

# 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.<sup>1</sup> 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.

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<sup>1</sup> 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

# Attachment 1

UNITED STATES DISTRICT COURT

*District of Arizona*

**ATF**

RETURN

**ATF**

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UNITED STATES DISTRICT COURT  
*District of Arizona*

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**ATF**

10-10251M

Affidavit

**ATF**

**ATF**