# **BRIEFING PAPER**

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

<b>SUBJECT:</b>	UI# 785041-09-0008,	ATF	Phoenix Group I, Yuma Satellite
	Office investigation involv	ing suspicious a	ctivities 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)

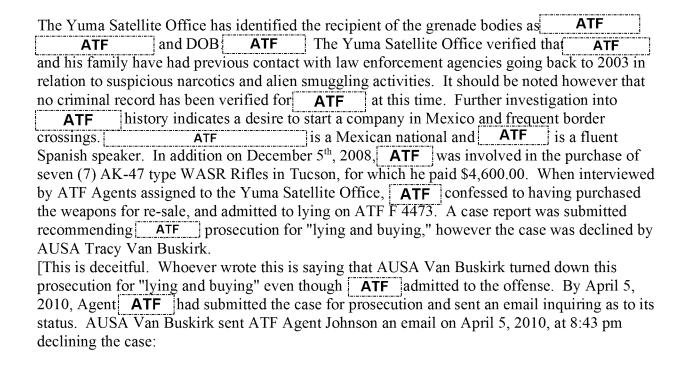
### **BACKGROUND:**

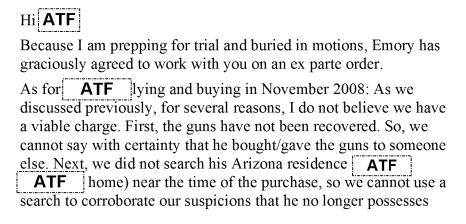
Since late 2006 the Phoenix Field Division has been analyzing the increasing use and seizure in Mexico of military ordnance, specifically hand and rifle grenades, on the part of Mexican Drug Trafficking Organizations (DTOs) in their ongoing battle with each other and the Government of Mexico (GOM). In 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 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

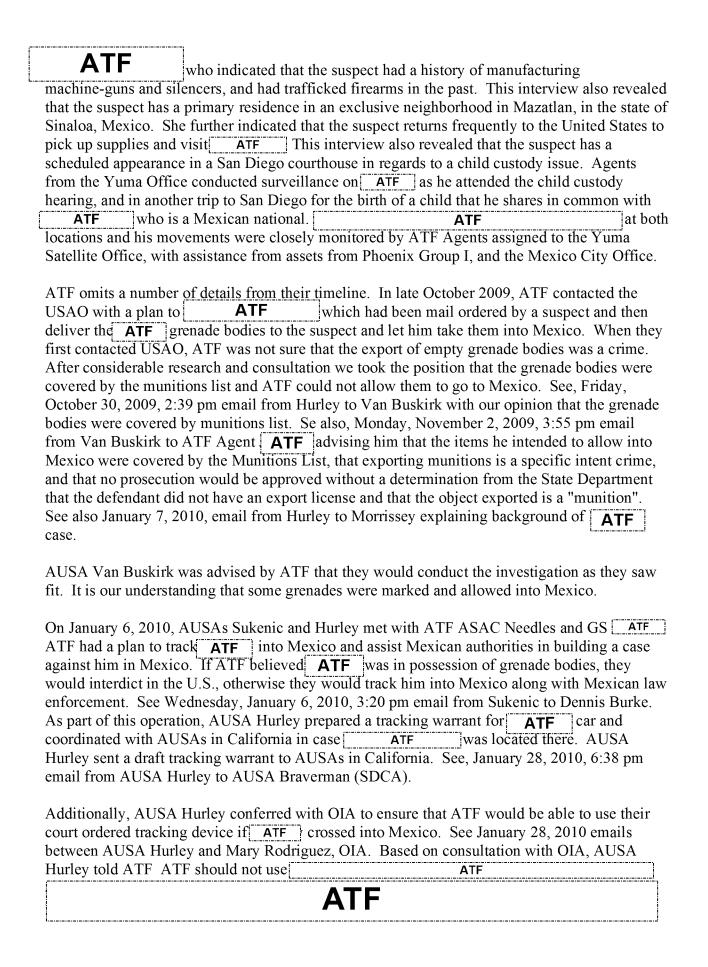
The "confession" to lying on the 4473 referenced above was not extracted from ATF until his arrest at the San Luis POE on June 15, 2010, more than two months AFTER AUSA Van Buskirk declined the case. Additionally, ATF confession to lying on the Form 4473 back in November 2008 appears to have been obtained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

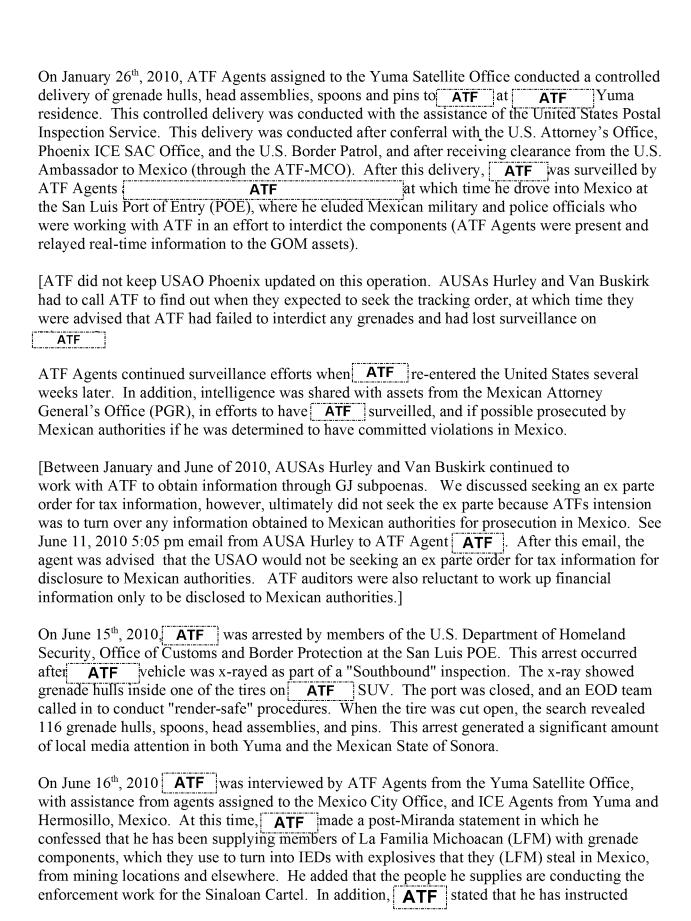
At the time of ATF arrest at the POE, both AUSA Hurley and AUSA Van Buskirk reminded ATF Agent ATF that ATF had invoked his right to remain silent and retained an attorney with regard to his November 2008 firearms purchases. During their investigation of the purchases, ATF had made it clear to the agents 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 16<sup>th</sup>, 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 distributers 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 12<sup>th</sup>, 2009, Yuma Special Agents **ATF** interviewed





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 16<sup>th</sup>, 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 mail 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(0), 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 <b>ATF</b> . 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

In early May of 2011, SAC Brandon, ASAC Atteberry and GS LATF 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 15<sup>th</sup>, 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. It 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.