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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>

May 3, 2011

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
Washington, DC 20530-0001

Dear Attorney General Holder,

Media and whistleblowers continue to sound alarms about the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF or the Agency). Some of these concerns relate to ATF's Operation Fast and Furious (Fast and Furious) – a subset of the Agency's Project Gunrunner. However, other concerns arise from reviews and audits in recent years that suggest ATF's management of its law enforcement operations and the Justice Department's oversight of ATF is sorely lacking.

On March 9, 2011, I was joined in a letter by 13 members of the Judiciary Committee asking about allegations that the Fast and Furious program may have been complicit in the illegal transfer of firearms into Mexico. According to media reports, the program intentionally allowed straw buyers for criminal organizations to purchase thousands of guns so that ATF could track them across the border. One of these guns is believed to have been used in the murder of Border Patrol Agent Brian Terry.

Unfortunately, the Justice Department's April 4 response avoided or refused to answer the majority of our questions. Because the Department has chosen not to cooperate with Congress's inquiries, I am beginning a review of ATF's management of Project Gunrunner and other operations and responsibilities and the adequacy of the Justice Department's oversight of ATF.

As the Committee continues to review public reports about Fast and Furious, it has become increasingly clear that the ATF mishandled the program. And perhaps even more concerning, problems with the Fast and Furious program appear to be a symptom of more serious management problems within ATF. I commend your decision to refer the Fast and Furious matter to the Justice Department's Office of the Inspector General (IG). However, I have

ongoing concerns about the institutional structure of an organization that thought it wise to allow guns to be smuggled to Mexico in order to stop the flow of smuggled guns to Mexico.

The Committee has also heard from several whistleblowers who consistently describe a culture of retaliation and mismanagement at ATF. These issues demand attention – not only from this Committee, but from Department leadership as well.

Weaknesses within ATF's management are nothing new. A November 2010 IG report titled, "Review of ATF's Project Gunrunner," found:

- The ATF does not systematically and consistently exchange intelligence with its Mexican, and some U.S., partner agencies.
- Some ATF field agents reported that they do not find investigative leads provided to them by ATF's Field Intelligence Groups to be timely and useful.
- Intelligence personnel in ATF's Southwest border field division do not routinely share firearms trafficking intelligence with each other.<sup>1</sup>

The IG was presumably unaware of Fast and Furious at the time of its report, but it appears that these same problems existed with that operation as well. The Mexican government, a supposed partner in the overall effort, claims to have had no knowledge of the operation. Mexico's Ministry of Foreign Affairs has already launched an inquiry into the matter.<sup>2</sup>

Similarly, Darren Gil, the top ATF official in Mexico during the Fast and Furious operation, apparently was not aware of the program's existence. Mr. Gil reportedly first noticed unusual developments when his office attempted to investigate an influx of guns used in cartel crimes with serial numbers that were traced back to the same investigation in Phoenix.<sup>3</sup> According to CBS news, Mr. Gil specifically emailed his staff on January 25, 2010, to say that no firearms would be allowed to cross into Mexico for a case without his approval. However, at that same time, ATF agents in Phoenix were already allowing traffickers to move weapons to Mexican drug cartels.<sup>4</sup> Another ATF whistleblower, John Dodson, reported to the *Center for Public Integrity* that the ATF and the Department were slow to use the information being gathered. According to Dodson, "Nothing happened. We're monitoring the same buyers buying the same guns from the same dealers at the same rate and we're not stopping any of it."<sup>5</sup>

These whistleblower reports and IG findings raise serious concerns about ATF management. In order for the Committee to better understand how the ATF manages operations like Fast and Furious and how the Justice Department conducts oversight of such activities, please provide the following documents to the Committee by May 20, 2011:

1. Any documents related to the creation of Operation Fast and Furious.

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<sup>1</sup> U.S. Dept. of Justice, Office of the Inspector General, "Review of ATF's Project Gunrunner," (Nov. 2010).

<sup>2</sup> Sharyl Atkisson, *Mexico Requests Info from U.S. on Gunrunning*, CBSNews (March 6, 2011).

<sup>3</sup> 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).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

2. Any documents related to ATF's international cooperation regarding Fast and Furious.
3. Any correspondence among and between ATF, the U.S. Attorney's Office for the District of Arizona, and the Department regarding Operation Fast and Furious.
4. Any documents related to the ATF's investigation of the December 2010 death of Border Patrol Agent Brian Terry.
5. Any meeting notes and documents relating to Gunrunner and Fast and Furious from Criminal Division Assistant Attorney General Lanny Breuer's and ATF Acting Director Kenneth Melson's respective trips to Mexico in the summer of 2010.

In addition, please answer the following questions:

1. What are the ATF's policies with regard to information sharing with U.S. and international partner agencies?
2. What process and procedure does the ATF follow for sharing investigative leads? How does the agency ensure that the leads are timely and useful?
3. Who specifically at the ATF and the U.S. Attorney's Office for the District of Arizona approved the Fast and Furious investigation? Did the Department approve the Fast and Furious investigation, and, if so, who specifically gave the approval?
4. How do intelligence personnel in the Southwest border field division share trafficking intelligence?

The reports about Fast and Furious, combined with other reviews of ATF management and law enforcement operations, raise issues that, if true, undermine the Agency's overall law enforcement efforts. To help the Committee better understand the manner in which the Justice Department provides oversight of the ATF's operations and the ATF's role relative to the Department's other component law enforcement agencies, please answer the following questions:

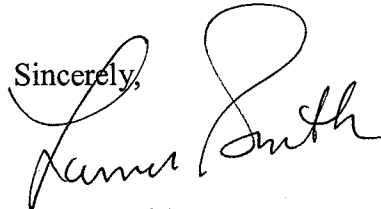
1. Please describe the ATF and the Department's decision-making process for ATF initiatives such as Project Gunrunner and Fast and Furious. Was this process followed with regard to these operations?
2. What is the ATF's and the Department's process for assessing risks in its various initiatives?
3. How does the Department oversee and assess the operations of the ATF?
4. How does the Department oversee and assess the ATF's performance in law enforcement initiatives executed jointly with other Department law enforcement agencies?

5. Has the Department considered whether its law enforcement components could function more efficiently if certain responsibilities were consolidated to reduce some of this jurisdictional overlap?

I appreciate your commitment to provide the Committee the information that it needs to conduct appropriate oversight of the Department. Please have your staff contact Bart Forsyth at (202) 225-5101 to make arrangements for the delivery of documents.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Lamar Smith". The signature is written in a cursive style with a large, looping initial "L" and a distinct "S" at the end.

Lamar Smith  
Chairman

cc: The Honorable John Conyers, Jr.