attorney General talked about "deliberative process." He indicated a willingness to provide that document and others like it, if the possibility of contempt were to be taken off the table. Yet this morning, it appears that you may be claiming executive privilege over the very same type of document—internal Justice Department communications not involving the White House—that the Attorney General said he was willing to provide.

Can you please provide a more precise description of the scope of your executive privilege claim? Are you asserting it only with regard to documents called for by the

President Barack Obama
June 20, 2012
Page 2 of 2

subpoena that may have involved communications with you? Or are you extending your claim to records of purely internal Justice Department communications, not involving the White House? Please provide a more detailed description of the documents that you are or are not asserting executive privilege to protect.

Sincerely,



Charles E. Grassley
Ranking Member

cc: Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives

June 20, 2012

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

Dear Mr. Chairman:

After you rejected the Department's recent offers of additional accommodations, you stated that the Committee intends to proceed with its scheduled meeting to consider a resolution citing the Attorney General for contempt for failing to comply with the Committee's subpoena of October 11, 2011. I write now to inform you that the President has asserted executive privilege over the relevant post-February 4, 2011, documents.

We regret that we have arrived at this point, after the many steps we have taken to address the Committee's concerns and to accommodate the Committee's legitimate oversight interests regarding Operation Fast and Furious. Although we are deeply disappointed that the Committee appears intent on proceeding with a contempt vote, the Department remains willing to work with the Committee to reach a mutually satisfactory resolution of the outstanding issues.

Over the last fourteen months, the Department has provided a significant amount of information to the Committee in an extraordinary effort to accommodate the Committee's legitimate oversight interests. The Department has provided the Committee with over 7,600 pages of documents and has made numerous high-level officials available for public congressional testimony, transcribed interviews, and briefings. Attorney General Holder has answered congressional questions about Fast and Furious during nine public hearings, including two before the Committee. The Department has devoted substantial resources to responding to these congressional inquiries.

In addition, upon learning of questions about the tactics used in Fast and Furious, the Attorney General promptly asked the Department's Acting Inspector General to open an investigation into the operation. This investigation continues today. We expect that the Inspector General's report will further help the Department to understand how these mistakes occurred and to ensure that they do not occur again.

Finally, the Department has instituted a number of significant reforms to ensure that the mistakes made in Fast and Furious are not repeated. For example, a directive was issued to the field prohibiting the flawed tactics used in that operation from being used in future law

enforcement operations. Leadership and staffing at ATF and the Arizona U.S. Attorney's Office were reorganized, and ATF instituted new policies to ensure closer supervision by ATF management of significant gun trafficking cases. The Criminal Division refined its process for reviewing wiretap authorization requests by its Office of Enforcement Operations. And component heads were directed to take additional care to provide accurate information in response to congressional requests, including by soliciting information directly from employees with detailed personal knowledge of the subject matter at issue.

The Committee's original report accompanying its contempt resolution identified three "main categories" of interest: (1) "Who at Justice Department Headquarters Should Have Known of the Reckless Tactics"; (2) "How the Department Concluded that Fast and Furious was 'Fundamentally Flawed'"; and (3) "How the Inter-Agency Task Force Failed." Committee on Oversight and Government Reform, U.S. House of Representatives, *Report* at 39-40 (June 15, 2012). With respect to the first category, the thousands of pages of documents and other information we have provided establish that the inappropriate tactics used in Fast and Furious were initiated and carried out by personnel in the field over several years and were not initiated or authorized by Department leadership. We have also provided the Committee with significant information with respect to the third category. In a revised report issued late last week, the Committee has made clear that these categories will not be the subject of the contempt vote. *See Report* at 41.

Rather, the Committee has said that the contempt vote will address only the second category, "How the Department Concluded that Fast and Furious was 'Fundamentally Flawed.'" *See Report* at 42; Letter for Eric H. Holder, Jr., Attorney General, from Darrell E. Issa, Chairman at 1-2 (June 13, 2012) ("Chairman's Letter"). In this regard, your letter of June 13 stated that the Committee is now "focused on" "documents from after February 4, 2011, related to the Department's response to Congress and whistleblower allegations" concerning Operation Fast and Furious, in order to "examine the Department's mismanagement of its response to Operation Fast and Furious." *Id.* The Committee has explained that it needs these post-February 4 documents, including "those relating to actions the Department took to silence or retaliate against Fast and Furious whistleblowers," so that it can determine "what the Department knew about Fast and Furious, including when and how it discovered its February 4 letter was false, and the Department's efforts to conceal that information from Congress and the public." *Report* at 33.

The Department has gone to great lengths to accommodate the Committee's legitimate interest in the Department's management of its response to congressional inquiries into Fast and Furious. The information provided to the Committee shows clearly that the Department leadership did not intend to mislead Congress in the February 4 letter or in any other statements concerning Fast and Furious. The Department has already shared with the Committee all internal documents concerning the drafting of the February 4 letter, and numerous Department officials and employees, including the Attorney General, have provided testimony, transcribed interviews, briefings, and other statements concerning the drafting and subsequent withdrawal of that letter.

This substantial record shows that Department officials involved in drafting the February 4 letter turned to senior officials of components with supervisory responsibility for Operation Fast and Furious – the leadership of ATF and the U.S. Attorney’s Office in Arizona – and were told in clear and definitive terms that the allegations in Ranking Member Grassley’s letters were false. After the February 4 letter was sent, such assurances continued but were at odds with information being provided by Congress and the media, and the Attorney General therefore referred the matter to the Acting Inspector General for review.

As the Department’s review proceeded over the next several months, Department leaders publicly indicated that the facts surrounding Fast and Furious were uncertain and that the Department had significant doubts about the assertions in the February 4 letter. For example, at a House Judiciary Committee hearing on May 3, 2011, the Attorney General testified that the Department’s Acting Inspector General was reviewing “whether or not Fast and Furious was conducted in a way that’s consistent with” Department policy, stating “that’s one of the questions that we’ll have to see.” The next day, May 4, 2011, in response to a question from Senator Grassley at a Senate Judiciary Committee hearing about allegations that ATF had not interdicted weapons, the Attorney General said, “I frankly don’t know. That’s what the [Inspector General’s] investigation . . . will tell us.” As you have acknowledged, Department staff reiterated these doubts during a briefing for Committee staff on May 5, 2011. Testifying before the Committee in June 2011, Ronald Weich, Assistant Attorney General for Legislative Affairs, acknowledged that “obviously allegations from the ATF agents . . . have given rise to serious questions about how ATF conducted this operation.” He added that “we’re not clinging to the statements” in the February 4 letter.

In October 2011, the Attorney General told the Committee that Fast and Furious was “fundamentally flawed.” This statement reflected the conclusion that Department leaders had reached based on the significant effort over the prior months to understand the facts of Fast and Furious and the other Arizona-based law enforcement operations. The Attorney General reiterated this conclusion while testifying before Congress in November 2011. The Department’s many public statements culminated in the formal withdrawal of the February 4 letter on December 2, 2011.

The Department has substantially complied with the outstanding subpoena. The documents responsive to the remaining subpoena items pertain to sensitive law enforcement activities, including ongoing criminal investigations and prosecutions, or were generated by Department officials in the course of responding to congressional investigations or media inquiries about this matter that are generally not appropriate for disclosure.

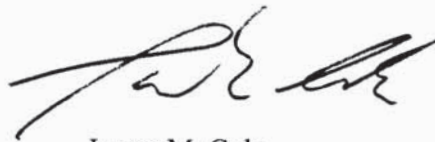
In addition to these productions, we made extraordinary accommodations with respect to the drafting and subsequent withdrawal of the February 4 letter, producing to the Committee 1,364 pages of deliberative documents. And we accepted your June 13 letter’s invitation to “mak[e] a serious offer” of further accommodation in hopes of reaching “an agreement that renders the process of contempt unnecessary.” Chairman’s Letter at 2. Specifically, we offered to provide the Committee with a briefing, based on documents that the Committee could retain,

explaining further how the Department's understanding of the facts of Fast and Furious evolved during the post-February 4 period, as well as the process that led to the withdrawal of the February 4 letter. *See* Letter for Darrell E. Issa, Chairman, from Eric H. Holder, Jr., Attorney General at 1 (June 14, 2012). We also offered to provide you with an understanding of the documents that we could not produce and to address any remaining questions that you had after you received the briefing and the documents on which it was based. We believe that this additional accommodation would have fully satisfied the Committee's requests for information. We are therefore disappointed that the Committee has not accepted our offer and has chosen instead to proceed with the scheduled contempt vote.

As I noted at the outset, the President, in light of the Committee's decision to hold the contempt vote, has asserted executive privilege over the relevant post-February 4 documents. The legal basis for the President's assertion of executive privilege is set forth in the enclosed letter to the President from the Attorney General. In brief, the compelled production to Congress of these internal Executive Branch documents generated in the course of the deliberative process concerning the Department's response to congressional oversight and related media inquiries would have significant, damaging consequences. As I explained at our meeting yesterday, it would inhibit the candor of such Executive Branch deliberations in the future and significantly impair the Executive Branch's ability to respond independently and effectively to congressional oversight. Such compelled disclosure would be inconsistent with the separation of powers established in the Constitution and would potentially create an imbalance in the relationship between these two co-equal branches of the Government.

In closing, while we are deeply disappointed that the Committee intends to move forward with consideration of a contempt citation, I stress that the Department remains willing to work toward a mutually satisfactory resolution of this matter. Please do not hesitate to contact this office if we can be assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. M. Cole', with a stylized flourish at the end.

James M. Cole
Deputy Attorney General

Enclosure

cc: The Honorable Elijah E. Cummings
Ranking Minority Member



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

June 19, 2012

The President
 The White House
 Washington, D.C. 20500

Dear Mr. President,

I am writing to request that you assert executive privilege with respect to confidential Department of Justice ("Department") documents that are responsive to the subpoena issued by the Committee on Oversight and Government Reform of the United States House of Representatives ("Committee") on October 25, 2011. The subpoena relates to the Committee's investigation into Operation Fast and Furious, a law enforcement operation conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") and the United States Attorney's Office for the District of Arizona to stem the illegal flow of firearms from the United States to drug cartels in Mexico ("Fast and Furious"). The Committee has scheduled a meeting for June 20, 2012, to vote on a resolution holding me in contempt of Congress for failing to comply with the subpoena.

I.

The Committee's subpoena broadly sweeps in various groups of documents relating to both the conduct of Operation Fast and Furious and the Department's response to congressional inquiries about that operation. In recognition of the seriousness of the Committee's concerns about both the inappropriate tactics used in Fast and Furious and the inaccuracies concerning the use of those tactics in the letter that the Department sent to Senator Grassley on February 4, 2011 ("February 4 Letter"), the Department has taken a number of significant steps in response to the Committee's oversight. First, the Department has instituted various reforms to ensure that it does not repeat these law enforcement and oversight mistakes. Second, at my request the Inspector General is investigating the conduct of Fast and Furious. And third, to the extent consistent with important Executive Branch confidentiality and separation of powers interests affected by the Committee's investigation into ongoing criminal investigations and prosecutions, as well as applicable disclosure laws, the Department has provided a significant amount of information in an extraordinary effort to accommodate the Committee's legitimate oversight interests, including testimony, transcribed interviews, briefings and other statements by Department officials, and all of the Department's internal documents concerning the preparation of the February 4 Letter.

The Committee has made clear that its contempt resolution will be limited to internal Department "documents from after February 4, 2011, related to the Department's response to Congress." Letter for Eric H. Holder, Jr., Attorney General, from Darrell E. Issa, Chairman, Committee on Oversight and Government Reform, U.S. House of Representatives at 1-2 (June 13, 2012) ("Chairman's Letter"). I am asking you to assert executive privilege over these documents. They were not generated in the course of the conduct of Fast and Furious. Instead,

they were created after the investigative tactics at issue in that operation had terminated and in the course of the Department's deliberative process concerning how to respond to congressional and related media inquiries into that operation.

In view of the significant confidentiality and separation of powers concerns raised by the Committee's demand for internal documents generated in response to the Committee's investigation, we consider the Department's accommodations regarding the preparation of the February 4 Letter to have been extraordinary. Despite these accommodations, however, the Committee scheduled a vote on its contempt resolution. At that point, the Department offered an additional accommodation that would fully address the Committee's remaining questions. The Department offered to provide the Committee with a briefing, based on documents that the Committee could retain, explaining how the Department's understanding of the facts of Fast and Furious evolved during the post-February 4 period, as well as the process that led to the withdrawal of the February 4 Letter. The Committee, however, has not accepted the Department's offer and has instead elected to proceed with its contempt vote.

As set forth more fully below, I am very concerned that the compelled production to Congress of internal Executive Branch documents generated in the course of the deliberative process concerning its response to congressional oversight and related media inquiries would have significant, damaging consequences: It would inhibit the candor of such Executive Branch deliberations in the future and significantly impair the Executive Branch's ability to respond independently and effectively to congressional oversight. This would raise substantial separation of powers concerns and potentially create an imbalance in the relationship between these two co-equal branches of the Government. Consequently, as the head of the Department of Justice, I respectfully request that you assert executive privilege over the identified documents. This letter sets forth the basis for my legal judgment that you may properly do so.

II.

Executive privilege is "fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution." *United States v. Nixon*, 418 U.S. 683, 708 (1974). It is "a necessary corollary of the executive function vested in the President by Article II of the Constitution." *Congressional Requests for Confidential Executive Branch Information*, 13 Op. O.L.C. 153, 154 (1989) ("*Congressional Requests Opinion*") (opinion of Assistant Attorney General William P. Barr); see U.S. Const. art. II, § 1, cl. 1 ("The executive Power shall be vested in a President of the United States of America."); U.S. Const. art. II, § 3 (The President shall "take Care that the Laws be faithfully executed . . ."). Indeed, executive privilege "has been asserted by numerous Presidents from the earliest days of our Nation, and it was explicitly recognized by the Supreme Court in *United States v. Nixon*." *Congressional Requests Opinion*, 13 Op. O.L.C. at 154.

The documents at issue fit squarely within the scope of executive privilege. In connection with prior assertions of executive privilege, two Attorneys General have advised the President that documents of this kind are within the scope of executive privilege. See Letter for the President from Paul D. Clement, Solicitor General and Acting Attorney General, *Re: Assertion of Executive Privilege Concerning the Dismissal and Replacement of U.S. Attorneys* at 6 (June 27, 2007) ("*U.S. Attorneys Assertion*") ("[C]ommunications between the Department of

Justice and the White House concerning . . . possible responses to congressional and media inquiries about the U.S. Attorney resignations . . . clearly fall within the scope of executive privilege.”); *Assertion of Executive Privilege Regarding White House Counsel’s Office Documents*, 20 Op. O.L.C. 2, 3 (1996) (“*WHCO Documents Assertion*”) (opinion of Attorney General Janet Reno) (concluding that “[e]xecutive privilege applies” to “analytical material or other attorney work-product prepared by the White House Counsel’s Office in response to the ongoing investigation by the Committee”).

It is well established that “[t]he doctrine of executive privilege . . . encompasses Executive Branch deliberative communications.” Letter for the President from Michael B. Mukasey, Attorney General, *Re: Assertion of Executive Privilege over Communications Regarding EPA’s Ozone Air Quality Standards and California’s Greenhouse Gas Waiver Request* at 2 (June 19, 2008) (“*EPA Assertion*”); see also, e.g., *U.S. Attorneys Assertion* at 2; *Assertion of Executive Privilege with Respect To Clemency Decision*, 23 Op. O.L.C. 1, 1-2 (1999) (“*Clemency Assertion*”) (opinion of Attorney General Janet Reno). The threat of compelled disclosure of confidential Executive Branch deliberative material can discourage robust and candid deliberations, for “[h]uman experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process.” *Nixon*, 418 U.S. at 705. Thus, Presidents have repeatedly asserted executive privilege to protect confidential Executive Branch deliberative materials from congressional subpoena. See, e.g., *EPA Assertion* at 2-3; Letter for the President from Michael B. Mukasey, Attorney General, *Re: Assertion of Executive Privilege Concerning the Special Counsel’s Interviews of the Vice President and Senior White House Staff* at 2 (July 15, 2008) (“*Special Counsel Assertion*”); Letter for the President from John Ashcroft, Attorney General, *Re: Assertion of Executive Privilege with Respect to Prosecutorial Documents* at 2 (Dec. 10, 2001) (“*Prosecutorial Documents Assertion*”); *Clemency Assertion*, 23 Op. O.L.C. at 1-4; *Assertion of Executive Privilege in Response to a Congressional Subpoena*, 5 Op. O.L.C. 27, 29-31 (1981) (“*1981 Assertion*”) (opinion of Attorney General William French Smith).

Because the documents at issue were generated in the course of the deliberative process concerning the Department’s responses to congressional and related media inquiries into Fast and Furious, the need to maintain their confidentiality is heightened. Compelled disclosure of such material, regardless of whether a given document contains deliberative content, would raise “significant separation of powers concerns,” *WHCO Documents Assertion*, 20 Op. O.L.C. at 3, by “‘significantly impair[ing]’” the Executive Branch’s ability to respond independently and effectively to matters under congressional review. *U.S. Attorneys Assertion* at 6 (“the ability of the Office of the Counsel to the President to assist the President in responding to [congressional and related media] investigations ‘would be significantly impaired’ if a congressional committee could review ‘confidential documents prepared in order to assist the President and his staff in responding to an investigation by the committee seeking the documents’”) (quoting *WHCO Documents Assertion*, 20 Op. O.L.C. at 3) (alterations omitted). See generally *The Constitutional Separation of Powers Between the President and Congress*, 20 Op. O.L.C. 124, 126-28, 133-35 (1996) (explaining that, under Supreme Court case law, congressional action that interferes with the functioning of the Executive Branch, including “attempts to dictate the processes of executive deliberation,” can violate general separation of powers principles); *Nixon v. Administrator of General Services*, 433 U.S. 425, 443 (1977) (congressional enactment that

“disrupts the proper balance between the coordinate branches” may violate the separation of powers).

Congressional oversight of the process by which the Executive Branch responds to congressional oversight inquiries would create a detrimental dynamic that is quite similar to what would occur in litigation if lawyers had to disclose to adversaries their deliberations about the case, and specifically about how to respond to their adversaries’ discovery requests. As the Supreme Court recognized in establishing the attorney work product doctrine, “it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel.” *Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947). Were attorney work product “open to opposing counsel on mere demand,” the Court explained, “[i]nefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial . . . , [a]nd the interests of the clients and the cause of justice would be poorly served.” *Id.* at 511.

Similarly, in the oversight context, as the Department recognized in the prior administration, a congressional power to request information from the Executive Branch and then review the ensuing Executive Branch discussions regarding how to respond to that request would chill the candor of those Executive Branch discussions and “introduce a significantly unfair imbalance to the oversight process.” Letter for John Conyers, Jr., Chairman, Committee on the Judiciary, U.S. House of Representatives, and Linda T. Sanchez, Chairwoman, Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, U.S. House of Representatives, from Richard A. Hertling, Acting Assistant Attorney General, Office of Legislative Affairs at 3 (Mar. 26, 2007). Such congressional power would disserve both Branches and the oversight process itself, which involves two co-equal branches of government and, like litigation, often is, and needs to be, adversarial. We recognize that it is essential to Congress’s ability to interact independently and effectively with the Executive Branch that the confidentiality of internal deliberations among Members of Congress and their staffs be protected against incursions by the Executive Branch. *See Gravel v. United States*, 408 U.S. 606, 616 (1972) (“The Speech or Debate Clause was designed to assure a co-equal branch of the government wide freedom of speech, debate, and deliberation without intimidation or threats from the Executive Branch.”). It is likewise essential to the Executive Branch’s ability to respond independently and effectively to matters under congressional review that the confidentiality of internal Executive Branch deliberations be protected against incursions by Congress.

Moreover, there is an additional, particularized separation of powers concern here because the Committee’s inquiry into Fast and Furious has sought information about ongoing criminal investigations and prosecutions. Such information would itself be protected by executive privilege, *see, e.g., Assertion of Executive Privilege in Response to Congressional Demands for Law Enforcement Files*, 6 Op. O.L.C. 31, 32 (1982) (opinion of Attorney General William French Smith) (“[I]t has been the policy of the Executive Branch throughout this Nation’s history generally to decline to provide committees of Congress with access to or copies of law enforcement files except in the most extraordinary circumstances.”). Consequently, the Department’s deliberations about how to respond to these congressional inquiries involved discussion of how to ensure that critical ongoing law enforcement actions are not compromised and that law enforcement decisionmaking is not tainted by even the appearance of political

influence. See, e.g., *id.* at 33 (noting “substantial danger that congressional pressures will influence the course of the investigation . . . [and] potential damage to proper law enforcement which would be caused by the revelation of sensitive techniques, methods, or strategy”) (quotation marks omitted). Maintaining the confidentiality of such candid internal discussions helps preserve the independence, integrity, and effectiveness of the Department’s law enforcement efforts.

III.

A congressional committee “may overcome an assertion of executive privilege only if it establishes that the subpoenaed documents are ‘*demonstrably critical*’ to the responsible fulfillment of the Committee’s functions.” *Special Counsel Assertion* at 5-6 (quoting *Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc) (emphasis added)); see also, e.g., *U.S. Attorneys Assertion* at 2 (same); *Clemency Assertion*, 23 Op. O.L.C. at 2 (same); *Nixon*, 418 U.S. at 707 (“[I]t is necessary to resolve those competing interests in a manner that preserves the essential functions of each branch.”). “Those functions must be in furtherance of Congress’s legitimate legislative responsibilities,” *Special Counsel Assertion* at 5 (emphasis added), for “[c]ongressional oversight of Executive Branch actions is justifiable only as a means of facilitating the legislative task of enacting, amending, or repealing laws.” *1981 Assertion*, 5 Op. O.L.C. at 30-31. See also, e.g., *Special Counsel Assertion* at 5; *U.S. Attorneys Assertion* at 2-3; *McGrain v. Daugherty*, 273 U.S. 135, 176 (1927) (congressional oversight power may be used only to “obtain information in aid of the legislative function”); *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 504 n.15 (1975) (“The subject of any [congressional] inquiry always must be one on which legislation could be had.”) (quotation marks omitted).

A.

The Committee has not satisfied the “demonstrably critical” standard with respect to the documents at issue. The Committee has said that it needs the post-February 4 documents “related to the Department’s response to Congress” concerning Fast and Furious in order to “examine the Department’s mismanagement of its response to Operation Fast and Furious.” Chairman’s Letter at 1-2. More specifically, the Committee has explained in the report that it is scheduled to consider at its June 20 contempt meeting that it needs these documents so that it can “understand what the Department knew about Fast and Furious, including when and how it discovered its February 4 letter was false, and the Department’s efforts to conceal that information from Congress and the public.” Comm. on Oversight and Gov’t Reform, U.S. House of Representatives, *Report* at 33 (June 15, 2012). House leaders have similarly communicated that the driving concern behind the Committee’s scheduled contempt vote is to determine whether Department leaders attempted to “mislead or misinform Congress” in response to congressional inquiries into Fast and Furious. See Letter for Eric H. Holder, Jr., Attorney General, from John A. Boehner, Speaker, U.S. House of Representatives, *et al.* at 1 (May 18, 2012) (“Speaker’s Letter”).

At the threshold, it is not evident that the Committee’s asserted need to review the management of the Department’s response to congressional inquiries furthers a legislative function of Congress. See *WHCO Documents Assertion*, 20 Op. O.L.C. at 4 (noting the question

of “the extent of Congress’s authority to conduct oversight of the executive branch’s response to oversight . . . must be viewed as unresolved as a matter of law in light of the requirement that there be a nexus to Congress’s legislative authority”). In any event, the purported connection between the congressional interest cited and the documents at issue is now highly attenuated as a result of the Department’s extraordinary efforts to accommodate the Committee’s interest in this regard. Through these efforts, the Department has amply fulfilled its constitutional “obligation . . . to make a principled effort to acknowledge, and if possible to meet, the [Committee’s] legitimate needs.” *1981 Assertion*, 5 Op. O.L.C. at 31; *see also, e.g., United States v. AT&T*, 567 F.2d 121, 127, 130 (D.C. Cir. 1977) (“[E]ach branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation. . . . Negotiation between the two branches should thus be viewed as a dynamic process affirmatively furthering the constitutional scheme.”).

Specifically, the Department has already shared with the Committee over 1300 pages of documents concerning the drafting of the February 4 Letter, in acknowledgment that the February 4 Letter contained inaccurate information. In addition, numerous Department officials and employees, including the Attorney General, have provided testimony and other statements concerning both the conduct of Fast and Furious and the Department’s preparation and withdrawal of the February 4 Letter. This substantial record shows that the inaccuracies in the February 4 Letter were the inadvertent product of the fact that, at the time they were preparing that letter, neither Department leaders nor the heads of relevant Department components on whom Department leaders reasonably relied for information knew the correct facts about the tactics used in Fast and Furious. Department leaders first learned that flawed tactics may have been used in Fast and Furious when public allegations about such tactics surfaced in early 2011, after such tactics had been discontinued. But Department leaders were mistakenly assured by the heads of relevant Department components that those allegations were false. As the Department collected and reviewed documents to provide to the Committee during the months after submitting the February 4 Letter, however, Department leaders came to understand that Fast and Furious was in fact fundamentally flawed and that the February 4 Letter may have been inaccurate. While the Department was developing that understanding, Department officials made public statements and took other actions alerting the Committee to their increasing concern about the tactics actually used in Fast and Furious and the accuracy of the February 4 Letter. When the Department was confident that it had a sufficient understanding of the factual record, it formally withdrew the February 4 Letter. All of this demonstrates that the Department did not in any way intend to mislead the Committee.

The Department continued its extraordinary efforts at accommodating the Committee by recently offering to provide the Committee with a briefing, based on documents that the Committee could retain, explaining further how the Department’s understanding of the facts of Fast and Furious evolved during the post-February 4 period, as well as the process that led to the withdrawal of the February 4 Letter. The Department believes that this briefing, and the accompanying documents, would have fully addressed what the Committee described as its remaining concerns related to the February 4 Letter and the good faith of the Department in responding to the Committee’s investigation. The Committee, however, has not accepted this offer of accommodation.

Finally, the Committee's asserted need for post-February 4 documents is further diminished by the Inspector General's ongoing investigation of Fast and Furious, which was undertaken at my request. As an Executive Branch official, the Inspector General may obtain access to documents that are privileged from disclosure to Congress. The existence of this investigation belies any suspicion that the Department is attempting to conceal important facts concerning Fast and Furious from the Committee. Moreover, in light of the Inspector General's investigation, congressional oversight is not the only means by which the management of the Department's response to Fast and Furious may be scrutinized.

In brief, the Committee received all documents that involved the Department's preparation of the February 4 Letter. The Committee's legitimate interest in obtaining documents created after the February 4 Letter is highly attenuated and has been fully accommodated by the Department. The Committee lacks any "demonstrably critical" need for further access to the Department's deliberations to address concerns arising out of the February 4 Letter.

B.

The Department's accommodations have concerned only a subset of the topics addressed in the withheld post-February 4 documents. The documents and information provided or offered to the Committee address primarily the evolution of the Department's understanding of the facts of Fast and Furious and the process that led to the withdrawal of the February 4 Letter. Most of the withheld post-February 4 documents, however, relate to other aspects of the Department's response to congressional and related media inquiries, such as procedures or strategies for responding to the Committee's requests for documents and other information. The Committee has not articulated *any* particularized interest in or need for documents relating to such topics, let alone a need that would further a legislative function.

"Broad, generalized assertions that the requested materials are of public import are simply insufficient under the 'demonstrably critical' standard." *U.S. Attorneys Assertion* at 3; *see also, e.g., Congressional Requests Opinion*, 13 Op. O.L.C. at 160 ("A specific, articulated need for information will weigh substantially more heavily in the constitutional balancing than a generalized interest in obtaining information.") (quoting *1981 Assertion*, 5 Op. O.L.C. at 30)). Moreover, "Congress's legislative function does not imply a freestanding authority to gather information for the sole purpose of informing 'the American people.'" *Special Counsel Assertion* at 6. The "only informing function" constitutionally vested in Congress "is that of informing itself about subjects susceptible to legislation, not that of informing the public." *Id.* (quoting *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 531 (9th Cir. 1983)). In the absence of any particularized legitimate need, the Committee's interest in obtaining additional post-February 4 documents cannot overcome the substantial and important separation of powers and Executive Branch confidentiality concerns raised by its demand.

* * * *

In sum, when I balance the Committee's asserted need for the documents at issue against the Executive Branch's strong interest in protecting the confidentiality of internal documents generated in the course of responding to congressional and related media inquiries and the separation of powers concerns raised by a congressional demand for such material, I conclude

that the Committee has not established that the privileged documents are demonstrably critical to the responsible fulfillment of the Committee's legitimate legislative functions.

IV.

For the reasons set forth above, I have concluded that you may properly assert executive privilege over the documents at issue, and I respectfully request that you do so.

Sincerely,

A handwritten signature in blue ink, reading "Eric H. Holder, Jr." with a stylized flourish at the end.

Eric H. Holder, Jr.
Attorney General

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION

11250 WAPLES MILL ROAD
 FAIRFAX, VIRGINIA 22030



NRA

Office of the Executive Director
CHRIS W. COX

June 20, 2012

The Hon. Darrell E. Issa, Chairman
 The Hon. Elijah Cummings, Ranking Member
 Committee on Oversight and Government Reform
 United States House of Representatives
 Washington, DC 20515

Dear Chairman Issa and Ranking Member Cummings:

On behalf of the National Rifle Association of America, I am writing in support of the Committee's resolution recommending that the House find Attorney General Eric H. Holder, Jr. in contempt of Congress.

Neither the Committee's vote, nor the NRA's support of the resolution, are undertaken lightly. The Committee's report thoroughly details the immediate reasons for the resolution: the Justice Department's open defiance of legitimate demands for documents that are needed for oversight and investigation of one of the most disastrous episodes in the history of federal law enforcement.

That episode, too, is now well documented. In the "Fast and Furious" program, agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives pressured reluctant firearms dealers to make sales to known straw purchasers, with the intention of allowing those firearms to be trafficked to Mexican drug cartels. The guns would only be traced after they were recovered by unwitting Mexican authorities, often after being used in violent crimes. And of course, one of those crimes—the murder of Border Patrol agent Brian Terry—took place not in Mexico, but in the United States. BATFE agents foresaw exactly this type of tragedy, but their warnings were disregarded by senior management.

Heightening the NRA's concerns—and requiring our involvement—is the White House's use of this program to advance its gun control agenda. The White House actively sought information from the operation to support its plan to demand reporting of multiple rifle sales by the nearly 9,000 federally licensed firearm dealers in border states.

It is no secret that the NRA does not admire Attorney General Holder. For years, we have pointed out his history of anti-Second Amendment advocacy and enforcement actions. Since

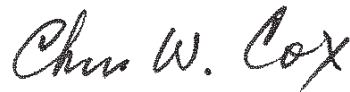
Tel: (703) 267-1140 • www.nraila.org • Fax: (703) 267-3973

taking office, Attorney General Holder has seized on the violence in Mexico to promote the lie that “90 percent” of firearms used in Mexican crime come from the U.S.; to call for bringing back the 1994 Clinton gun ban; and to justify the illegal multiple sales reporting scheme, which amounts to gun registration for honest Americans who buy long guns in southwest border states.

But our support of this contempt resolution is not about those issues—nor is it a partisan decision, for we have also expressed our strong policy disagreements with Attorney General Holder’s predecessors of both parties. The reason we support the contempt resolution is the same reason we first called for Attorney General Holder’s resignation more than a year ago: the Department’s obstruction of congressional oversight of a program that cost lives in support of an anti-gun agenda.

The American people—including millions of NRA members and tens of millions of NRA supporters—deserve the truth about these issues, and we will support any effort that leads us to that truth. This is an issue of the utmost seriousness and the NRA will consider this vote in our future candidate evaluations. If you have any questions about our position on this issue, please do not hesitate to contact me.

Sincerely,



Chris W. Cox
Executive Director

cc: Speaker John Boehner
Majority Leader Eric Cantor
Majority Whip Kevin McCarthy
Minority Leader Nancy Pelosi
Minority Whip Steny Hoyer
Members of the House of Representatives



U.S. Department of Justice

Office of the Inspector General

June 21, 2012

The Honorable Carl Levin
Chairman
Committee on Armed Services
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing this letter in response to your correspondence dated May 31, 2012, regarding the nomination of Kevin A. Ohlson to be a Judge of the United States Court of Appeals for the Armed Forces.

We have reviewed our files relating to the firearms trafficking investigation known as Operation Fast and Furious for information. Based upon this review, we have not found information to indicate that Mr. Ohlson was aware of the flawed law enforcement tactics employed in Operation Fast and Furious at the time they were being used. In addition, we have not found information to indicate that, as Chief of Staff, Mr. Ohlson was given any responsibilities or duties to learn of the flawed tactics. Please note that our investigation into Operation Fast & Furious is ongoing, and if we discover information relevant to your inquiry, we will be sure to advise you.

We hope that this information is helpful for your Committee's purposes. If you have any questions, please do not hesitate to contact me or Senior Counsel Jay Lerner at (202) 514-3435.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Horowitz", is positioned above the printed name.

Michael E. Horowitz
Inspector General

cc: The Honorable John McCain
United States Senate

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

June 25, 2012

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

I have received information that the Department of Justice headquarters may be providing boxes of Operation Fast and Furious documents to individuals at the headquarters of the Department of Homeland Security (DHS). Given the fact that the Justice Department has refused to produce large categories of documents to Congress, this is disturbing information. Since the DHS Inspector General (IG) is conducting its own investigation into Operation Fast and Furious, it also raises questions as to whether such records may have also been made available to the DHS IG.

Accordingly, please respond to the following questions:

1. Have documents regarding Operation Fast and Furious been provided to anyone in Secretary Napolitano's office? If so, which documents and for what purpose? Have such documents also been provided to the DHS IG?
2. Have documents regarding Operation Fast and Furious been provided to anyone at DHS? If so, which documents and for what purpose? Have such documents also been provided to the DHS IG?
3. Are any of the documents among those that are responsive to the October 12, 2011 subpoena, but have not been produced to the Committees? If so, which documents?

Thank you in advance for ensuring your response arrives no later than July 2, 2012. If you have any questions concerning this matter, please contact Tristan Leavitt of my staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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June 25, 2012

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

On June 19, 2012, shortly after leaving a meeting in the U.S. Capitol, Attorney General Eric Holder wrote to request that you assert executive privilege with respect to Operation Fast and Furious documents he is withholding from this Committee. The next day, Deputy Attorney General James Cole notified me in a letter that you had invoked executive privilege. The Committee received both letters minutes before the scheduled start of a vote to recommend that the full House hold the Attorney General in contempt of Congress for refusing to comply with its subpoena.

Courts have consistently held that the assertion of the constitutionally-based executive privilege — the only privilege that ever can justify the withholding of documents from a congressional committee by the Executive Branch — is only applicable with respect to documents and communications that implicate the confidentiality of the President's decision-making process, defined as those documents and communications to and from the President and his most senior advisors. Even then, it is a qualified privilege that is overcome by a showing of the committee's need for the documents. The letters from Messrs. Holder and Cole cited no case law to the contrary.

Accordingly, your privilege assertion means one of two things. Either you or your most senior advisors were involved in managing Operation Fast & Furious and the fallout from it, including the false February 4, 2011 letter provided by the Attorney General to the Committee, or, you are asserting a Presidential power that you know to be unjustified solely for the purpose of further obstructing a congressional investigation. To date, the White House has steadfastly maintained that it has not had any role in advising the Department with respect to the congressional investigation. The surprising assertion of executive privilege raised the question of whether that is still the case.

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June 25, 2012
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As you know, the Committee voted to recommend that the full House hold Attorney General Holder in contempt of Congress for his continued refusal to produce relevant documents in the investigation of Operation Fast and Furious. Last week's proceeding would not have occurred had the Attorney General actually produced the subpoenaed documents he said he could provide. The House of Representatives is scheduled to vote on the contempt resolution this week. I remain hopeful that the Attorney General will produce the specified documents so that we can work towards resolving this matter short of a contempt citation. Furthermore, I am hopeful that, consistent with assertions of executive privilege by previous Administrations, you will define the universe of documents over which you asserted executive privilege and provide the Committee with the legal justification from the Justice Department's Office of Legal Counsel (OLC).

Background

U.S. Border Patrol Agent Brian Terry was killed in a firefight with a group of armed Mexican bandits who preyed on illegal immigrants in a canyon west of Rio Rico, Arizona on December 14, 2010. Two guns traced to Operation Fast and Furious were found at the murder scene. The Terry family appeared before the Committee on June 15, 2011, to ask for answers about the program that put guns in the hands of the men who killed their son and brother. Having been stonewalled for months by the Attorney General and his senior staff, the Committee issued a subpoena for documents that would provide the Terry family the answers they seek. The subpoena was served on October 12, 2011.

Internally, over the course of the next eight months, the Justice Department identified 140,000 pages of documents and communications responsive to the Committee's subpoena. Yet, the Department handed over only 7,600 of these pages. Through a series of accommodations and in recognition of certain Executive Branch and law enforcement prerogatives, the Committee prioritized key documents the Department needed to produce to avoid contempt proceedings. These key documents would help the Committee understand how and why the Justice Department moved from denying whistleblower allegations to understanding they were true; the identities of officials who attempted to retaliate against whistleblowers; the reactions of senior Department officials when confronted with evidence of gunwalking during Fast and Furious, including whether they were surprised or already aware of the use of this reckless tactic, and; whether senior Department officials are being held to the same standard as lower-level employees who have been blamed for Fast and Furious by their politically-appointed bosses in Washington.

I met with Attorney General Holder on June 19, 2012, to attempt to resolve this matter in advance of the Committee's scheduled contempt vote. We were joined by Ranking Member Elijah Cummings and Senators Patrick Leahy and Charles Grassley, respectively the Chairman and Ranking Member of the Senate Committee on the Judiciary. The Department had previously identified a small subset of documents created after February 4, 2011 — the date of its letter containing the false claim that no gunwalking had occurred — that it would make available to the Committee. The Justice Department described this small subset as a "fair compilation" of the full universe of post-February 4th documents responsive to the subpoena.

The President
June 25, 2012
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During the June 19th meeting, the Attorney General stated he wanted to “buy peace.” He indicated a willingness to produce the “fair compilation” of post-February 4th documents. He told me that he would provide the “fair compilation” of documents on three conditions: (1) that I permanently cancel the contempt vote; (2) that I agree the Department was in full compliance with the Committee’s subpoenas, and; (3) that I accept the “fair compilation,” sight unseen.

As Chairman of the primary investigative Committee of the U.S. House of Representatives, I considered the Attorney General’s conditions unacceptable, as would have my predecessors from both sides of the aisle. I simply requested that the Department produce the “fair compilation” in advance of the contempt vote, with the understanding that I would postpone the vote to allow the Committee to review the documents.

The short meeting in the Capitol lasted about twenty minutes. The Attorney General left the meeting and, shortly thereafter, sent an eight-page letter containing more than forty citations requesting that you assert executive privilege. The following morning, the Deputy Attorney General informed me that you had taken the extraordinary step of asserting the privilege that is designed to protect presidential decision making.

In his letter, the Attorney General stated that releasing the documents covered by the subpoena, some of which he offered to the Committee hours earlier, would have “significant, damaging consequences.”¹ It remains unclear how — in a matter of hours — the Attorney General moved from offering those documents in exchange for canceling the contempt vote and ending the congressional investigation to claiming that they are covered by executive privilege and that releasing them — which the Attorney General was prepared to do hours earlier — would now result in “significant, damaging consequences.”

The Scope of Executive Privilege

Deputy Attorney General Cole’s representation that “the President has asserted executive privilege over the relevant post-February 4, 2011, documents” raised concerns that there was greater White House involvement in Operation Fast and Furious than previously thought.² The courts have never considered executive privilege to extend to internal Executive Branch deliberative documents.

Absent from the Attorney General’s eight-page letter were the controlling authorities from the U.S. Court of Appeals for the District of Columbia. As the court held in the seminal case of *In re Sealed Case (Espy)*:

The privilege should not extend to staff outside the White House in executive branch agencies. Instead, the privilege should apply only to communications authored or solicited and received by those members of an immediate White House adviser’s staff who have broad and significant

¹ Letter from U.S. Att’y Gen. Eric H. Holder, Jr. to the President (June 19, 2012), at 2.

² Letter from Deputy U.S. Att’y Gen. James Cole to Chairman Issa (June 20, 2012).

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June 25, 2012
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responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate.³

The D.C. Circuit established the “operational proximity test” to determine which communications are subject to privilege. *Espy* made clear that it is “operational proximity to the President that matters in determining whether the president’s confidentiality interest is implicated.”⁴

In addition, even if the presidential communications privilege did apply to some of these subpoenaed documents, *Espy* made clear that “the presidential communications privilege is, at all times, a qualified one,” and that a showing of need could overcome it.⁵ Such a need — indeed a compelling one — plainly exists in this case.

The Justice Department has steadfastly maintained that the documents sought by the Committee do not implicate the White House whatsoever. If true, they are at best deliberative documents between and among Department personnel who lack the requisite “operational proximity” to the President. As such, they cannot be withheld pursuant to the constitutionally-based executive privilege. Courts distinguish between the presidential communications privilege and the deliberative process privilege. Both, the *Espy* court observed, are executive privileges designed to protect the confidentiality of Executive Branch decision-making. The deliberative-process privilege, however, which applies to executive branch officials generally, is a common law privilege that requires a lower threshold of need to be overcome, and “disappears altogether when there is any reason to believe government misconduct has occurred.”⁶

The Committee must assume that the White House Counsel’s Office is fully aware of the prevailing authorities of *Espy*, discussed above, and *Judicial Watch v. Dep’t of Justice*.⁷ If the invocation of executive privilege was proper, it calls into question a number of public statements about the involvement of the White House made by you, your staff, and the Attorney General.

Finally, the Attorney General’s letter to you cited numerous authorities from prior Administrations of both parties. It is important to note that the OLC opinions provided as authorities to justify expansive views of executive privilege are inconsistent with existing case law.

³ *In re Sealed Case* (*Espy*), 121 F.3d 729 (D.C. Cir. 1997).

⁴ *Id.*

⁵ *Id.*

⁶ Congressional Research Service, Presidential Claims of Executive Privilege: History, Law, Practice, and Recent Developments (Aug. 21, 2008).

⁷ 365 F.3d 1108 (D.C. Cir. 2004) (holding that presidential communications privilege only applied to documents “solicited and received” by the President or his immediate advisers).

The President
June 25, 2012
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Remarks about White House Involvement in Fast and Furious

For the past sixteen months, Senator Grassley and I have been investigating Operation Fast and Furious. In response to a question about the operation during an interview with Univision on March 22, 2011, you stated that, “Well first of all, I did not authorize it. Eric Holder, the Attorney General, did not authorize it.”⁸ You also stated that you were “absolutely not” informed about Operation Fast and Furious.⁹ Later in the interview, you said that “there may be a situation here in which a serious mistake was made and if that’s the case then we’ll find out and we’ll hold somebody accountable.”¹⁰

From the early stages of the investigation, the White House has maintained that no White House personnel knew anything about Operation Fast and Furious. Your assertion of executive privilege, however, renews questions about White House involvement.

White House Press Secretary Jay Carney emphasized your denial that you knew about Fast and Furious. Mr. Carney stated, “I can tell you that, as the president has already said, he did not know about or authorize this operation.”¹¹ A few weeks later, Mr. Carney reiterated the point, stating, “I think he made clear . . . during the Mexican state visit and the press conference he had then that he found out about this through news reports. And he takes it very seriously.”¹²

In an October 6, 2011 news conference, you maintained that Attorney General Holder “indicated that he was not aware of what was happening in Fast and Furious.”¹³ Regarding your own awareness, you went on to state, “Certainly I was not. And I think both he and I would have been very unhappy if somebody had suggested that guns were allowed to pass through that could have been prevented by the United States of America.”¹⁴

On March 28, 2012, Senator Grassley and I wrote to Kathryn Ruemmler, who serves as your Counsel, to request that she grant our numerous requests to interview Kevin O’Reilly, a member of the White House National Security Staff. We needed Mr. O’Reilly’s testimony to ascertain the extent of White House involvement in Operation Fast and Furious. In her response, Ms. Ruemmler advised us that the e-mail communications between Mr. O’Reilly and William Newell, the Special Agent in Charge of ATF’s Phoenix Field Division, did not reveal “the existence of any of the inappropriate investigative tactics at issue in your inquiry, let alone any decision to allow guns to ‘walk.’”¹⁵ She further emphasized “the absence of any evidence that suggests that Mr. O’Reilly had any involvement in ‘Operation Fast and Furious’ or was aware of

⁸ Interview by Jorge Ramos, Univision, with President Barack Obama, San Salvador, El Salvador (Mar. 22, 2011).

⁹ *Id.*

¹⁰ *Id.*

¹¹ The White House, Office of the Press Secretary, Press Briefing by Press Secretary Jay Carney (June 17, 2011).

¹² The White House, Office of the Press Secretary, Press Briefing by Press Secretary Jay Carney (July 5, 2011).

¹³ Richard Serrano, *Obama Defends Attorney General: Holder Faces Scrutiny over ATF's Fast and Furious Gun Operation*, CHARLOTTE OBSERVER, Oct. 7, 2011.

¹⁴ *Id.*

¹⁵ Letter from Hon. Kathryn Ruemmler, Counsel to the President, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, & Sen. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary (Apr. 5, 2012).

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June 25, 2012
Page 6

the existence of any inappropriate investigative tactics.”¹⁶ Your assertion of executive privilege renews concerns about these denials.

Earlier this month, when House Judiciary Committee Chairman Lamar Smith asked the Attorney General when the Justice Department first informed the White House about the questionable tactics used in Fast and Furious, he responded, “I don’t know.”¹⁷ He informed Chairman Smith that his focus was on “dealing with the problems associated with Fast and Furious,” and that he was “not awfully concerned about what the knowledge was in the White House.”¹⁸

Attorney General Holder has assured the public that he takes this matter very seriously, stating that “to the extent we find that mistakes occurred, people will be held accountable.”¹⁹ Yet, he has described the Committee’s vote as “an election-year tactic.”²⁰ Nothing could be further from the truth. This statement not only betrays a total lack of understanding of our investigation, it exemplifies the stonewalling we have consistently faced in attempting to work with the Justice Department. If the Attorney General had produced the responsive documents more than eight months ago when they were due, or at any time since then, we would not be where we are today.

Moving Forward

At the heart of the congressional investigation into Operation Fast and Furious are disastrous consequences: a murdered Border Patrol Agent, his grieving family, countless deaths in Mexico, and the souring effect on our relationship with Mexico. Members of the Committee from both sides of the aisle agree that the Terry family deserves answers. So, too, do Agent Terry’s brothers-in-arms in the border patrol, the Mexican government, and the American people. Unfortunately, your assertion of executive privilege raises more questions than it answers. The Attorney General’s conditional offer of a “fair compilation” of a subset of documents covered by the subpoena, and your assertion of executive privilege, in no way substitute for the fact that the Justice Department is still grossly deficient in its compliance with the Committee’s subpoena. By the Department’s own admission, it has withheld more than 130,000 pages of responsive documents.

I still believe that a settlement, rendering further contempt of Congress proceedings unnecessary, is in the best interests of the Justice Department, Congress, and those most directly affected by Operation Fast and Furious. In light of the settled law that confines the constitutionally-based executive privilege to high-level White House communications, I urge

¹⁶ *Id.*

¹⁷ *Oversight of the U.S. Dep’t of Justice: Hearing Before the H. Comm. on the Judiciary*, 112th Cong. (June 7, 2012) (Test. of U.S. Att’y Gen. Eric H. Holder, Jr.).

¹⁸ *Id.*

¹⁹ Mike Levine, *Guns Groups To Sue over New Obama Regulations, DOJ Vows To “Vigorously Oppose,”* FOXNEWS.COM, Aug. 3, 2011, <http://www.foxnews.com/politics/2011/08/03/guns-groups-to-sue-over-new-obama-regulations-doj-vows-to-vigorously-oppose/#ixzz1yRMujaLY>.

²⁰ *Congress Contempt Charge for U.S. Attorney General Holder*, BBC NEWS, June 21, 2012, <http://www.bbc.co.uk/news/world-us-canada-18528798>.

The President
June 25, 2012
Page 7

you to reconsider the decision to withhold documents that would allow Congress to complete its investigation.

In the meantime, so that the Committee and the public can better understand your role, and the role of your most senior advisors, in connection with Operation Fast and Furious, please clarify the question raised by your assertion of executive privilege: To what extent were you or your most senior advisors involved in Operation Fast and Furious and the fallout from it, including the false February 4, 2011 letter provided by the Attorney General to the Committee? Please also identify any communications, meetings, and teleconferences between the White House and the Justice Department between February 4, 2011 and June 18, 2012, the day before the Attorney General requested that you assert executive privilege.

I appreciate your prompt attention to this important matter.

Sincerely,



Darrell Issa
Chairman

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

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

Senator Patrick Leahy, Chairman
Committee on the Judiciary
U.S. Senate

The Honorable Kathryn Ruemmler, Counsel to the President



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

June 28, 2012

The Honorable John A. Boehner
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

As you know, the President has asserted executive privilege and directed the Attorney General not to release certain documents that are responsive to the subpoena issued to the Attorney General by the Committee on Oversight and Government Reform ("Committee") in connection with its investigation into Operation Fast and Furious. That directive was based on a legal opinion from the Department of Justice advising that the assertion of privilege would be legally proper. *See* Letter for the President from Eric H. Holder, Jr., Attorney General (June 19, 2012).

Notwithstanding the President's directive, on June 20, 2012, the Committee adopted a resolution recommending that the House of Representatives cite the Attorney General for contempt. On June 22, 2012, the Committee referred its report on the resolution to the full House. And on June 28, 2012, the House adopted a contempt resolution, which calls upon you to refer the report to the United States Attorney for the District of Columbia for prosecution under the contempt of Congress statute, 2 U.S.C. §§ 192, 194.

Across administrations of both political parties, the longstanding position of the Department of Justice has been and remains that we will not prosecute an Executive Branch official under the contempt of Congress statute for withholding subpoenaed documents pursuant to a presidential assertion of executive privilege. The fullest explanation of the legal basis for the Department's position was provided during the Reagan Administration by Assistant Attorney General for the Office of Legal Counsel Theodore Olson. Mr. Olson's opinion explained that "the contempt of Congress statute was not intended to apply and could not constitutionally be applied to an Executive Branch official who asserts the President's claim of executive privilege." *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101, 102 (1984) ("*Prosecution for Contempt of Congress*"). The Department has consistently adhered to this position ever since. *See, e.g., Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. 350, 356 (1995) ("application of the contempt statute against an assertion of executive privilege would seriously disrupt the balance between the President and Congress") (citing *Prosecution for Contempt of Congress*).

The Honorable John A. Boehner
Page 2

The Department relied on this longstanding position in 2008, during the George W. Bush administration, when it declined to prosecute two White House officials who were the subject of a contempt of Congress referral from the House of Representatives. Attorney General Michael Mukasey informed Speaker Nancy Pelosi that, in accord with “the Department of Justice’s longstanding position taken during Administrations of both parties, ... the Department has determined that the non-compliance by [the White House officials] with the Judiciary Committee subpoenas did not constitute a crime, and therefore the Department will not bring the congressional contempt citations before a grand jury or take any other action to prosecute [them].” Letter for Nancy Pelosi, Speaker, from Michael B. Mukasey, Attorney General at 1-2 (Feb. 29, 2008). To support his decision, Attorney General Mukasey relied explicitly on Mr. Olson’s *Prosecution for Contempt of Congress* opinion, *see id.* at 1, and enclosed a letter the Department had sent the Committee the prior year more fully setting forth the Department’s position, *see* Letter for John Conyers, Jr., Chairman, Committee on the Judiciary, from Brian A. Benczkowski, Principal Deputy Assistant Attorney General, Office of Legislative Affairs (July 24, 2007). Both of these letters are enclosed.

Consistent with this uniform position and practice, the Department has determined that the Attorney General’s response to the subpoena issued by the Committee on Oversight and Government Reform does not constitute a crime, and therefore the Department will not bring the congressional contempt citation before a grand jury or take any other action to prosecute the Attorney General.

Please do not hesitate to contact me if you would like to discuss this matter further.

Sincerely,



James M. Cole
Deputy Attorney General

Enclosures

cc: The Honorable Nancy Pelosi
The Honorable Darrell E. Issa
The Honorable Elijah E. Cummings

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

June 29, 2012

VIA ELECTRONIC TRANSMISSION

The Honorable Ronald C. Machen, Jr.
United States Attorney
District of Columbia
United States Department of Justice
555 Fourth Street, NW
Washington, DC 20530

Dear U.S. Attorney Machen:

Last night, the Deputy Attorney General sent a letter to the Speaker of the House of Representatives saying:

The Department has determined that the Attorney General's response to the subpoena issued by the Committee on Oversight and Government Reform does not constitute a crime, and therefore the Department will not bring the congressional contempt citation before a grand jury or take any other action to prosecute the Attorney General.¹

It is odd that this letter arrived before the House of Representatives had even transmitted the contempt resolution adopted yesterday to you as the "appropriate United States Attorney" under 2 U.S.C. § 194. Under that statute, the appropriate U.S. Attorney's "duty . . . **shall** be to bring the matter before the grand jury for its action."²

This language is quite clear and simple to comprehend. It is not optional.³ Moreover, the law clearly assigns that duty to you and to no one else. It could have assigned the duty to the Attorney General or to the Deputy Attorney General or some other official. But, it does not. As for the ultimate decision to proceed with a prosecution after you have exercised your duty to present the matter to a grand jury,

¹ Letter from Deputy Attorney General James Cole to John Boehner, Speaker of the U.S. House of Representatives (June 28, 2012), at 2.

² 2 U.S.C. § 194 (2006) (emphasis added).

³ See *F.T.C. v. Tarriff*, 584 F.3d 1088, 1090-1091 (D.C. Cir. 2009) (defining *shall*: "It is fixed law that words of statutes or regulations must be given their 'ordinary, contemporary, common meaning.' *Williams v. Taylor*, 529 U.S. 420, 431 (2000). It is also fixed usage that 'shall' means something on the order of 'must' or 'will'. See, e.g., Black's Law Dictionary 1407 (8th ed. 2004) (defining 'shall' as 'has a duty to; more broadly, is required to').").

The Honorable Ronald C. Machen, Jr.
 June 29, 2012
 Page 2 of 4

that decision is for the citizens empaneled in the grand jury, not for you or for the Deputy Attorney General or for "the Department" generally to make.

The Deputy Attorney General's letter cites the President's assertion of executive privilege as relieving you of your duty to present the contempt citation to a grand jury.⁴ Arguably, that may be true. But, it can only be true to the extent that the assertion of executive privilege is valid as to every single document sought by the House subpoena that has been withheld. The Deputy Attorney General relies on a 1984 Office of Legal Counsel (OLC) opinion, which argues that the duty of a U.S. Attorney to present a contempt citation to a grand jury could not be constitutionally applied where there is a valid assertion of privilege.⁵ However, the OLC opinion clearly sets forth "the caveat that our conclusions are limited to the unique circumstances that gave rise to these questions in late 1982 and early 1983."⁶ According to the OLC opinion, "a United States Attorney is *not required* to refer a contempt citation *in these circumstances* to a grand jury or otherwise to prosecute an Executive Branch official who is carrying out the President's instruction *in a factual context such as that presented by the December 16, 1982, contempt citation.*"⁷ Whether or not you are ultimately required by law to refer the contempt citation, nothing in the OLC opinion prohibits you from determining whether the facts here are like those in 1984. Since it is your clear duty under the statute, it is you who must undertake an independent assessment of the facts and circumstances of this case to determine whether there may be important differences between that case and this one, and therefore, the extent to which you may or may not be relieved of your duty by the assertion of executive privilege.

It does not appear possible that you could have undertaken any such independent assessment. The Deputy Attorney General's letter has put the cart before the horse. As you may or may not know, the Justice Department and the White House have refused to provide a particularized description of the documents being withheld or a description of the documents over which executive privilege has been asserted. No one can reasonably make an intelligent judgment as to the validity of a privilege claim without a specific description of the documents in question, at the very least. As the District Court for the District of Columbia recognized when it considered the contempt citations of White House officials Josh Bolton and Harriet Miers:

[B]oth the Court and the parties will need some way to evaluate privilege assertions going forward in the context of this litigation. More specifically, if the Court is called upon to decide the merits of any specific claim of privilege, it will need a better description of the documents withheld than the one found in Mr. Clement's letter of June 27, 2007.⁸

⁴ *Id.* at 1.

⁵ 8 Op. O.L.C. 101 (1984) ("*Prosecution for Contempt of Congress*").

⁶ *Id.* at 102.

⁷ *Id.* (emphasis added).

⁸ Committee on Judiciary, U.S. House of Representatives v. Miers, 558 F.Supp.2d 53, 107 (D.D.C., 2008).

The Honorable Ronald C. Machen, Jr.
 June 29, 2012
 Page 3 of 4

The same principle applies to you in order to evaluate the privilege assertion and thus assess your duty under the statute. Ideally, you would undertake an actual examination of the documents in order to make an independent assessment of the validity of any privilege claim.

The Attorney General has assigned to you the duty of investigating a series of national security leaks. The Attorney General and several members of the Senate Judiciary Committee expressed supreme confidence in your ability to act independently and take the facts wherever they lead, regardless of the political consequences or any pressure to pull punches that might come from the political leadership of the Department or from the White House. Your independence and integrity were cited as the reason that there was supposedly no necessity to appoint a special prosecutor. This matter gives you an opportunity to live up to that high praise and prove your independence.

However, the way this has been handled so far suggests no such independence at all. Before you have even received the citation, before you have even had a chance to understand the scope of the documents and the privilege claim at issue, the Deputy Attorney General has already announced the decision of "the Department" not to proceed as required by the contempt statute. Therefore, so that Congress can have a better understanding of the procedural standing of this matter, please provide answers to the following questions:

- 1) Have you had any communications with the Deputy Attorney General, the Attorney General, or other senior Department political appointees about the contempt citation or about Operation Fast and Furious? If so, provide a detailed description of those communications and when they occurred.
- 2) Have you been instructed not to present the contempt citation to a grand jury? If so, when, by whom, and on what grounds?
- 3) Have you independently decided not to present the contempt citation to a grand jury? If so, when and on what basis?
- 4) Have you conducted an independent review of the documents being withheld from Congress by the Attorney General in order to assess the validity of any privilege claims? If so, when did that review occur? If not, please explain why not.
- 5) Have you been provided with copies of the documents the Attorney General is withholding from Congress or a specific list of the documents being withheld? If so, have you conducted an independent analysis of the executive privilege claim? If not, how can you conduct an independent assessment of the validity of any executive privilege claim or make any independent judgment about your duty under the contempt statute to present the contempt citation to a grand jury?

The Honorable Ronald C. Machen, Jr.
June 29, 2012
Page 4 of 4

Please provide written responses to each of these questions as soon as possible, but no later than July 3, 2012. Thank you for your prompt attention to this important matter. If you have any questions concerning this matter, please contact Jason Foster of my staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable John A. Boehner
The Honorable Patrick J. Leahy
The Honorable Darrell E. Issa
The Honorable Elijah E. Cummings

Congress of the United States
Washington, DC 20510

June 29, 2012

VIA ELECTRONIC TRANSMISSION

Michael E. Horowitz
Inspector General
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Inspector General Horowitz:

Following yesterday's vote to hold the Attorney General in contempt of Congress, we are now concerned that the Justice Department and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) may be even more motivated to engage in acts of retaliation against the whistleblowers who brought this matter to light. We just learned that ATF senior management placed two of the main whistleblowers who have testified before Congress about Fast and Furious under the supervision of someone who vowed to retaliate against them.

Senator Grassley disclosed whistleblower allegations to the ATF about Operation Fast and Furious on January 27, 2011. At that time, Scot Thomasson was serving as Chief of ATF's Public Affairs Division. According to a direct eyewitness account, shortly after the allegations became public, he stated: "We need to get whatever dirt we can on these guys [the whistleblowers] and take them down." This information was made public on May 3, 2012 in the House Oversight and Government Reform Committee's memorandum accompanying its draft contempt report.¹ Not included in the report is more explicit language. Thomasson was also allegedly heard to have said: "All these whistleblowers have axes to grind. ATF needs to f—k these guys." When asked if the whistleblower allegations were true, Thomasson purportedly said he didn't know and didn't care. It is difficult to understand why ATF leadership would put two of these

¹ Memorandum from Chairman Darrell Issa to Members of the Committee on Oversight and Government Reform (May 3, 2012), at 12.

Inspector General Horowitz
 June 29, 2012
 Page 2 of 3

courageous whistleblowers at the mercy of an individual who made such reckless, irresponsible, and inaccurate comments about them 18 months ago.

As we have learned, Thomasson had been aware of concerns about Operation Fast and Furious two weeks before Senator Grassley's first letter. On January 11, 2011, Special Agent in Charge (SAC) of the Phoenix Field Division William Newell e-mailed Thomasson: "Just heard Melson's coming for the Fast/Furious press conf on the 25th. I hope he realizes how politically charged Arizona is right now especially regarding gun issues, was that way even before the Tucson shooting."² By the next day, the Public Affairs Division at ATF Headquarters had prepared internal talking points that specifically anticipated the issue of gunwalking.³ The January 12, 2011 talking points were drafted to respond to such sample questions as:

Some media reports, referencing an anonymous ATF official, claim that ATF knowingly "walked" about 1,900 firearms across the U.S.-Mexico border as part of this operation. What can you tell me about that?

...

We understand that a firearm bought in connection with this ATF investigation was used to murder Border Patrol Agent Brian A. Terry. Can you please comment on this information?⁴

Thomasson was also involved in the process at ATF and the Justice Department of responding to Senator Grassley's January 27, 2011, letter.⁵

Since allegations about Thomasson's desire to retaliate against whistleblowers have been public since May 3, 2012, and since your office should be a firm, independent voice within the Department to protect whistleblowers from retaliation, please undertake a review to determine: (1) what steps the Department has taken, if any, to admonish Thomasson about such retaliatory remarks, (2) how someone who expressed Thomasson's contempt for whistleblowers was chosen to become the Division Chief of the Firearms Operations Unit and given supervisory responsibility over those very same whistleblowers, and (3) what steps, if any, are being taken to ensure that Thomasson

² E-mail from William Newell to Scot Thomasson (Jan. 11, 2011) [HOCR 005479] (Attachment 1).

³ ATF Official Statements, "Operation: Fast and Furious and Corresponding Investigations" (Jan. 12, 2011) [HOCR 005543-005546] (Attachment 2).

⁴ *Id.* at 2.

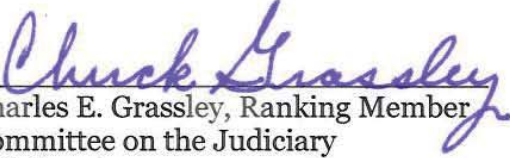
⁵ *See, e.g.*, e-mail from Gregory Rasnake to Ron Weich, et al. (Jan. 27, 2011) [HOCR 003637] (Attachment 3).

Inspector General Horowitz
June 29, 2012
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does not use his new position to engage in a campaign of retaliation along the lines he expressed a desire to conduct last year.

We would appreciate a response as soon as possible, but by no later than July 6, 2012. If you have any questions concerning this matter, please contact Tristan Leavitt of Senator Grassley's staff at (202) 224-5225, or Henry Kerner of Chairman Issa's staff at (202) 225-5074. We look forward to receiving your response.

Sincerely,


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


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

cc: 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 James M. Cole
Deputy Attorney General, U.S. Department of Justice

B. Todd Jones
Acting Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives

July 2012

July 2012

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
 KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

July 3, 2012

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
 Attorney General
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, DC 20530

Dear Attorney General Holder:

The investigation into Operation Fast and Furious has focused on two specific areas: (1) When did individuals within the Department of Justice (DOJ/Department) become aware of the tactics and (2) How did DOJ provide false information to Congress regarding the allegations of gunwalking.

I believe the Department should have been abundantly aware of allegations of gunwalking as there was more than one ATF agent providing information to Department components before the February 4, 2011, letter was sent to Congress.

Specifically, on February 2, 2011, my investigators contacted an ATF Special Agent who worked out of the Phoenix Field Division, Group VII office, and was familiar with Operation Fast and Furious. The conversation centered on the ATF Agent's recollection of how Fast and Furious was executed and his recollection confirmed the allegations my office had heard from other ATF whistleblowers. What was unknown until late 2011 was that this ATF Agent produced a memorandum on February 3, 2011, which documented his discussion about Fast and Furious. The subject of the memorandum is, "Contact with Congressional Investigators," and I have enclosed it within this letter.

This Fast and Furious memorandum traveled rapidly through ATF's chain of command. The memorandum was emailed on February 3, 2011, from the Dallas Field Division to Phoenix SAC William Newell and Deputy Assistant Director for Field Operations William McMahon. Records that the Justice Department has withheld from Congress, which were only made available for review *in camera*, show an email chain attaching this memorandum was sent to Assistant Director of Field Operations Mark Chait at ATF headquarters by the afternoon of February 3, 2011.

According to ATF personnel, the memorandum was discussed by high level ATF personnel and possibly forwarded to DOJ headquarters on February 3, 2011. Specifically, it has been alleged that individuals within the Deputy Attorney General's (DAG's) office and the Office of Legislative Affairs (OLA) at the Department were aware of or actually read the memorandum before the Department's February 4, 2011, letter was sent. Some individuals

The Honorable Eric H. Holder, Jr.
July 3, 2012
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who spoke with my office claim they were "alarmed" by the substance of the memorandum and it caused such a stir that ATF planned to put a panel together to address the allegations but someone within DOJ suppressed the idea.

The possibility that DOJ was aware of this memorandum on February 3, 2011, and still sent the erroneous letter to Congress on February 4, 2011, raises more questions about DOJ's claim that faulty information from Department components inadvertently led to the false letter. This was direct, documented information from street level agents in a far better position to know the facts than the senior supervisory personnel whom DOJ claims to have relied upon for information about the allegations.

Discovering how high up the chain of command inside the Justice Department the memorandum was reviewed has not been easy. The Department has not made available certain individuals who could corroborate what my office has been told. Moreover, it is unclear whether the set of "deliberative" materials about the drafting of the February 4, 2011, letter that the Department produced to Congress constitutes a complete set of all relevant documents or whether other relevant documents from the pre-February 4th timeframe may have been withheld. Consequently, please answer the following questions:

- 1) Have all records relating to the February 3, 2011, memorandum been gathered and preserved by the Justice Department? If not, why not? If so, please describe the nature and volume of those records.
- 2) Will you produce those records to Congress? If not, please explain why not.
- 3) Which DOJ personnel received a copy of the February 3, 2011, memorandum prior to February 4, 2011?
- 4) Which DOJ personnel were aware of the memorandum before the February 4, 2011 reply was sent to me? Please provide all records related to these questions, or certify that all relevant documents have already been provided.

I would appreciate a written response by no later than July 17, 2012. If you have any questions concerning this matter, please contact Brian Downey of my staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

The Honorable Eric H. Holder, Jr.
July 3, 2012
Page 3 of 3

Enclosure

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

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

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

The Honorable Michael E. Horowitz, Inspector General
U.S. Department of Justice

B. Todd Jones, Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives

**U.S. Department of Justice****Bureau of Alcohol, Tobacco,
Firearms and Explosives**

www.atf.gov

February 3, 2011

MEMORANDUM TO: Special Agent in Charge
Dallas Field Division

THRU: Resident Agent in Charge *TL*
Lubbock Field Office *2-3-2011*

FROM: Gary M. Styers
Special Agent
Lubbock Field Office

SUBJECT: Contact with Congressional Investigators

On February 2, 2011, at approximately 1500 hours, ATF Special Agent Gary Styers was contacted telephonically by Robert Donovan and Brian Downey, representing United States Senator Chuck Grassley and the Senate Judiciary Committee. Downey and Donovan after identifying themselves asked Special Agent Styers if he would be willing to answer some questions regarding the time Special Agent Styers spent on a detail to the Phoenix Field Division, Phoenix Group VII Office. Special Agent Styers said he would be willing to answer questions to the best of his knowledge.

Special Agent Styers was asked if he was familiar with the large firearms trafficking case in Phoenix Group VII and Special Agent Styers said he was. Downey and Donovan asked if Special Agent Styers knew the name of the case and he responded that it was "Fast and Furious". Downey and Donovan then asked if Special Agent Styers knew who the case agent was and Special Agent Styers said it was Special Agent Hope McAllister. Special Agent Styers was also asked who the supervisor of the group was and Special Agent Styers said it was Group Supervisor David Voth. Downey and Donovan also asked who helped Special Agent McAllister, Special Agent Styers said that Special Agent McAllister had a Co-Case Agent from Immigration and Customs Enforcement (ICE) as well as an agent from Group VII. Downey and Donovan asked who was the Agent from ICE and Special Agent Styers told them it was Lane France.

Downey and Donovan asked Special Agent Styers if he knew what the agents were assigned to do on the investigation. Special Agent Styers explained that a group of agents were assigned to the case and that since the case was in the stage of an active wiretap, some agents were working within the group and

others were working at various functions related to the wire. Special Agent Styers further said that he did not specifically know the role of each individual agent.

Downey and Donovan inquired as to the role that Special Agent Styers had in this case and Special Agent Styers advised that he had assisted with some surveillance operations with the case. Special Agent Styers was asked to describe the operations and relayed that one of the operations was a suspected transaction that was to occur at a gas station and detailed agents were asked to cover the transaction. While positioning to observe the suspects, Special Agent Styers and other detailed agents were told by Special Agent McAllister that agents were too close and would burn the operation. Special Agent McAllister told all the agents to leave the immediate area. While the agents were repositioning, the transaction between the suspects took place and the vehicle that took possession of the firearms eventually left the area without agents following it.

Downey and Donovan asked Special Agent Styers if he ever saw guns actually go into Mexico. Special Agent Styers said he did not see any firearms cross the border to Mexico. They also asked if Special Agent Styers had worked with any agencies in Mexico, Special Agent Styers relayed that he had not, but had knowledge that other agents within Group VII spoke of communication with other ATF Special Agents assigned in Mexico.

Downey and Donovan then asked if Special Agent Styers had any knowledge that Federal Firearms Licensees (FFLs) were reporting suspected straw purchasers. Special Agent Styers explained that FFLs were indeed reporting such situations and that Special Agent Styers had numerous contacts with FFLs in the Phoenix area and had also worked inside of an FFL in an undercover capacity, while an individual attempted a large scale straw purchase. Special Agent Styers told Downey and Donovan that in speaking with the FFL holder and owner of the gun shop, he told Special Agent Styers that he had asked ATF to install cameras inside his shop and to have an undercover agent inside on a more regular basis.

Downey and Donovan inquired as to what the procedures were and who handled the calls from the FFLs when they reported such suspected transactions. Special Agent Styers told them that he had no knowledge of any special procedures. If the FFLs called during normal business hours, Special Agent Styers assumed that, if they called the office number, their call was handled by the Group Supervisor. Special Agent Styers also told Downey and Donovan that if the FFLs were calling individual agents within the group, he had no direct knowledge of those calls and what the ATF response was to those reports. However, Special Agent Styers did tell Downey and Donovan that he had heard from within the group that FFLs were calling case agents.

With regards to statistics and reporting, Downey and Donovan, questioned Special Agent Styers as to whether he had any knowledge of "padding of statistics or inconsistent reporting". Special Agent Styers advised them that he had no knowledge of a wide scale effort to skew statistics. However, Special Agent Styers relayed that he did question the Group Supervisor as to why he wanted Special Agent Styers to trace firearms that had not been recovered. Special Agent Styers was assigned to the investigation and provided the ATF Form 4473s, the Firearms Transaction Record, and told to trace said firearms. Special Agent Styers asked as to why, when ATF has the Suspect Gun Database, which is designed for such firearms that have yet to be recovered by law enforcement. Group Supervisor Voth said he wanted them traced so that if someone else traced the firearms, they would know the firearms were connected to the case Special Agent Styers was assigned. Special Agent Styers relayed that even though he disagreed with the requested procedures, he follow the request of Group Supervisor Voth. Special Agent Styers also informed Donovan and Downey that he asked several agents also assigned to Group VII if they had to submit similar firearms traces and they replied that they in fact also were told to trace all firearms in a similar fashion.

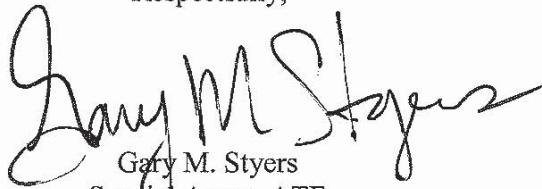
Special Agent Styers was then asked about his general impression of the Fast and Furious case. Special Agent Styers stated that the case had systematically divided and isolated agents from the group. The case agent had solicited the advice of numerous experienced agents, including Special Agent Styers, regarding how to conduct and end the wiretap operations and case overall. Special Agent Styers gave the case agent his honest opinion and advice since Special Agent Styers had worked two wiretap investigations in his career. Special Agent Styers felt that his advice and opinions, as well as other agents' advice and opinions were widely disregarded. Along with other agents within the group, Special Agent Styers explained that he was no longer asked to assist with Fast and Furious and concentrated on his assigned cases and provided necessary assistance to fellow agents within the detail and group.

Downey and Donovan asked Special Agent Styers what he felt was incorrect about the way the Fast and Furious case was conducted. Special Agent Styers explained that first and foremost, it is unheard of to have an active wiretap investigation without full time dedicated surveillance units on the ground. Special Agent Styers relayed that no agents in the group were assigned to surveillance on the Fast and Furious case. Special Agent Styers said that other agencies or task force officers may have been used to conduct surveillance and respond to calls of FFLs, but it seemed that either the case agent or Group Supervisor would poll the office for agents who were available to respond at short notice.

Secondly, Special Agent Styers said that it appeared odd to have a majority of ATF Agents working on a wiretap investigation, who had never worked such a case. Especially, when numerous, permanent Group VII agents and detailers had previous wiretap experience.

Special Agent Styers was provided with contact information for Downey and Donovan and the conversation was ended. Special Agent Styers contacted the Lubbock Resident Agent in Charge, Jim Luera at 1545 hours after the conversation with Downey and Donovan ended, to inform him of the contact. Special Agent Styers was later asked to document the conversation herein and attempted to do so to the fullest extent possible.

Respectfully,



Gary M. Styers
Special Agent, ATF



U.S. Department of Justice

Office of the Inspector General

July 5, 2012

Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
2347 Rayburn House Office Building
Washington, DC 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510


Dear Mr. Chairman and Senator Grassley:

This letter responds to your correspondence dated June 29, 2012, regarding the apparent decision by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to place two whistleblowers who testified before Congress about the Fast and Furious matter under the supervision of an individual who allegedly threatened to retaliate against them.

This Office takes seriously any situation where a whistleblower may face possible retaliation, and it is important that the Department ensure that whistleblowers do not suffer retaliation. We have carefully reviewed the materials you provided, and we have initiated an investigation into this matter. Once we complete the investigation, we will be in a better position to respond to your specific inquiries.

Thank you for bringing this important matter to our attention. If you have any questions, please do not hesitate to call me or Senior Counsel Jay Lerner at (202) 514-3435.

Sincerely,


Michael E. Horowitz
Inspector General

cc: The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

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

James E. Cole
Deputy Attorney General
U.S. Department of Justice

B. Todd Jones
Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives

Congress of the United States
Washington, DC 20510

July 13, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Harold D. Rogers
 Chairman
 Committee on Appropriations
 U.S. House of Representatives
 Washington, DC 20515

Dear Mr. Chairman:

We write today in response to a July 6, 2011, letter you may have received from Mayors Against Illegal Guns (MAIG) addressed to Speaker of the House John Boehner and Senate Majority Leader Harry Reid. That letter refers to the investigation that we have been conducting into the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) "Operation Fast and Furious." The letter falsely claims our investigation has been impeded by the Tiahrt Amendment, an appropriations restriction that prevents the release of firearms trace information unless the disclosure is pursuant to one of several exceptions. No exception is necessary for disclosure to Congress, however. As with all non-disclosure provisions in law, Congress does not limit its own access to information or ability to conduct oversight of the Executive Branch unless it does so explicitly.

Despite the claims by MAIG, the Tiahrt provision has not impeded our investigation. The provision has not been cited by anyone from whom we have sought information as a reason to deny our requests, and the Department of Justice (DOJ) did provide documents containing trace data pursuant to the House subpoena. However, DOJ has been slow to respond and uncooperative in other ways, leading us to ask both the Government of Mexico (GOM) and the State of Arizona for information independent of the DOJ. As is clear from our letter dated June 21, 2011, quoted by MAIG, the requests we sent to the Mexican government and to Arizona law enforcement officials were not limited to firearms on which ATF would already have records through its National Tracing Center. Rather, the request also sought information on firearms that may not yet have been traced, but that officials "believe may be connected with Operation Fast and Furious." In any event, the Tiahrt Amendment would not bind either the GOM or the State of Arizona and neither has cited it as a reason to withhold information.

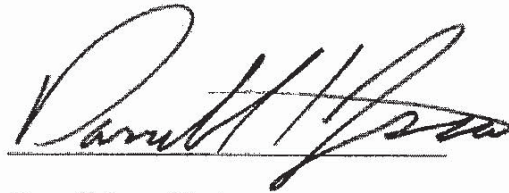
Chairman Harold Rogers
 July 13, 2011
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Furthermore, anyone who has closely followed our investigation of Fast and Furious should not be surprised by the need to seek information from additional sources even if it might be held by ATF. One of our major concerns in this investigation has been the failure of ATF and DOJ to provide complete, accurate and timely responses to our questions and document requests. As long as those agencies continue to withhold key information, we will continue to look for that information wherever else it may be found.

MAIG also quotes Senator Grassley's June 16, 2011, letter to ATF's Acting Director, Kenneth Melson, in a misleading manner. In that letter, Senator Grassley pointed out that "Federal law prohibits the ATF from releasing firearm trace data or multiple handgun sales reports," but only in the context of criticizing the accuracy and completeness of ATF statistical information that is *not* restricted by the Tiahrt Amendment—as Senator Grassley expressly stated in the letter.

We hope this background is helpful to you in understanding the truth about the relationship between these appropriations provisions and the investigation of Operation Fast and Furious. We would urge you and your committee to disregard MAIG's deceptive efforts to exploit that investigation as an argument for the repeal of the Tiahrt Amendment—a provision that we strongly support as necessary to protect the integrity of legitimate criminal investigations.

Sincerely,



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



Charles E. Grassley, Ranking Member
 Committee on the Judiciary
 United States Senate

Cc: The Honorable Frank Wolf
 Chairman
 House Committee on Appropriations Subcommittee on
 Commerce, Justice, Science and Related Agencies

The Honorable Lamar Smith
 Chairman
 House Committee on the Judiciary



Office of the Deputy Attorney General

Washington, D.C. 20530

July 16, 2012

The Honorable Charles E. Grassley
 Ranking Minority Member
 Committee on the Judiciary
 United States Senate
 Washington, D.C. 20515

Dear Senator Grassley:

This responds to your letter of June 29, 2012, to Ronald C. Machen, Jr., the United States Attorney for the District of Columbia, regarding the Department's decision, consistent with established legal principles adopted by administrations of both political parties, not to pursue criminal prosecution against the Attorney General for acting in accordance with the President's invocation of executive privilege.

I am responding to your letter because it raises Department-wide legal questions best addressed by the Deputy Attorney General and not by an individual U.S. Attorney, although U.S. Attorney Machen has asked that I convey to you his concurrence with the position articulated below and in my enclosed letter to Speaker John A. Boehner dated June 28, 2012. I note that, in 2008, when the Department declined to prosecute two officials in the Bush White House who were the subject of a contempt of Congress citation by the House of Representatives, that decision was conveyed to the Speaker of the House of Representatives by the Attorney General and not by the U.S. Attorney for the District of Columbia.

My letter to Speaker Boehner set forth well-settled precedent for the Department's decision not to pursue the recent contempt citation, including an opinion drafted during the Reagan administration by Assistant Attorney General for the Office of Legal Counsel Theodore Olson and the Department's reliance on that opinion in the 2008 matter noted above. These precedents are authoritative expressions of Justice Department legal interpretation regarding such matters.

Simply put, the Attorney General's response to the subpoena issued by the House Committee on Oversight and Government Reform does not constitute a crime in light of the President's assertion of executive privilege. That assertion is conclusive within the Executive Branch and thus binding on the Department, including individual U.S. Attorneys. As Assistant Attorney General Olson explained, "the fundamental balance required by the Constitution does not permit Congress to make it a crime for an official to assist the President in asserting a constitutional privilege that is an integral part of the President's responsibilities under the Constitution." *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101, 140 (1984) ("*Prosecution for Contempt of Congress*"). Thus, "the contempt of Congress statute was not intended to apply and could not constitutionally be applied to an Executive Branch official who asserts the President's claim of executive privilege." *Id.* at 102.

The Honorable Charles E. Grassley
Page 2

The Olson opinion restates and confirms “the Department’s long-standing position that the contempt of Congress statute does not apply to executive officials who assert Presidential claims of executive privilege.” *Id.* at 129. That has been the Department position at least since 1956, when Deputy Attorney General (subsequently Attorney General) William P. Rogers explained that “in the context of Presidential assertions of the privilege, the contempt of Congress statute was ‘inapplicable to the executive departments.’” *Id.* (quoting *Hearings Before a Subcommittee of the House Committee on Government Operations*, 84th Cong., 2d Sess. 2933 (1956)).

The Department has consistently adhered to the position articulated in the Olson opinion. Most recently, as noted, Attorney General Mukasey relied on the Olson opinion when he declined to prosecute White House officials for contempt of Congress in 2008 in light of President George W. Bush’s assertion of executive privilege. *See* Letter for Nancy Pelosi, Speaker, from Michael Mukasey, Attorney General, at 1-2 (Feb. 29, 2008) (enclosed); *see also, e.g.*, Letter for John Conyers, Jr., Chairman, Committee on the Judiciary, from Brian A. Benczkowski, Principal Deputy Assistant Attorney General, Office of Legislative Affairs (July 24, 2007) (“Benczkowski Letter”) (enclosed) (informing congressional committee that Department’s position as articulated in *Prosecution for Contempt of Congress* would apply to the White House officials if held in contempt of Congress); *Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. 350, 356 (1995) (opinion of Assistant Attorney General Walter Dellinger) (“[T]he criminal contempt of Congress statute does not apply to the President or presidential subordinates who assert executive privilege.”).

This settled legal position compelled the Department’s decision to refrain from pursuing any criminal prosecution on the recent contempt citation. As Assistant Attorney General Olson concluded, “[t]he President, through a United States Attorney, need not, indeed *may* not, prosecute criminally a subordinate for asserting on his behalf a claim of executive privilege.” *Prosecution for Contempt of Congress*, 8 Op. O.L.C. at 141 (emphasis added).

Sincerely,



James M. Cole
Deputy Attorney General

Enclosure

cc: The Honorable Patrick J. Leahy
Chairman

Congress of the United States
Washington, DC 20510

July 18, 2012

Via Electronic Transmission

Mr. B. Todd Jones
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
U.S. Department of Justice
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Jones:

If courageous whistleblowers within the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF/Agency) had not come forward to Congress, the tactics used in Operation Fast and Furious might never have come to light. By providing Congress key information about the shortcomings of Fast and Furious, these whistleblowers put their careers on the line to prevent reckless operational tactics from ever being employed again and to make sure the family of murdered Border Patrol Agent Brian Terry got the whole truth about their son's death. On numerous occasions, we have stressed to ATF and the Department of Justice the importance of protecting whistleblower disclosures and preventing retaliation against whistleblowers.

We recently reviewed a video message you sent to ATF employees on July 9, 2012. In this message, entitled "ChangeCast #8: Choices and Consequences," you stress to ATF employees that "if you make poor choices, that if you don't abide by the rules, that if you don't **respect the chain of command**, if you don't find the appropriate way to raise your concerns **to your leadership**, there will be consequences. . . ." The essence of whistleblowing is reporting problems outside of an employee's chain of command when the chain of command has failed to address them. In fact, for a disclosure to be legally protected, it is often necessary for the employee to report the wrongdoing to someone other than his or her supervisor.

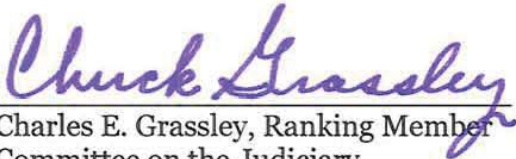
Your ominous message – which could be interpreted as a threat – is likely to have a major chilling effect on ATF employees exercising their rights to contact Congress. Therefore, it needs to be clarified.

Mr. B. Todd Jones
 July 18, 2012
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You must remind ATF employees about their right to talk to Congress and provide Congress with information free and clear of agency interference or retaliation.¹ By clarifying your message, you will ensure that ATF employees are aware of their rights and whistleblower protections. Sometimes it is necessary to address concerns outside the chain of command, and those kinds of disclosures are protected by law and should not be threatened with unspecified "consequences." ATF managers should be required to respect protected whistleblower disclosures and held accountable when they do not. That would send a clear message that ATF will not tolerate intimidation of whistleblowers who provide information to Congress.

We would appreciate a written response by no later than July 25, 2012, indicating whether or not you intend to clarify your remarks so that they are not misunderstood and that you agree whistleblowers rights must be protected under law. If you have any questions concerning this matter, please contact Henry Kerner of the House Oversight Committee staff at (202) 225-5074 or Brian Downey of the Senate Judiciary Committee staff at (202) 224-5225.

Sincerely,



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



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

cc: 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 James M. Cole
 Deputy Attorney General, U.S. Department of Justice

¹ 5 U.S.C. § 7211 states:

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.



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

Washington, DC 20226

JUL 25 2012

Via Hand Delivery

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives

Dear Ranking Member Grassley and Chairman Issa:

This is in response to your letter dated July 18, 2012, wherein you raised concerns about an internal video message entitled "ChangeCast #8: Choices and Consequences" that I recorded for the employees of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

Since becoming the Acting Director of ATF in August of 2011, I have used these brief internal video messages, or ChangeCasts, as a means to communicate efficiently with our nearly 5,000 employees throughout the country and in our international posts of duty. In developing these ChangeCasts, I have covered a number of topics of interest to our workforce, to include Trust, Morale, Mission, Change, ATF's Role in the Department of Justice, Leadership and Organizational Discipline. This latest video message, "ChangeCast #8," was designed to reinforce and highlight the importance of accountability at all levels of ATF to safe and efficient Federal law enforcement, one of the main concerns raised to me by employees in the field. At no time was I attempting to discourage, dissuade or prevent employees from making protected disclosures under Title 5 of the United States Code.

I have issued a "Special Message" to all ATF employees that clarifies the message of ChangeCast #8, and outlines the nature of the protected disclosures under the Whistleblower Protection Act.

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The Honorable Charles E. Grassley
The Honorable Darrell Issa

Thank you for your time and consideration in this matter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "B. Todd Jones". The signature is fluid and cursive, with the first name "B." and last name "Jones" clearly distinguishable.

B. Todd Jones
Acting Director

c: 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