

BRIEFING PAPER
Office of Field Operations
Phoenix Field Division
Yuma Satellite Office
Updated - August 2, 2011

SUBJECT: UI# 785041-09-0008 [ATF] Phoenix Group I, Yuma Satellite Office investigation involving suspicious activities by an individual who is acquiring large quantities of novelty grenade bodies and related components. This investigation is in support of ATF's Southwest Border "Gunrunner" Initiative.

PURPOSE:

- To brief the Assistant Director for Field Operations and Deputy Assistant Director, Field Operations of the status of this investigation.
- To brief the Country Attaché of the Mexico City Country Office (MCO)

BACKGROUND:

Since late 2006 the Phoenix Field Division has been analyzing the increasing use and seizure in Mexico of military ordnance, specifically hand and rifle grenades, on the part of Mexican Drug Trafficking Organizations (DTOs) in their ongoing battle with each other and the Government of Mexico (GOM). In 2007, Phoenix Field Division personnel along with Phoenix Explosives Enforcement Officer Tony May began working closely with the Mexico Country Office and GOM officials in properly identifying and inventorying previously seized hand and rifle grenades in order to better analyze the source of these items as well as put together an overall report on the increasing use of the same. In support of this effort the Phoenix Field Division, in conjunction with the U.S. Bomb Data Center, created the English/Spanish Southwest Border Ordnance Recognition Guide, ATF Publication 3320.10, dated August 2009. This publication was created in order to provide up to date information for Mexican law enforcement and military officials who are regularly seizing these items and have a need to properly identify and safely handle them. This guide is also being distributed to U.S. law enforcement personnel along the Southwest Border due to recent incidents involving the seizure of actual U.S. grenades as well as illegally manufactured grenades. A result of these efforts has led Mexico and Guatemala to acknowledge problems with internal inventory procedures of military ordnance, specifically hand and rifle grenades. This has led to a much closer working relationship with ATF and U.S. Defense Attaché Offices in these two countries and through this much improved relationship an ability to more effectively track the use and seizure of grenades. One of the concerns has been however that the Mexican DTOs are aware of this potential loss of a steady source of grenades and are availing themselves of other markets, to include the U.S. market for illegally manufactured improvised grenades. Unlike most countries the U.S. sells grenade component parts as "novelty items" which with the addition of fuzes and explosive substances can be readily converted to function as improvised grenades. Several ATF investigations along the Southwest Border over the past several years have resulted in the dismantling of improvised grenade

"factories" as well as the seizure of hundreds of improvised grenades destined for Mexico. The ongoing McAllen, Texas Field Office investigation referenced below is an example of this.

CURRENT INVESTIGATIVE STATUS

This Yuma investigation was initiated due to information gained from the ongoing Houston Field Division, McAllen Field Office investigation (UI#782055-09-0086) of an individual purchasing novelty MK2 (pineapple style) grenade bodies and then assembling them into functional explosive devices. During the Houston Field Division investigation information was obtained from the seller/shipper of these items that an individual in Yuma, Arizona had obtained 120 novelty MK2 bodies. The seller/shipper agreed to cooperate with the Phoenix Field Division in delaying the shipment of these items.

The Yuma Satellite Office has identified the recipient of the grenade bodies as [ATF] [ATF] and DOB [ATF]. The Yuma Satellite Office verified that [ATF] and his family have had previous contact with law enforcement agencies going back to 2003 in relation to suspicious narcotics and alien smuggling activities. It should be noted however that no criminal record has been verified for [ATF] at this time. Further investigation into [ATF] history indicates a desire to start a company in Mexico and frequent border crossings. [ATF] is a Mexican national and [ATF] is a fluent Spanish speaker. In addition on December 5th, 2008, [ATF] was involved in the purchase of seven (7) AK-47 type WASR Rifles in Tucson, for which he paid \$4,600.00. When interviewed by ATF Agents assigned to the Yuma Satellite Office, [ATF] confessed to having purchased the weapons for re-sale, and admitted to lying on ATF F 4473. A case report was submitted recommending [ATF] prosecution for "lying and buying," however the case was declined by AUSA Tracy Van Buskirk.

[This is deceitful. Whoever wrote this is saying that AUSA Van Buskirk turned down this prosecution for "lying and buying" even though [ATF] admitted to the offense. By April 5, 2010, Agent [ATF] had submitted the case for prosecution and sent an email inquiring as to its status. AUSA Van Buskirk sent ATF Agent Johnson an email on April 5, 2010, at 8:43 pm declining the case:

Hi [ATF]

Because I am prepping for trial and buried in motions, Emory has graciously agreed to work with you on an ex parte order.

As for [ATF] lying and buying in November 2008: As we discussed previously, for several reasons, I do not believe we have a viable charge. First, the guns have not been recovered. So, we cannot say with certainty that he bought/gave the guns to someone else. Next, we did not search his Arizona residence ([ATF] [ATF] home) near the time of the purchase, so we cannot use a search to corroborate our suspicions that he no longer possesses

the guns (not that a search is dispositive of the issue, but it helps). Third, he did not admit purchasing the firearms for someone else, but instead stated that he still had the guns in a storage locker. While I do not find his version of events to be believable, I do not believe there is sufficient evidence to charge him.

As an alternate theory of prosecution, that he used an incorrect address, I believe we have proof problems because you were able to locate him at the address he listed on the Form 4473. Further, **ATF** confirmed that he was staying there at that time. I think we were getting ready to close the file, but then you got the tip from the Texas ATF agent re: the grenades, which is why I did not write a declination letter previously.

Tracy

The "confession" to lying on the 4473 referenced above was not extracted from **ATF** until his arrest at the San Luis POE on June 15, 2010, more than two months AFTER AUSA Van Buskirk declined the case. Additionally, **ATF** confession to lying on the Form 4473 back in November 2008 appears to have been obtained illegally by the federal agents questioning him.

At the time of **ATF** arrest at the POE, both AUSA Hurley and AUSA Van Buskirk reminded ATF Agent **ATF** that **ATF** had invoked his right to remain silent and retained an attorney with regard to his November 2008 firearms purchases. During their investigation of the purchases, **ATF** had made it clear to the agents that he would not talk with them without his lawyer present. However, during custodial interrogation at the POE, **ATF** was questioned, without counsel, about those November 2008 purchases. In the highlighted paragraph below that begins with "On June 16th, 2010, **ATF** was interviewed . . ." ATF omits the fact that this was the date that his illegal confession to "lying and buying" was obtained by federal agents. See, email from Hurley to Morrissey June 23, 2010, at 1:54 pm, which mentions that **ATF** questioning likely involved constitutional complication.]

ATF Special Agents assigned to the Yuma Satellite Office have conducted surveillance on the suspect on numerous occasions, and on several occasions have observed him receive packages from UPS, DHL and the U.S. Postal Service, after placing on-line orders with several distributors of inert grenades and military surplus items. Federal grand jury subpoenas were served on his internet provider and analysis of the records indicate that **ATF** has purchased approximately two thousand grenade hulls, head assemblies, spoons and jungle clips. Extensive surveillance also led the agents to a hardware store in the Yuma area where the suspect was found to have purchased drill bits, a tapping tool, and other items which would be consistent with the manufacture of IEDs from grenade bodies.

[ATF does not recognize the fact that throughout the investigation that AUSA Van Buskirk was very responsive to their frequent requests for GJ subpoenas.]

In addition, on November 12th, 2009, Yuma Special Agents **ATF** interviewed

ATF

who indicated that the suspect had a history of manufacturing machine-guns and silencers, and had trafficked firearms in the past. This interview also revealed that the suspect has a primary residence in an exclusive neighborhood in Mazatlan, in the state of Sinaloa, Mexico. She further indicated that the suspect returns frequently to the United States to pick up supplies and visit **ATF**. This interview also revealed that the suspect has a scheduled appearance in a San Diego courthouse in regards to a child custody issue. Agents from the Yuma Office conducted surveillance on **ATF** as he attended the child custody hearing, and in another trip to San Diego for the birth of a child that he shares in common with **ATF** who is a Mexican national. **ATF** at both locations and his movements were closely monitored by ATF Agents assigned to the Yuma Satellite Office, with assistance from assets from Phoenix Group I, and the Mexico City Office.

ATF omits a number of details from their timeline. In late October 2009, ATF contacted the USAO with a plan to **ATF** which had been mail ordered by a suspect and then deliver the **ATF** grenade bodies to the suspect and let him take them into Mexico. When they first contacted USAO, ATF was not sure that the export of empty grenade bodies was a crime. After considerable research and consultation we took the position that the grenade bodies were covered by the munitions list and ATF could not allow them to go to Mexico. See, Friday, October 30, 2009, 2:39 pm email from Hurley to Van Buskirk with our opinion that the grenade bodies were covered by munitions list. See also, Monday, November 2, 2009, 3:55 pm email from Van Buskirk to ATF Agent **ATF** advising him that the items he intended to allow into Mexico were covered by the Munitions List, that exporting munitions is a specific intent crime, and that no prosecution would be approved without a determination from the State Department that the defendant did not have an export license and that the object exported is a "munition". See also January 7, 2010, email from Hurley to Morrissey explaining background of **ATF** case.

AUSA Van Buskirk was advised by ATF that they would conduct the investigation as they saw fit. It is our understanding that some grenades were marked and allowed into Mexico.

On January 6, 2010, AUSAs Sukenic and Hurley met with ATF ASAC Needles and GS **ATF**. ATF had a plan to track **ATF** into Mexico and assist Mexican authorities in building a case against him in Mexico. If ATF believed **ATF** was in possession of grenade bodies, they would interdict in the U.S., otherwise they would track him into Mexico along with Mexican law enforcement. See Wednesday, January 6, 2010, 3:20 pm email from Sukenic to Dennis Burke. As part of this operation, AUSA Hurley prepared a tracking warrant for **ATF** car and coordinated with AUSAs in California in case **ATF** was located there. AUSA Hurley sent a draft tracking warrant to AUSAs in California. See, January 28, 2010, 6:38 pm email from AUSA Hurley to AUSA Braverman (SDCA).

Additionally, AUSA Hurley conferred with OIA to ensure that ATF would be able to use their court ordered tracking device if **ATF** crossed into Mexico. See January 28, 2010 emails between AUSA Hurley and Mary Rodriguez, OIA. Based on consultation with OIA, AUSA Hurley told ATF ATF should not use **ATF**

ATF

On January 26th, 2010, ATF Agents assigned to the Yuma Satellite Office conducted a controlled delivery of grenade hulls, head assemblies, spoons and pins to [ATF] at [ATF] Yuma residence. This controlled delivery was conducted with the assistance of the United States Postal Inspection Service. This delivery was conducted after conferral with the U.S. Attorney's Office, Phoenix ICE SAC Office, and the U.S. Border Patrol, and after receiving clearance from the U.S. Ambassador to Mexico (through the ATF-MCO). After this delivery, [ATF] was surveilled by ATF Agents [ATF] at which time he drove into Mexico at the San Luis Port of Entry (POE), where he eluded Mexican military and police officials who were working with ATF in an effort to interdict the components (ATF Agents were present and relayed real-time information to the GOM assets).

[ATF did not keep USAO Phoenix updated on this operation. AUSAs Hurley and Van Buskirk had to call ATF to find out when they expected to seek the tracking order, at which time they were advised that ATF had failed to interdict any grenades and had lost surveillance on [ATF]

ATF Agents continued surveillance efforts when [ATF] re-entered the United States several weeks later. In addition, intelligence was shared with assets from the Mexican Attorney General's Office (PGR), in efforts to have [ATF] surveilled, and if possible prosecuted by Mexican authorities if he was determined to have committed violations in Mexico.

[Between January and June of 2010, AUSAs Hurley and Van Buskirk continued to work with ATF to obtain information through GJ subpoenas. We discussed seeking an ex parte order for tax information, however, ultimately did not seek the ex parte because ATF's intention was to turn over any information obtained to Mexican authorities for prosecution in Mexico. See June 11, 2010 5:05 pm email from AUSA Hurley to ATF Agent [ATF]. After this email, the agent was advised that the USAO would not be seeking an ex parte order for tax information for disclosure to Mexican authorities. ATF auditors were also reluctant to work up financial information only to be disclosed to Mexican authorities.]

On June 15th, 2010, [ATF] was arrested by members of the U.S. Department of Homeland Security, Office of Customs and Border Protection at the San Luis POE. This arrest occurred after [ATF] vehicle was x-rayed as part of a "Southbound" inspection. The x-ray showed grenade hulls inside one of the tires on [ATF] SUV. The port was closed, and an EOD team called in to conduct "render-safe" procedures. When the tire was cut open, the search revealed 116 grenade hulls, spoons, head assemblies, and pins. This arrest generated a significant amount of local media attention in both Yuma and the Mexican State of Sonora.

On June 16th, 2010, [ATF] was interviewed by ATF Agents from the Yuma Satellite Office, with assistance from agents assigned to the Mexico City Office, and ICE Agents from Yuma and Hermosillo, Mexico. At this time, [ATF] made a post-Miranda statement in which he confessed that he has been supplying members of La Familia Michoacan (LFM) with grenade components, which they use to turn into IEDs with explosives that they (LFM) steal in Mexico, from mining locations and elsewhere. He added that the people he supplies are conducting the enforcement work for the Sinaloan Cartel. In addition, [ATF] stated that he has instructed

them (LFM) on how to convert semi-automatic AK-47 variants into fully automatic machine guns. [ATF] also advised that he has been asked by his associates, to transport narcotics into the United States, but has declined for fear of being arrested.

Since the time of his arrest on June 16th, 2010, the Group Supervisor of the Phoenix I Field Office has met with the assigned AUSAs from the District of Arizona and requested that [ATF] be indicted and charged. This has not yet occurred. The Group Supervisor has also requested that this case be considered for prosecution by the U.S. Attorney's Office for the Southern District of New York's (SDNY) International Narcotics Trafficking Unit, which has ongoing prosecutions against members of La Familia Michoacan and the Sinaloan Cartel. At the meeting with SDNY prosecutors, attempts were made to determine if any materials ordered by [ATF] or monies utilized by [ATF] had transferred through the SDNY for consideration in a 21 USC 846 prosecution. No such nexus could be determined.

[This paragraph makes it sound like ATF requested that [ATF] be indicted immediately after he was arrested at the POE. This is not correct. Immediately following his arrest ATF tried to work him as a [ATF]. When it appeared that [ATF] was not cooperating as ATF wanted, AUSA Hurley told ATF that they should submit the case for prosecution. See, June 23, 2010 email from Hurley to Morrissey. ATF was told that they would need to obtain State Department certification that the items [ATF] had in the port were covered by the Munitions List and that he did not have an export permit. ATF did not understand that any previous certifications were not sufficient as they did not cover the items to be charged or the date of attempted export. A lengthy discussion was required to explain that knowing [ATF] did not have an export license for the grenades ATF lost in January of 2010 did not prove that he had not subsequently acquired an export license for items seized on June 15, 2010. As of June 28, 2010, ATF had not decided whether they would submit [ATF] for prosecution or not. See, ATF Agent [ATF] email to GS [ATF] June 28, 2010, at 5:32 pm.]

[ATF communicated very little with the USAO in July and August 2010, about [ATF] case. On September 2, 2010, GS [ATF] is advised that grenades linked to [ATF] were recovered in Mexico. See, September 2, 2010 emails between Agent [ATF] and GS [ATF]. Between September 2 and 3, 2010, a meeting was set up between Agent [ATF], GS [ATF], and AUSAs Hurley and Van Buskirk. See September 3, 2010, 5:54 email between GS [ATF] and AUSA Hurley. The meeting was held in GS [ATF] office at ATF. GS [ATF] presented the [ATF] blue covers for prosecution. We discussed that ATF still did not have the State Department certifications. GS [ATF] then wanted to know if we would indict [ATF] for 18 U.S.C. 924(o), conspiracy to commit 924(c) on the basis of his admissions that the guns he had purchased were going to be sold to Mexican cartels. GS [ATF] was advised that we would consider the viability of such charges, but doubted very much that we would decide to pursue them. The AUSAs left ATF with the case reports for [ATF] less the State Department certifications.]

In October, 2010 a case report was sent to the ATF Mexico City Office for translation and referral in accordance with the MLAT. To date, no action has been taken by the Government of Mexico in regards to potential prosecution.

[The State Department pretrial certifications were completed on December 21, 2010 and forwarded to ICE Special Agent [ATF]. On February 22, 2011, the certification was forwarded to AUSA Hurley. Agent [ATF] believes that he had previously forwarded them to AUSA Hurley, but that email has not yet been located. The earliest that AUSA Hurley could have received the certification was December 21, 2010. See February 22, 2011 email from ICE Agent [ATF] to AUSA Hurley. At that time AUSA Hurley was working on a large indictment that had to be presented January 19, 2011. On March 9, 2011, AUSA Hurley advised his chain of command that he had received the State Department certification, but had not yet had the time to indict [ATF]. See March 9, 2011, 10:49 am email from AUSA Hurley to USA Dennis Burke.]

In early May of 2011, SAC Brandon, ASAC Atteberry and GS [ATF] met with Criminal Division Chief Cunningham and Supervisory AUSA Morrissey to request that this case be transferred. This case was reassigned to AUSA Josh Parecki of the National Security Section. AUSA Parecki moved diligently in examining all of the evidence which had been gathered in the case, and prepared to move towards securing an indictment (which is imminent). AUSA Parecki concurred with ATF's belief that a search warrant was needed for the thumb drive that [ATF] had in his possession at the time of his detention at the border and subsequent confession. Exploitation of that thumb drive provided information that indicates that [ATF] was either trafficking or manufacturing .50 caliber rifles, in addition to his activities pertaining to the securing of grenade components.

In August of 2011, ATF Financial Auditors located financial assets which had not previously been located. These assets included two Mexican Bank Accounts. [ATF] is suspected of having transferred several hundred thousand dollars in funds from those accounts, to accounts in Germany or Switzerland. [ATF] did not file income taxes during this period, as required of a U.S. Citizen living abroad. In addition, ATF surveillance can corroborate that [ATF] was residing part time in the United States during the period of these wire transfers.

[The delay in auditors locating assets may have stemmed from their professed reluctance to work on a case that ATF was likely to send to Mexico for prosecution. See Agent [ATF] June 11, 2010, 5:05 pm email to AUSAs Hurley and Van Buskirk regarding auditor's reluctance.]

RECOVERIES:

1. 116 grenade hulls, head assemblies, spoons and pins were recovered from inside [ATF] tire at the San Luis POE on June 15th, 2010. There have been approximately 12 additional recoveries at various crime scenes in Mexico, samples from these recoveries have been sent to the ATF Laboratory for analysis.

ISSUES/PROBLEMS:

2. There were problems with the lack of initiative on the part of the previous Assistant U.S.

Attorney, who took no action for a period of 10 months in this case despite overwhelming evidence, which included a confession from [ATF]. This case was reassigned to another Assistant U.S. Attorney in June of 2011, and significant progress has since been made.

3. [ATF] has taken his two small children to Mazatlan, where they currently reside with him and [ATF] who has been cooperative in this investigation, resides in the State of California. If [ATF] is apprehended in Mexico, the children will require safe passage back into the United States.

4. [ATF] is a United States Citizen. His marital status with reference to the female with whom he resides in Mazatlan is unknown. If he is in fact married to the female, deportation efforts initiated by the Mexican Government may become complicated.

ACTION or FOLLOW-UP:

5. The Phoenix Field Division has been and is working closely with the ATF Mexico Country Office (MCO) on this case and they are prepared to assist in any follow-up needed.

6. The Phoenix Field Division is also coordinating this investigation with the PGR representative assigned to the Phoenix Field Division office.

7. The Phoenix I Field Office Supervisor has traveled to the U.S. Embassy in Mexico and conducted briefings with the DOJ Attaché and the Charge'd Affairs in regards to the unclassified aspects of this investigation.

8. ATF personnel assigned to the Mexico City Office will coordinate with GOM assets in the event of [ATF] arrest, to ensure that his children, who are U.S. citizens, are safely transported back into the United States.

9. Coordinate with IRS-CI in regards to bank accounts which have been located. These accounts indicate that [ATF] has wired several hundred thousand dollars in funds, between bank accounts in Mexico, Germany or Switzerland. [ATF] did not file taxes or declare income during this period.

EXPECTED OUTCOMES:

10. It is expected that [ATF] will be indicted in mid-August, 2011 for violations of the Arms Export Control Act. Superseding indictments are expected for additional violations, including narcotics conspiracy and other related charges. Additionally, any pertinent information that may be developed as a result of [ATF] arrest of a public safety nature will be immediately passed on to our Mexican counterparts via the ATF Mexico City Office. Other intelligence or information gathered will be shared with other ATF and DOJ assets as appropriate.

BUDGET IMPACT:

11. To date, approximately \$3000.00 in Agent Cashier has been expended in support of this investigation. No additional significant funding of this investigation is anticipated at this time.

12. Politically-Great potential for use to highlight ATF's unique experience and expertise in the explosives arena in furtherance of our efforts to combat Southwest Border related violence.

DOJ POSITION/INTEREST:

13. This case should be of intense interest in DOJ mainly due to the growing concern on the part of ATF personnel along the Southwest Border of the illegal manufacture of improvised grenades for use by DTOs.

14. In addition the GOM has in the past blamed the U.S. as being the source of the grenades being seized in Mexico. Due to our efforts over the past several years we have been able to disprove these claims clearly showing that up to this point most of the grenades being seized are part of Foreign Military Sales to countries such as Guatemala and El Salvador as well as grenades manufactured by and for the Mexican Army. However this case and the case in McAllen if made public or shared with the GOM could raise these claims once again, even if these are technically not "military grenades." They are however equally deadly when used as IEDs.

CONGRESSIONAL INTEREST:

15. Yes, especially along U.S./Mexico border region and given the current climate, additional delays may cause criticism which could adversely affect the case.