

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

Attachment 1

Report of Investigation

Title of Investigation:

Investigation Number:

785115-10

Report Number:

SUMMARY OF EVENTS:

ATF

Prepared by:

Title:

Special Agent, Phoenix VII Field Office

Signature:

Date:

Authorized by:

ATF

Title:

Group Supervisor, Phoenix VII Field Office

Signature:

Date:

Second level reviewer (optional):

William D. Newell

Title:

Special Agent in Charge, Phoenix Field Division

Signature:

Date:

ATF

ATTACHMENTS:

1.

2.

ATF

EXHIBITS:

1.

ATF

Report of Investigation

Title of Investigation:

Investigation Number:

785115-10

Report Number:

SUMMARY OF EVENT:

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NARRATIVE:

ATF

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Title:

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Signature:

Date:

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Date:

ATF

ATTACHMENTS:

1.

ATF

EXHIBITS:

ATF

Attachment 2

From:
Sent:
To:
Subject:

ATF

Friday, March 12, 2010 7:34 PM
Phoe-Group VII
Monday Morning Meeting, Strike force 9:30am

To all;

ATF

ATF

Group Supervisor
Phoenix Group VII
602 [REDACTED]

Attachment 3

Group Supervisor
Phoenix Group VII
602 [REDACTED]

ATF

Thanks for everyone's continued support in this endeavor.

ATF

ATF

From:
Sent:
To:
Cc:
Subject:

Friday, April 02, 2010 10:31 AM
Hurley, Emory (USAAZ); Gillett, George T. Jr.
Phoenix-Group VII
No pressure but perhaps an increased sense of urgency...

ATF

Attachment 4

From:

Sent:

To:

Subject:

ATF

Monday, May 03, 2010 11:13 AM

Phoe-Group VII

Just an FYI.

> April was the second most violent month during the Calderon administration with 1,231 executions. This is more than twice that accumulated in the same month in 2009 (560 dead) and five times that of 2008 (270).

ATF

Group Supervisor

Phoenix Group VII

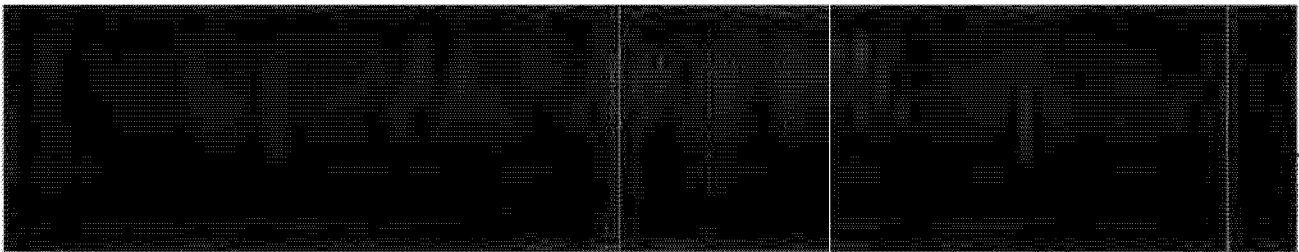
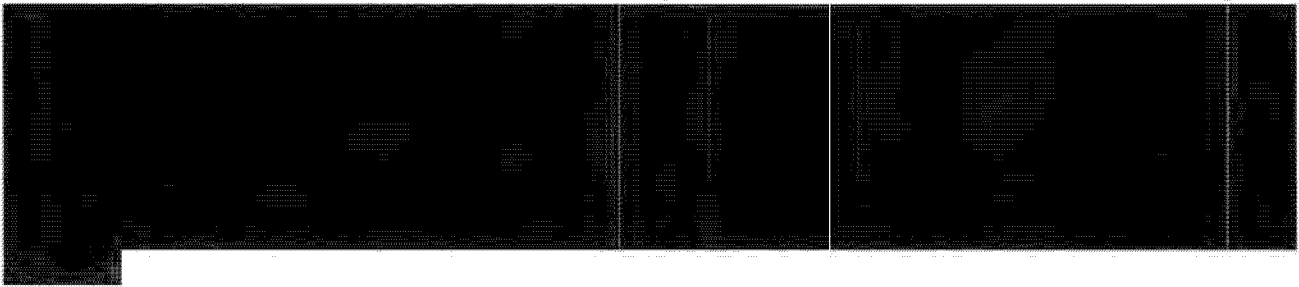
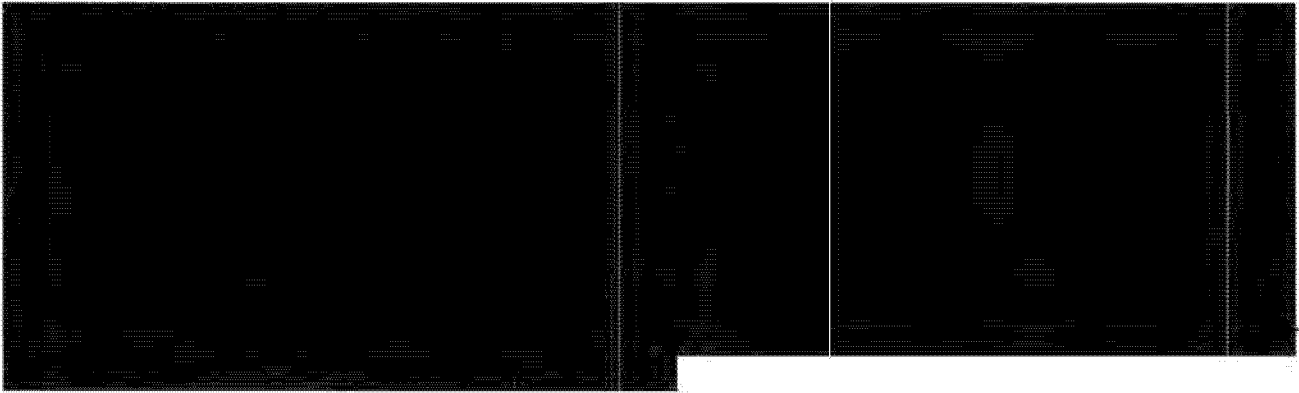
602-

Attachment 5

Phoenix Group VII

(GRIT/SWB Firearms Trafficking)

ATF



Attachment 6

From: [REDACTED]
Sent: Thursday, June 17, 2010 8:09 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Suspect Databases #LE1001715
Attachments: SGF33171.pdf, Suspect Person.doc

Good Morning, [REDACTED]

I am not sure if you received an answer to your inquiry as to the "SUSPECT" Databases.

The Suspect Person Database, this is handled by the Violent Crime Analysis Branch (VCAB). I have attached a copy of both submission forms for your review and completion. For additional information on Suspect "Person", please contact [REDACTED] or [REDACTED] for additional assistance at VCAB; phone 304-[REDACTED].

Suspect Gun - Entries made to this program are firearms that have "NOT" been recovered by law enforcement but suspected to eventually be used in criminal activity.

Once the firearms are entered in the system, you will receive a report, representative of the firearm information that was provided. For the trace to be a "hit", all of the weapon information must match; that is, the manufacturer, weapon type, caliber and serial number. If the NTC receives a Trace request for any of the firearms submitted, the Suspect Gun Program will advise you upon email notification to include Requestor information. It is part of our procedures of Suspect Gun to obtain the Suspect Gun Case Status when an incoming Trace is submitted to the NTC on an Active Suspect Gun Case, regardless of the Trace requestor. At this point the trace will be held pending upon written verification from the Suspect Gun case agent.

The Suspect Gun Database is beneficial to the law enforcement in providing investigative leads when dealing with firearms trafficking and straw purchasers. This information can also be shared between law enforcement agencies for comparing records or ongoing investigations. Checking trace requests against the Suspect Gun Database also saves valuable time in processing trace requests.

If you are submitting a large list of firearms it would be best to have an attached Word or Excel document detailing the FFL, identifying each firearm (complete weapon description), include the purchaser (if available), purchase date (if available) and FFL involved (if available) for the purchase.

Please be advised that the Suspect Gun Program requires an active ATF investigation number for entry into the Suspect Gun Database. Gun Database (general IN numbers, case 765065-07-[REDACTED], are no longer accepted). Also indicate whether or not the National Tracing Center (NTC) can release Trace history to other requestors.

Please note that an updated Suspect Gun Submission form has been attached for future submissions which can be faxed to 800-[REDACTED] or emailed directly to our Suspect Gun email box through outlook at [REDACTED].

All information regarding this Theft, Multiple Sale and/or any other Trace requests can be obtained by using eTrace. In the event that you do not have access, access can be requested by contacting the E-Trace Administrator at 304-[REDACTED] or via email at [REDACTED]. In the event that you do not have access, access can be requested by contacting the Law Enforcement Support Branch at 304-[REDACTED] or 800-[REDACTED].

Attachment 7

[REDACTED]

From: [REDACTED]
Sent: Thursday, March 18, 2010 12:27 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Suspect Person Activity Report - IN # 785115-10
Attachments: [REDACTED].docx; FY10 FIREARMS DATA RESTRICTIONS.pdf

Good Afternoon [REDACTED] and S/A [REDACTED]

ATF

Attachment 8

[REDACTED]
From: [REDACTED]
Sent: Friday, August 06, 2010 12:43 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Suspect Person Activity Report - IN #785115-10- [REDACTED]
Attachments: [REDACTED].docx; FY10 FIREARMS DATA RESTRICTIONS.pdf

ATF

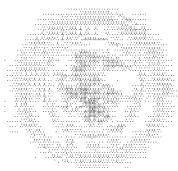
Please be advised that the Consolidated Appropriations Act of 2010, Public L. 111-117, which became effective on December 16, 2009, restricts the disclosure of any part of the contents of the Firearms Tracing System or any information required to be kept by Federal Firearms Licensees pursuant to 18 USC 923(g), or required to be reported pursuant to 18 USC 923(g)(3) and 923(g)(7).

The information, which is being provided per your request, is for official law enforcement use only and may only be disseminated by the Bureau of Alcohol, Tobacco, Firearms and Explosives to a Federal, State, local, or tribal law enforcement agency, or a Federal, State, or local prosecutor; or a foreign law enforcement agency solely in connection with and for use in a criminal investigation or prosecution; or a Federal agency for a national security or intelligence purpose. This disclosure restriction shall not be construed to prevent the sharing or exchange of such information among and between Federal, State, local, or foreign law enforcement agencies, Federal, State, or local prosecutors, and Federal national security, intelligence, or counterterrorism officials. Congress has prohibited the public release of any data by the recipient law enforcement agency. The publication of statistical aggregate data regarding firearms traffickers and trafficking channels, firearms misuse, felons, and trafficking investigations is exempt from the restriction. If you have questions regarding these restrictions please contact ATF legal counsel prior to disclosing any of the information provided in this correspondence outside of ATF.

Thank you,

[REDACTED]
Contractor
ATF - Violent Crime Analysis Branch
(304) [REDACTED]

Attachment 9



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

Attachment 10



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,

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman