

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] 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.

Van Buskirk's Response:

I received an official recommendation for prosecution (or "blue cover") for false statement charges in early 2010. I authored an email to Special Agent Karl Johnson on April 5, 2010, which outlined all the reasons why I believed that we lacked sufficient evidence to charge a false statement violation. At the time of my declination email, [ATF] had not confessed to lying on the Form 4473 as the Briefing Paper suggests, but instead, initially told agents that he possessed the guns in a storage locker. Later, when [ATF] was contacted at his sister's home on January 12, 2009, he declined to discuss the rifles; he invoked his right to an attorney and then obtained representation. It wasn't until after [ATF] was stopped at the San Luis Port of Entry in June 2010 that he confessed to the "lying and buying." See attached email to Karl Johnson dated 04/05/10, re: declination of charges.

Further, I was alerted to [ATF] arrest by ATF SA Robert Landis as he traveled to the San Luis Port of Entry to meet with the agents who had detained [ATF]. I immediately informed AUSA Emory Hurley of the arrest. AUSA Hurley made himself available to SA Landis and the other agents that participated in the post-arrest questioning of [ATF]. I reminded SA Landis that [ATF] had obtained an attorney with regard to the November 2008 purchase of AK-47 rifles and not to interview him about that alleged false statement

offense. SA Landis conveyed that information to the other law enforcement officers, who apparently disregarded it and interviewed him about that rifle purchase any way. Thus, I question the admissibility of [ATF] confession.

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.

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.

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 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.

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 Sinaloa 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 Sinaloa 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.

Van Buskirk Response:

I do not believe this statement accurately represents ATF's position regarding prosecution. After [ATF] was arrested, ATF explored the possibility of not charging [ATF] with any offenses. When it appeared that [ATF] possessed detailed information about DTO's and/or arms smuggling, ATF (in conjunction with other agencies) considered using [ATF] as a confidential source or cooperator. See attached email dated June 16, 2010 from Emory Hurley.

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.

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.

RECOVERIES:

- 116 grenade hulls, head assemblies, spoons and pins were recovered from inside **ATF** fire 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:

- 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.
- **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.
- **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:

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

- 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:

- 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:

- 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.
- 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:

- 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.
- 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:

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

* Van Buskirk Comment:

In addition to responding to the Briefing Paper, Ann Scheel asked me to describe in greater

detail the events leading to my telephone call with SA Johnson on October 30, 2009, when I conveyed the USAO's position about not allowing any grenade bodies to cross the border into Mexico. My recollection is that on October 29, 2010, I received a telephone call from Karl Johnson about the possibility of charging [ATF] with a violation of the AECA if he tried to cross into Mexico with the grenade bodies and whether the grenade bodies were included on the munitions list. I immediately went to talk to my supervisor, AUSA Emory Hurley about the case. I emailed SA Johnson a page from the USA Book about what is needed to charge a violation of the AECA. (This began an ongoing discussion—lasting months— about obtaining a licensing certification through the State Department.) Throughout that day and the next, AUSA Hurley and I talked to SA Johnson on the phone several times. SA Johnson told me about ATF's desire to mark the grenades in order to track them if/when they were recovered in Mexico. AUSA Hurley and I consulted other AUSA's within our office. Ultimately, AUSA Hurley reduced the issue and our office's position to writing (email dated October 30, 2009). I called SA Johnson and conveyed that information to him. SA Johnson acknowledged our office's position, but informed me that ATF would conduct their investigation the way they see fit, and that decisions were being made a levels above him.