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August 31, 2011

Senator Charles E. Grassley,
Ranking Member
U.S. Senate Committee on the Judiciary

Representative Darrell Issa,
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives

Re: Whistleblower Retaliation against Group Supervisor
Peter J. Forcelli resulting from his testimony before the U.S.
House of Representative, Committee on Oversight and
Government Reform

Honorable Sirs:

As you may recall, Group Supervisor Peter J. Forcelli (GS Forcelli), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Phoenix I Field Office and Yuma Satellite Office, was subpoenaed to provide testimony before the U. S. House of Representatives, Committee on Oversight and Government Reform regarding "Operation Fast and Furious" conducted by a unit of the Phoenix, AZ ATF office.

GS Forcelli's testimony, which was preceded by a sworn deposition, included an outline of several contacts with Assistant United States Attorney Emory Hurley, and Assistant United States Attorney Rachel Hernandez of the District of Arizona's United States Attorney Office in Phoenix. This portion of GS Forcelli's testimony focused on what he strongly believed to be inaction, bordering on malfeasance, with regard to several investigations. There were additional protected disclosures by GS Forcelli regarding additional instances that would be contained in transcribed interviews with both Congressional Staffers and the Investigators from the Department of Justice, Office of the Inspector General.

GS Forcelli's testimony was extensive, truthful and heartfelt,

though extremely difficult for him. It is never easy to disclose potential impropriety and mistake on the part of colleagues. Unfortunately GS Forcelli has now found himself to be the victim of perceived retaliation on the part of the United States Attorneys Office (USAO) for the District of Arizona and the Department of Justice, Office of the Deputy Attorney General (DAG) for his testimony regarding the USAO's actions/inaction and conduct. Therefore, we find it necessary to respectfully notify you of certain events which have transpired since GS Forcelli's testimony which rise to the level of whistleblower retaliation in violation of the Whistleblower Protection Act of 1989 and which, in seem to fly in the face of your completely proper and appropriate of exercise of Congressional authority.

Initially GS Forcelli would like to assure Your Honors that in his 25 years as a sworn law enforcement officer, he has had extensive experience in dealing with prosecutors on both the state and federal level. His dealings with these attorneys have always been positive, and he can provide a lengthy list of laudatory references from the United States Attorney's Offices from both the Southern and Eastern Districts of New York, as well as the District Attorney's Office for Bronx and New York Counties, in the State of New York.

In his previous dealings with prosecutors, there have been many instances where he and they did not see eye to eye, but all such instances of disagreement were worked out in pursuing criminal cases professionally, respectfully, and in the interest of both justice and public safety. In his career, GS Forcelli has developed lifelong friendships with many of the prosecutors with whom he had worked, and he has always conducted himself professionally in his dealings with them, fully realizing that there must be a partnership between the investigator and the prosecutor to achieve the goals of any criminal investigation.

In the interest of full disclosure, GS Forcelli would have it known that prior his testimony, he had always had a pleasant professional relationship with AUSA Hurley, often speaking and meeting over coffee. As GS Forcelli testified, unfortunately, he also had a great deal of displeasure with AUSA Hurley's seeming laziness, and lack of vigor in prosecuting cases. [As stated hereinabove, testifying regarding the conduct Emory Hurley, Hope MacAllister, David Voth and Bill Newell, all of whom GS Forcelli liked and got along well with, has been difficult and taxing on him personally. Others about whom GS Forcelli was forced to testify were not close associates. In all of such instances however, GS Forcelli realized that his testimony affected them personally, and affected their families as well. It was difficult, but mandated by subpoena, and was GS Forcelli's duty.]

The first instance of what GS Forcelli now sees as retaliatory behavior actually occurred during the time of his testimony. Patrick Cunningham of the USAO, District of Arizona, while visiting ATF Headquarters, had the temerity of accusing GS Forcelli of being untruthful in regards to AUSA Emory Hurley's declination of the "X-Caliber Arms" case. As soon as GS Forcelli was made aware of this statement, he made contact with Mr. Cunningham, through Assistant Special Agent in Charge, Jim Needles. GS Forcelli advised Mr. Cunningham of the fact that AUSA Hurley's declination of the "X-Caliber Arms" case was witnessed by another

ATF employee (Senior Special Agent Jose Wall). Mr. Cunningham's tone then became conciliatory, and he expressed an interest in moving forward on future cases. GS Forcelli immediately contacted Investigator Sean O'Neill, of the U.S. Department of Justice, Office of Inspector General, and advised him of the above. GS Forcelli also notified Carlton Davis, of Congressman Darrell Issa's Staff, and Brian Downey of Senator Grassley's Staff of the contact, and documented this in an e-mail to GS Forcelli's chain of command. At the time, GS Forcelli did not view this as Whistleblower Retaliation, because he understood that Mr. Cunningham was protecting the reputation of the U.S. Attorney's Office in the heat of the moment and seemed to strike an ameliorative tone when confronted by GS Forcelli.

More recent events, however, have changed GS Forcelli's opinion on the situation. It now appears to GS Forcelli that a pattern of conduct has emerged designed to attack GS Forcelli's credibility. On August 15th, 2011, at approximately 7:30 AM, GS Forcelli contacted Michael Morrissey, the Chief of the National Security Division at the Phoenix USAO, regarding a case involving the purchase of grenade components (portions of this case remain classified), to discuss an e-mail that had been sent by Patrick Cunningham to Acting (ATF Phoenix) SAC Thomas Atteberry. Said e-mail mischaracterized the work done by the case agent, bordering on accusing the case agent of being less than candid. Having reviewed the case file, and spoken with AUSA Morrissey on several occasions, GS Forcelli knew what the agent had done on the case. GS Forcelli requested that Mr. Morrissey contact him if there were any further issues with the case, rather than have incorrect, and possibly discoverable, e-mails sent in the case. During this conversation, and to GS Forcelli's dismay, Mr. Morrissey advised him that he had been instructed to report **any** contact with GS Forcelli to his chain of command because his office viewed GS Forcelli as a "Whistleblower". Mr. Morrissey indicated that he did want to sit down with GS Forcelli over coffee and discuss "a few things," but that his "Whistleblower" status complicated this. GS Forcelli advised Mr. Morrissey that he viewed this as unfortunate, and offered to remove himself from the grenade component case if it would be in the best interest of the case.

Mr. Morrissey then stated that GS Forcelli should be aware that his "office's position is that they did not sit on this case," and that "the case was pulled from Emory in April". [NOTE - Neither GS Forcelli nor the case agent was made aware of the case re-assignment by the USAO, which leads GS Forcelli to suspect that the case was not actually re-assigned until a meeting which occurred on May 5, 2011 where incoming SAC Tom Brandon, ASAC's Joe Anarumo, Tom Atteberry, Division Counsel Tom Karmgard and GS Forcelli met with the USAO requesting that this case be given a "second look" or that it would be referred to the U.S. Department of Justice, Narcotics and Dangerous Drugs Section]. The conversation ended shortly thereafter. It must be noted that at no time during this conversation was Mr. Morrissey unpleasant, or disrespectful toward GS Forcelli. GS Forcelli did, however, take offense to the fact that Mr. Morrissey's office would institute such a policy. More offensive, was the fact that this case involved what GS Forcelli viewed as unethical conduct by Emory Hurley, for a period of over one year. [Since the case is partially classified as secret, and has since been re-assigned to a prosecutor who is moving forward diligently with the case, GS Forcelli will refrain from

naming it herein.] GS Forcelli notified ASAC's Joe Anarumo and Tom Atteberry of this conversation with Mr. Morrissey.

GS Forcelli, during another telephone conversation with Chief Michael Morrissey, which occurred on August 18, 2011, at approximately 11:41AM, sought additional clarification on the USAO policy which required notification of any contact with GS Forcelli up the USAO chain of command. After briefing Mr. Morrissey of a major development in the aforementioned case, GS Forcelli advised him that GS Forcelli would contact him from this point forward on any issues involving the case, so as to not burden AUSA Josh Parecki with having to make notifications on such contacts. GS Forcelli then asked Mr. Morrissey if these notifications were mandated up to United States Attorney Burke (who has, apparently, recently resigned his position), or beyond Mr. Burke to the DAG or to Attorney General Eric Holder? Mr. Morrissey replied that he needed to notify his local chain of command. ASAC Joe Anarumo was a witness to this conversation. once again, at no point was Mr. Morrissey rude, disrespectful or discourteous. However, GS Forcelli does have an issue with being singled out in such a manner.

[Both of these conversations were reported to the Department of Justice, Office of the Inspector General (OIG), and GS Forcelli showed the OIG investigators the call records on his cellular phone to corroborate this].

After this August 18, 2011 phone call terminated, GS Forcelli conversed with ASAC Anarumo, and advised him of the fact that he found this conduct improper. ASAC Anarumo then brought to GS Forcelli's attention a packet of paperwork which had been delivered to him and ASAC Atteberry. Among the papers was a memorandum out of the USAO, from Raynette Logan to Dennis Burke, Ann Scheel and Patrick Cunningham, which mischaracterized the conduct of both GS Forcelli and SAC Thomas Brandon, as well as some of the statements made, at a certain meeting which had occurred on May 5, 2011. With regard to GS Forcelli's conduct Ms. Logan's memo alleged, "*Forcelli looked visibly angry when he spoke of this case, and when he spoke of Emory*". [Interestingly, the memo was dated August 10th, 2011 but memorialized the meeting (mentioned above) which occurred on May 5, 2011.] This description of GS Forcelli's demeanor is decidedly not true.

Clearly, the USAO is clumsily attempting to paint a picture that GS Forcelli's testimony and conduct resulted from a "personal issue" between AUSA Hurley and himself, rather than hold AUSA Hurley accountable for missteps in several of his cases. GS Forcelli believes that most of the ATF special agents assigned to the Phoenix Field Division's Offices in the City of Phoenix would be able to describe the glaring problems and issues at hand with AUSA Hurley and the USAO in Phoenix.

The aforementioned package of documents which the USAO delivered and which was shown to GS Forcelli by ASAC Anarumo also included an e-mail from AUSA Emory Hurley, dated May 11, 2011. This e-mail, referred to the "secret" classification of the grenade

component investigation mentioned hereinabove. GS Forcelli had sent an e-mail to his group, and sent copies to AUSA's who had involvement in the investigation. AUSA Hurely's reply to this E-mail, which was sent to Patrick Cunningham, merely stated "This is convenient for GS Forcelli". A review of GS Forcelli's transcribed deposition with Congressional staffers will actually confirm that GS Forcelli was against the "secret" classification of portions of the case because he believed that it would appear that it was being so classified to prevent oversight as part of the "Fast and Furious" inquiry. While GS Forcelli necessarily did not provide any of the information about the case to congressional investigators, and did NOT discuss the classified matter at all. GS Forcelli did advise said staffers of his concern with the timing of such classification.

The fact is that GS Forcelli finds the actions of the U.S. Attorney's Office and the Office of the Deputy Attorney General in the grenade component case to be problematic. This case revolves around an individual who is believed to have manufactured over 2000 hand grenades for the Sinaloa and La Familia Michoacana Cartels. On June 16, 2010, after he was caught with 116 disassembled grenades hidden in a tire at the San Luis Port of Entry, ATF Agents under GS Forcelli's supervision interviewed the suspect. The suspect confessed to his involvement in arming these cartels with hand grenades, which he makes in Mexico with parts he exports from the United States, with explosives that he acquires in Mexico.

This individual also confessed to teaching cartel operatives how to convert AK-47 variant rifles and AR-15 rifles into automatic weapons. Finally, he confessed to sometimes transporting instructions, including assassination orders, to cartel operatives working in the United States on thumb drives.

On June 16, 2010, both before, during and after his confession, GS Forcelli had requested, and, at one point, practically begged the assigned prosecutor, AUSA Emory Hurley, for permission to arrest the suspect on a criminal complaint. GS Forcelli was horrified with the thought of releasing this individual, who, in his opinion, was engaged in terrorist-like activity. These requests were repeatedly denied by AUSA Hurley, and GS Forcelli was told that the suspect would be indicted "in a couple of weeks". As of today, this individual remains free and un-indicted.

Recent information indicates that this suspect is still operating in Mexico, though, as a result of information that ATF has shared with the Mexican Government, GS Forcelli believes and fervently hopes an arrest by Mexican authorities is imminent.

What is additionally disturbing is the fact that representatives from the DAG Office came to Phoenix on a fact-finding mission, and seemed less concerned with the lack of initiative and follow-up on the part of the U.S. Attorney's Office, than they did with ATF failing to interdict items which, as a matter of fact, it could not do since possession of the items at issue **is not** and **was not** illegal.

More specifically, the DAG's investigators focused on a delivery of inert grenade hulls, which occurred in November of 2009. These hulls were intercepted and marked by ATF, for the purpose of identifying whether or not the suspect was, in fact, making IEDs. In this instance, the USAO had indicated that ATF should not allow the subject to export the items, even though **the USAO would not prosecute the suspect if he was caught exporting them.** This, of course, caused a problem, in that ATF could not seize the items, in that, regardless of the suspect's criminal history, the items were not contraband. The items would only become contraband if they were exported, but, of course, the USAO had made it clear that it would not prosecute the case as an export violation. ATF notified Customs and Border Protection (CBP) of the matter, so that CBP could stop the suspect if they observed him crossing the border. (At the time of this delivery, ATF was not certain if the subject was making IEDs in Yuma, AZ or in Mexico. In fact it was believed that he may possibly have also been using the items for the manufacture of novelty items.]

In January of 2010, a controlled delivery was conducted. This delivery consisted of other components, which were marked in the event they were able to be interdicted at the border. By this time, ATF had developed information that indicated that the subject was, in fact, transporting the items to Mexico, and ATF believed that he was using the items in the manufacture of IEDs. Since the USAO had indicated that they would not prosecute the subject for an export violation, a plan was enacted which would allow assets from the Government of Mexico to conduct an interdiction and prosecute the case. This plan was discussed and given approval from the U.S. Attorney himself. However, after GS Forcelli's testimony before Congress, he received a phone call from Michael Morrissey who advised him that his office's position was that the USAO never authorized ATF to conduct a cross-border operation where grenade components crossed into Mexico. GS Forcelli, in turn, advised Mr. Morrissey of U.S. Attorney Dennis Burke's e-mail authorizing said operation. Mr. Morrissey seemed surprised. It troubles GS Forcelli that a package was forwarded to the DAG's Office summarizing this case which included a copy of a related e-mail but which left Mr. Burke's authorizing e-mail out.

GS Forcelli believes that the USAO has aggressively and systematically attacked his credibility, but has lost sight of and/or ignored the facts in the process.

As a result, GS Forcelli has been placed in a position which has him worried about his career. Due to the economy, a transfer to another post-of- duty would probably be untenable. GS Forcelli, having bought at the height of the real estate bubble, is "underwater" on his residence by nearly \$150,000.00. He has medical issues related to his work as a recovery worker at the World Trade Center following the 9/11 terror attacks. His daughter has just begun college on a full scholarship to a school in the State of Arizona.

The actions of the USAO have made his ability to work as a field supervisor in Arizona nearly impossible, yet leaving would financially devastate GS Forcelli and his family. GS Forcelli is now being forced to work under conditions where his words are taken out of context, my actions mischaracterized, and anything he authors "word-smithed" by a team of attorneys,

who are more intent on diverting blame, than holding some of their own accountable. The options which ATF management have heretofore given GS Forcelli would not adversely affect him financially, though he believes same were given in good faith (should they come to fruition). Assignments which have been suggested to him by his management are not his chosen assignments, as they would take him away from law enforcement, and place him in more of an administrative sphere. The alternative however, remaining in the cross-hairs of the USAO is also, however, not what he believes to be in his best interest.

GS Forcelli would like to emphasize, that he has thus far been treated fairly by ATF Management. His present concerns are with Patrick Cunningham and others from the USAO in Phoenix and with the DAG's office, all of who serve under the U.S. Department of Justice. it is respectfully suggested that these individuals and entities have acted in a manner that is, at a minimum, unethical. They have caused GS Forcelli significant grief and mental anguish, and have adversely affected his career and family life.

GS Forcelli has sacrificed his health, and missed much of his children's youth in the performance of his duties. He refuses to sacrifice, or fail to defend, is his integrity. GS Forcelli would respectfully request that the actions of certain members of the Department of Justice be investigated inasmuch as said actions seem to flout the power of Congress to oversee and reform the workings of our great Nation's government. Simultaneously, GS Forcelli and this office will be considering further remedies to protect his reputation and his career from those who seek to hide rather than uncover the truth by besmirching GS Forcelli's character and reputation.

We thank you for your anticipated courtesy and consideration in this matter.

Respectfully submitted,



Luciano Cerasi,
Associate General Counsel