July 2011

Chandler • Arizona
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July 1, 2011

Darrell Issa, Cha: :man
Committee on Ov :rsight
And Government Reform
U.S. House of Re ɔresentatives
C/O Henry Kerne ·

Charles Grassley, Ranking Member
Committee on the Judiciary
United States Sen: te
C/O Tristan Leav: t

RE: Request foı Public Records concerning Operation Fast and Furious conducted by Bureau of Alcohol, Tobacco Firearms and Explosives.

Dear Sirs:

Pursuant ·ɔ your request for the above records dated June 2, 2011, the Chandler Police Department has cc ıducted a search for the following:

1. All DI s which the Department has reason to believe may be connected to Operation Fast and Furiou s;
2. All DR ; that list U.S Attorney Emory Hurley as the point of contact;
3. All L Rs from September to the present where firearms were recovered attendant to investigati ns into homicide, aggravated assault, kidnapping, or home invasion.

Please be dvised that the Department's search has uncovered no DRs pertaining to request numbers 1 and 2 ıbove. The attached list of weapons pertains to request number 3. If you need further assistance, ɔlease do not hesitate to contact me at 480-782-4489

Respectfully,

Thomas A. Zawors ci
Assistant Chandler City Attorney
Police Legal Advis or Unit

Mailing Address
Mail Stop 602
PO Box 4008
Chandler, Arizona 85244-4008

Printed on recycled paper

Police Legal Unit
Office of the City Attorney
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55 North Arizona Place
Chandler, Arizona 85225

U.S. Department of Justice

Office of the Inspector General

July 1, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Issa:

I am writing to respond to your June 22, 2011, letter in which you raised concerns regarding the ability of the Department of Justice (Department) Office of the Inspector General (OIG) to conduct a review of Operation Fast and Furious free from political or other improper considerations. In sum, I can assure you that the OIG's review is moving forward expeditiously and, like all OIG reviews, is being conducted objectively, aggressively, and independently.

I will address the three major points raised in your letter in turn.

First, you expressed concern that officials at the Bureau of Alcohol, Tobacco, Firearms and Explosive (ATF) cited an OIG report on a separate ATF program called Project Gunrunner as a factor that prompted them to shift to "a riskier strategy" that resulted in Operation Fast and Furious.[1] However, the ATF could not have instituted the strategies we are reviewing in Operation Fast and Furious in response to our Gunrunner report because we had neither reached any findings nor provided any recommendations to the ATF at the time the ATF initiated Operation Fast and Furious.

The ATF first became aware of our findings and recommendations with respect to developing more complex firearms trafficking cases in Project Gunrunner on September 3, 2010, when we provided a draft of our report to ATF for its review prior to publication. Our understanding is that Operation Fast and Furious was initiated in late 2009 and that the investigative strategy employed in this operation was implemented shortly thereafter, well before the OIG began to formulate its recommendations relating to the investigative strategies of Project

[1] *A Review of Project Gunrunner*, issued by our office in November 2010, can be found at: http://www.justice.gov/OIG/reports/ATF/e1101.pdf.

Gunrunner. Contrary to the suggestion in your letter, our Gunrunner report does not recommend that ATF move to a strategy of "allowing guns to be trafficked rather than arresting straw buyers." Moreover, an interim review of the Gunrunner project issued by the OIG in November 2009 focused solely on administrative aspects of the program and did not involve an examination of ATF's investigative strategies.[2]

The second concern you raised in your letter is that the OIG received allegations from an ATF Special Agent about Operation Fast and Furious in December 2010 and failed to adequately follow up on those allegations. This concern is unfounded. We first learned of this agent's allegations on January 27, 2011, when a member of Senator Grassley's staff contacted me about the matter. We took these allegations very seriously as soon as we became aware of them, and we promptly followed up by interviewing the agent.[3]

Your third concern relates to whether there is a conflict of interest with my supervision of the ongoing OIG review because I may be under consideration for the position of Inspector General. Whether I am being considered as a nominee for the Inspector General position has no bearing on my ability to lead the OIG's review of this matter. I have been a career employee in the Department for 22 years, including 7 years as a criminal prosecutor and over 5 years in OIG senior leadership positions. Through my long history as a career public servant, I have demonstrated my ability to conduct my work with independence and objectivity.[4]

In addition, this Office has a demonstrated history of conducting sensitive reviews in an independent, objective, and aggressive manner.

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[2] This *Interim Review of ATF's Project Gunrunner* can be found at: http://www.justice.gov/DOJ-OIG/reports/ATF/e0906.pdf.

[3] The OIG's public webpage at http://www.justice.gov/OIG provides several means of reporting allegations of waste, fraud, abuse, or misconduct, including a hotline number, an e-mail address, an on-line submission form, and a fax number. We discussed with the agent the unsuccessful attempts he made to contact our office so that we could identify and correct any possible deficiencies in our intake process.

[4] As you may be aware, in February 2011 Senator Grassley requested a determination by the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE) that the OIG be recused from conducting its review of Operation Fast and Furious for many of the same reasons you raise in your letter. The CIGIE Integrity Committee informed Senator Grassley that it found no basis for such a recusal. Indeed, the Integrity Committee characterized the OIG as "a model of independence, objectivity, and above all, integrity in every aspect of its daily pursuits." The Committee concluded by stating that the OIG "fully earned an unquestioned reputation for successfully addressing highly difficult and sensitive cases, and deserves the trust and confidence of the public." A copy of the Integrity Committee's response is enclosed with this letter.

The OIG investigative team we have assembled for the Operation Fast and Furious review is comprised of experienced attorneys, Special Agents, and analysts with a combined total of more than 70 years of investigative experience.

While I serve as Acting Inspector General, the OIG's review of Operation Fast and Furious – and all of our audits, reviews, and investigations – will be conducted free from political or any other improper considerations. At no time has any Department leader, anyone in the Administration, or anyone in Congress attempted to improperly influence our investigation. We will follow the facts in this matter wherever they may lead, and we will report our findings to the Department of Justice, Congress, and the public.

If you have any further questions, please feel free to contact me at [redacted]

Sincerely,

Cynthia A. Schnedar

Cynthia A. Schnedar
Acting Inspector General

Enclosure

cc: The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 1, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This supplements our previous responses to the Committee's subpoena of March 31, 2011, and your letter of June 8, 2011, relating to Operation Fast and Furious.

Enclosed please find an additional 32 pages of material. Pursuant to our agreement with Committee staff, we will no longer deliver hard copies to your office. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure. In response to requests from Chairmen Smith and Leahy, we also will provide these documents to the House Committee on the Judiciary and the Senate Committee on the Judiciary, respectively.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

M. Faith Burton for

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Elijah Cummings
Ranking Member

Congress of the United States
Washington, DC 20510

July 5, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

Yesterday, Acting ATF Director Kenneth Melson participated in a transcribed interview regarding Operation Fast and Furious and related matters with both Republican and Democratic staff. He appeared with his personal counsel, Richard Cullen of McGuireWoods LLP. His interview had originally been scheduled through the Justice Department to occur on July 13 in the presence of DOJ and ATF counsel. As you know, however, under our agreement Department witnesses who choose to attend a voluntary interview with their own lawyer are free to exercise that right rather than participate with counsel representing the Department's interests.

After being made aware of that provision of our agreement, Acting Director Melson chose to exercise that right and appeared with his own lawyer. We are disappointed that no one had previously informed him of that provision of the agreement. Instead, Justice Department officials sought to limit and control his communications with Congress. This is yet another example of why direct communications with Congress are so important and are protected by law.[1]

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[1] Specifically, no officer or employee may attempt to prohibit or prevent "any other officer or employee of the Federal Government from having direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress" about a matter related to his employment or the agency "in any way, irrespective of whether such communication or contact is at the initiative" of the employee or Congress (emphasis added). Moreover, the prohibition also applies to any officer or employee who "removes, suspends from duty without pay ... any other officer or employee of the Federal Government ... by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress." Consolidated Appropriations Act, 2010, P.L. 111-117, 123 Stat. 3034, § 714 (2010), as continued by §1104 of P.L. 112-10—which extends the funding levels, as well as "the authority and conditions provided in such Acts," through September 30, 2011. *See generally*,

Acting Director Melson's cooperation was extremely helpful to our investigation. He was candid in admitting mistakes that his agency made and described various ways he says that he tried to remedy the problems. According to Mr. Melson, it was not until after the public controversy that he personally reviewed hundreds of documents relating to the case, including wiretap applications and Reports of Investigation (ROIs). By his account, he was sick to his stomach when he obtained those documents and learned the full story. Mr. Melson said that he told the Office of the Deputy Attorney General (ODAG) at the end of March that the Department needed to reexamine how it was responding to the requests for information from Congress.

According to Mr. Melson, he and ATF's senior leadership team moved to reassign every manager involved in Fast and Furious, from the Deputy Assistant Director for Field Operations down to the Group Supervisor, after learning the facts in those documents. Mr. Melson also said he was not allowed to communicate to Congress the reasons for the reassignments. He claimed that ATF's senior leadership would have preferred to be more cooperative with our inquiry much earlier in the process. However, he said that Justice Department officials directed them not to respond and took full control of replying to briefing and document requests from Congress. The result is that Congress only got the parts of the story that the Department wanted us to hear. If his account is accurate, then ATF leadership appears to have been effectively muzzled while the DOJ sent over false denials and buried its head in the sand. That approach distorted the truth and obstructed our investigation. The Department's inability or unwillingness to be more forthcoming served to conceal critical information that we are now learning about the involvement of other agencies, including the DEA and the FBI.

The Role of DEA, FBI, and Other Agencies

When confronted with information about serious issues involving lack of information sharing by other agencies, which Committee staff had originally learned from other witnesses, Mr. Melson's responses tended to corroborate what others had said. Specifically, we have very real indications from several sources that some of the gun trafficking "higher-ups" that the ATF sought to identify were *already known* to other agencies and may even have been paid as informants. The Acting Director said that ATF was kept in the dark about certain activities of other agencies, including DEA and FBI. Mr. Melson said that he learned from ATF agents in the field that information obtained by these agencies could have had a material impact on the Fast and Furious

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Government Accountability Office, "Department of Health and Human Services—Chief Actuary's Communications with Congress," B-302911 (Sep. 7, 2004) (discussing the history and background in support of the government-wide prohibition on attempts to prevent direct communications with Congress). As you know, obstructing or impeding a Congressional inquiry is also a criminal violation under 18 U.S.C. § 1505.

investigation as far back as late 2009 or early 2010. After learning about the possible role of DEA and FBI, he testified that he reported this information in April 2011 to the Acting Inspector General and directly to then-Acting Deputy Attorney General James Cole on June 16, 2011.

The evidence we have gathered raises the disturbing possibility that the Justice Department not only allowed criminals to smuggle weapons but that taxpayer dollars from other agencies may have financed those engaging in such activities. While this is preliminary information, we must find out if there is any truth to it. According to Acting Director Melson, he became aware of this startling possibility only after the murder of Border Patrol Agent Brian Terry and the indictments of the straw purchasers, which we now know were substantially delayed by the U.S. Attorney's Office and Main Justice. Mr. Melson provided documents months ago supporting his concerns to the official in the ODAG responsible for document production to the Committees, but those documents have not been provided to us.

It is one thing to argue that the ends justify the means in an attempt to defend a policy that puts building a big case ahead of stopping known criminals from getting guns. Yet it is a much more serious matter to conceal from Congress the possible involvement of other agencies in identifying and maybe even working with the same criminals that Operation Fast and Furious was trying to identify. If this information is accurate, then the whole misguided operation might have been cut short if not for catastrophic failures to share key information. If agencies within the same Department, co-located at the same facilities, had simply communicated with one another, then ATF might have known that gun trafficking "higher-ups" had been already identified. This raises new and serious questions about the role of DEA, FBI, the United States Attorney's Office in Arizona, and Main Justice in coordinating this effort. Nearly a decade after the September 11th attacks, the stovepipes of information within our government may still be causing tragic mistakes long after they should have been broken down.

Efforts to Oust Melson

In the last few weeks, unnamed administration officials have indicated to the press that Acting Director Melson would be forced to resign. According to Mr. Melson, those initial reports were untrue. Regardless of what we might have thought before about how he should handle a request to resign, we now know he has not been asked to resign. We also now have the benefit of hearing his side of the story and will have a chance to examine what he said and compare it to the other evidence we are gathering. However, that will take some time.

Mr. Melson served as the First Assistant to the U.S. Attorney in the Eastern District of Virginia for 21 years, from 1986 to 2007. That is a career position. After the controversy over the firing of the U.S. Attorneys, he took over the Executive Office for U.S. Attorneys (EOUSA). He indicated that he was asked to convert to a non-career Senior Executive Service (SES), a politically appointed position, in order to speed the hiring process, and he agreed. However, his former position at EOUSA is currently filled by a career SES employee, Marshall Jarrett. As you know, for civil servants, the distinction between career and non-career status is significant.

In 2009, he said he was asked to take over as Acting Director of the ATF. Acting Director of the ATF is by its nature a temporary job. According to Mr. Melson, he was willing to serve the Department with the understanding that after a short tenure as Acting Director, he would return to a position as a career senior executive elsewhere within the Department.

However, two days after he told Acting Deputy Attorney General Cole about serious issues involving lack of information sharing, the *Wall Street Journal* reported that unnamed sources said that Melson was about to be ousted.

The revelations about Operation Fast and Furious have focused intense scrutiny on the ATF. It has no doubt taken a toll on the agency and the good people who work there. Much of that damage has occurred because the Department prevented ATF from being more forthcoming and responsive to questions from Congress. This is the context in which Mr. Melson decided to submit to an on-the-record interview with private counsel, pursuant to our agreement with the Department.

Technically, Mr. Melson no longer enjoys the due process protections afforded to career officials. Given his testimony, unless a permanent director is confirmed, it would be inappropriate for the Justice Department to take action against him that could have the effect of intimidating others who might want to provide additional information to the Committees.

We hope that the Department will take a much more candid and forthcoming approach in addressing these very serious matters with the Committees. If other important fact witnesses like Mr. Melson have a desire to communicate directly with the Committees they should be informed that they are free to do so. They should also be notified that if they are represented by personal counsel, they may appear with personal counsel rather than with Department lawyers.

Any decision about Mr. Melson's future with the Department would need to be justified solely on the basis of the facts and the needs of the agency, rather than on his decision to speak to us. We encourage you to communicate to us any additional significant information about any such decision so that we can work together to ensure

that it would not impede our investigation. For now, the Office of Inspector General is still conducting its review, and we are still conducting ours. Knowing what we know so far, we believe it would be inappropriate to make Mr. Melson the fall guy in an attempt to prevent further congressional oversight.

Sincerely,

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

Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc:

The Honorable Elijah E. Cummings, Ranking Member
U.S. House of Representatives, Committee on Oversight & Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 5, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 18 pages of documents that we produced to the House Oversight and Government Reform Committee on July 5, 2011. Pursuant to our agreement with Committee staff, we will no longer deliver hard copies to your office. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. Most of the enclosed documents bear limited redactions to protect specific details about the pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Charles Grassley
Ranking Minority Member

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 5, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

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We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Charles Grassley
Ranking Minority Member

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 6, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letter to the Attorney General dated July 5, 2011. Contrary to the suggestion in your letter, the Department of Justice has in no way sought to limit the Committee on Oversight and Government Reform's (the "Committee") appropriate access to information concerning Operation Fast and Furious. Rather, like you, the Department is deeply interested in understanding the facts surrounding Operation Fast and Furious. That is why the Attorney General several months ago asked the Department's Inspector General to look into concerns raised about this Operation and why the Department has and will continue to cooperate with that ongoing independent inquiry. That is also why the Department has assigned dozens of attorneys and reviewers to work on the Committee's extremely broad requests for information about the Operation.

We are puzzled by your criticism of the Department for its efforts to facilitate the Committee's access to documents and witnesses. Indeed, those concerns seem flatly inconsistent with statements that Chairman Issa has made on this subject in the recent past. For example, in a Committee hearing on June 15, 2011, Chairman Issa recognized that the Department had facilitated a "breakthrough" on the production of information and said "we're thankful for the breakthrough." Yet, just a few weeks later and notwithstanding the Department's continued production of documents, that "breakthrough" has been re-characterized as an effort to prevent the Committee from receiving the information it requested.

Similarly, while your letter suggests that the Department has made it difficult for you to gain access to witnesses, that simply is not the case. The Committee requested that the Department make witnesses available for interviews on a voluntary basis and without need for subpoenas. The Department agreed to do so and this has been a significant benefit to the Committee, whose rules make interviews conducted pursuant to subpoena much more cumbersome. If the Department were attempting to make interviews more difficult, it would not have agreed to make witnesses voluntarily available. Indeed, as noted in your letter, Acting Director Melson was scheduled for just such a voluntary interview on July 13 when he instead appeared for two sessions over the Fourth of July weekend. Even beyond the Acting Director, a number of other voluntary interviews have either been conducted or are scheduled.

Your letter further questions why the Department took a lead role in managing the process through which information from ATF's files is provided to the Committee. The answer is that the Department wanted to ensure that the information being provided to the Committee was accurate, complete and timely. After Chairman Issa expressed frustration with the pace of document production during the early phase of his review, the Department added its resources to ATF's in order to speed the production of responsive materials and provide a mechanism for orderly access by the Committee to witnesses of the Committee's choosing. Regrettably, your letter unfairly criticizes both the Department's efforts to address the Committee's concerns and the integrity of the professionals at the Department who have worked long hours to make responsive information available to you. Such criticism is unjustified and does little to advance our mutual interest in learning the true facts surrounding this matter.

Your letter also suggests that the coordination process adopted by the Department is somehow an effort to "distort[] the truth" or "obstruct[]" the Committee's review. Nothing could be further from the truth, as Chairman Issa again recognized during the Committee's June 15th hearing. There, Chairman Issa said that he "share[s] [the Department's] concerns" about the provision of sensitive law enforcement information to the Committee because "once something comes over here, with the exception of the Select Intelligence Committee, it becomes much more problematic as far as review or release [by the Committee]." The Department continues to believe – as Chairman Issa did on June 15 – that the provision of certain sensitive law enforcement information to the Committee is problematic because, once in the Committee's possession, it is likely to become public. And, once public, such information could easily jeopardize ongoing law enforcement operations.

To date, hundreds of thousands of pages of documents have been reviewed for responsiveness and over 2000 pages of documents have either been produced to the Committee or made available for review and productions of more material are occurring on a near-daily basis. While we do not question the Committee's right to conduct appropriate oversight, we reject entirely any suggestion that our extraordinary efforts have been designed to limit – rather than facilitate – the Committee's access to information.

The Department has a legitimate interest in ensuring that its ongoing investigations and prosecutions are not compromised. Unfortunately, your letter completely ignores the Department's equities on that issue. We believe both sides can continue to work cooperatively to address the Department's and the Committee's concerns.

The Interview of Acting Director Melson

Your letter indicates that Acting Director Melson participated in a transcribed interview with Committee staff on July 4. Your letter fails to note, however, that Acting Director Melson also submitted to a three-hour interview by Committee staff on July 3 that was not transcribed. The Department of Justice learned of these significant facts for the first time last evening, when Acting Director Melson provided notice that these events had already occurred. Your letter recites that the interview was "extremely helpful to [y]our investigation" and that Acting Director Melson admitted "mistakes that his agency made and described various ways he says that he tried to remedy the problems." In addition, your letter explains that "it was not until after the public controversy [surrounding Operation Fast and Furious] that he personally reviewed hundreds of documents relating to the case…"

Relatedly, you express "disappoint[ment]" that, in your view, Acting Director Melson did not understand that he could have a private lawyer accompany him to an interview with the Committee. We believe that Acting Director Melson was aware of his right to private representation. The supposition of your letter is that Mr. Melson, who was a long-time Assistant United States Attorney, including service as the First Assistant in the Eastern District of Virginia, and in the Executive Office for U.S. Attorneys, did not understand that he could have a private lawyer accompany him to an interview. Lower-level employees of ATF have asked for representation by private counsel in connection with your inquiry and it seems unreasonable to suppose that Mr. Melson did not understand what appears quite clear to his subordinates.

Information Concerning Other Law Enforcement Agencies

Your letter raises concerns about the alleged role of other agencies in matters that you say touch on Operation Fast and Furious. Chairman Issa's staff previously raised this issue with representatives of the Department and it is my understanding that discussions about whether and how to provide any such sensitive law enforcement information have been ongoing. Again, such information – to the extent it exists -- is something that Chairman Issa has recognized should not simply be turned over to the Committee. Accordingly, this is not a matter of the Department attempting to keep any such material from the Committee for an improper purpose but a question of whether such material appropriately should be provided and, if so, how to best to protect ongoing investigations.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
Page Four

We trust that this letter has addressed your concerns. Please do not hesitate to contact this office if we may be of further assistance on this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc:

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate

JUL-06-2011 16:24 Gila Sheriff Globe [redacted] P.001

Thomas H. Melcher
Chief Deputy

James A. Eskew
Jail Commander

Office of
Sheriff of Gila County
John R. Armer

Date: 7/6/11

To: Chairman Darrell Issa or Ranking Member Charles Grassley

Fax Number: 202-[redacted]

From: Misty Allinson

Document Description: Records pertaining to Operation Fast and Furious

Number of Pages (including cover sheet): 48

If documents received were not legible, please call:
(928)[redacted] Fax: (928)[redacted]

Additional Comments: Per your request

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P.O. Box 311, Globe, AZ 85502 – Phone: (928)425-4449 – Toll Free: (800) 635-8017 – Fax: (928)[redacted]
108 Main St., Payson, AZ 85541 – Phone: (928)474-2208 – Toll Free: (866) 866-4452 – Fax: (928)[redacted]

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 6, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 16 pages of documents that we produced to the House Oversight and Government Reform Committee on July 6, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 9 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by Committee staff. There are significant redactions of non-responsive text in several multi-subject documents and limited redactions of text that would disclose specific details about the pending investigation. In response to Chairman Smith's request, the documents will also be made available for review at the Department by staff of the House Committee on the Judiciary.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Charles Grassley
Ranking Minority Member

JUL-7-2011 09:08 FROM:GILBERT POLICE ADMIN (480[redacted] TO:1202[redacted] P.1

Gilbert Police Department
75 E. Civic Center Drive
Gilbert, Arizona 85296

Fax Transmittal
Please Deliver Immediately

To: Tristan Leavitt
Henry Kerner

Fax: 202[redacted]
202[redacted]

From: Kate Weiby, Gilbert Police Department

Date: 07/07/11

Re: Operation Fast and Furious, Follow-Up Request

Total number of pages, including cover page: 2

Attached are the serial numbers of the firearms involved from the previously identified Gilbert Police reports.

Sincerely,
Kate Weiby
Police Legal Advisor
Gilbert Police Department
[redacted] or direct line 480[redacted]

Confidentiality Notice: The materials enclosed with this facsimile transmission are private and confidential and are the property of the Gilbert Police Department. The information contained in the material is privileged and is intended only for the use of the above named party. If you are not the intended recipient, be advised that any unauthorized disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone to arrange for return of the forwarded documents.

Congress of the United States
Washington, DC 20515

July 11, 2011

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
301 7th Street, NW
Washington, D.C. 20528

Dear Secretary Napolitano:

Many unanswered questions remain surrounding the death of Immigration and Customs Enforcement (ICE) Special Agent Jaime Zapata. As you know, Agent Zapata died on February 15, 2011 in Mexico in the line of duty. On June 14, 2011, representatives of the Zapata family wrote a letter to José Angel Moreno, U.S. Attorney for the Southern District of Texas, Cory Nelson, the FBI Special Agent in Charge for San Antonio, and several ICE officials in Texas requesting information surrounding Jaime Zapata's death.[1] Congress and the American people also have a legitimate interest in finding out how a federal agent's life came to such a tragic and untimely end. We trust you have now been able to gather sufficient facts to satisfy the valid concerns of the Zapata family and the public.

We therefore ask that you provide answers to the following questions:

1) What was Jaime Zapata's mission on the day he was murdered?

2) Was he armed? If not, why not?

3) Please describe, in detail, the actual circumstances leading up to, and including, the shooting of Jaime Zapata.

4) What investigative steps has the Department of Homeland Security (DHS) taken since the shooting?

5) Have there been any changes in DHS policy to ensure that no other agents will face similar situations?

Additionally, please provide the following:

6) Copies of all ICE Reports of Investigation related to this incident.

7) Any other investigative reports prepared by DHS regarding the Zapata murder.

8) Any photographs of the crime scene taken by DHS personnel.

[1] Letter from Benigno Martinez & Raymond Thomas to José Angel Moreno et al. (Jun. 14, 2011).

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Please provide the information and documents requested by no later than July 15, 2011 at noon. If you have any questions regarding this request, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. We look forward to receiving your response.

Sincerely,

Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives

Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

Congress of the United States
Washington, DC 20515

July 11, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

We have recently learned that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has afforded potential witnesses for the Committees' investigation into Operation Fast and Furious access to a shared drive on its computer system replete with pertinent investigative documents, including official ATF e-emails. Although, our staff has been advised the Department has since terminated access to this document cache, we write to seek additional information relating to this egregious decision. We also ask that you promptly self-report this matter to the Office of Inspector General (OIG).

As we understand it, the shared drive contains the documents that have been produced to the Committees through the course of our investigation, those made available for *in camera* review and possibly documents that the Department of Justice (DOJ) has not yet provided to the Committee. These witnesses had not previously seen many of these documents.

Allowing witnesses access to such documents could taint their testimony by allowing them to tailor their responses to what they think the Committees already know. Additionally, witnesses who gain access to documents they have not previously seen could alter their recollection of events. This practice harms not only our investigation, but also the independent investigation that you instructed the Inspector General to conduct.

One witness who had access to these documents informed us of this questionable practice:

> Q. What other documents have you gone through other than your emails?
>
> A. A couple of the things that have been produced. They put a link on our computer, some kind of drive that I can click on and read things that have been produced. So I do that every once in a while, but not normally.
>
> Q. And so what is the purpose of that, to your knowledge?
>
> A. Just to refresh my recollection about what is out there, you know.

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> Q. So you have a link on your computer so that you know what we have been provided by Justice?
>
> A. Yes. There is a link in our computer for Gunrunner, Fast and Furious produced to Congress, and there is updates every once in a while of those documents that are being produced.[1]

Yet in a May 5, 2011 meeting with Committee staff, an Associate Deputy Attorney General expressed the Department's concern that the Committee might allow witnesses exposure to documents they had not previously seen. He further stated:

> To the extent that you nevertheless plan to interview our trial witnesses prior to trial, we would appreciate you taking the following steps to help reduce the risk of harm to the case that could arise from such interviews. First . . . we ask that you not show the witnesses new documents, as exposing the witnesses to facts that are not already within their personal knowledge may contaminate their recall of events. Second, for the same reasons, we ask that you not orally convey facts to the witness of which the witness was previously unaware.[2]

In essence, it appears that DOJ did to witnesses in our investigation precisely what it asked us not to do to witnesses in its investigation.

Please provide answers to the following questions no later than Monday, July 18, 2011 at noon:

1. Identify which ATF and DOJ employees had access to this shared drive.
2. Provide a log of documents and the date each document was posted to the shared drive.
3. Provide a log of any other documents relating to this investigation, not on the shared drive, to which these employees had access.
4. Provide the dates for which these employees had access to the shared drive.
5. Identify those employees who still have access to this information.

In order to mitigate any harm that may have been caused to the OIG investigation, please also send your responses to the OIG.

---

[1] Transcript of William McMahon, Deputy Assistant Director for Field Operations, at 96 (June 28, 2011).
[2] E-mail from Associate Deputy Attorney General [Name Redacted] to Chief Counsel for Investigations, H. Comm. on Oversight and Gov't Reform Steve Castor (May 17, 2011).

If you have any questions about these requests, please contact Brian Downey in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner or Jean Humbrecht in Chairman Issa's office at (202) 225-5074. Thank you for your attention to this important matter.

Sincerely,

Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives

Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

Ms. Cynthia A. Schnedar, Acting Inspector General
U.S. Department of Justice, Office of Inspector General

Congress of the United States
Washington, DC 20515

July 11, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

As our investigation into Operation Fast and Furious has progressed, we have learned that senior officials at the Department of Justice (DOJ), including Senate-confirmed political appointees, were unquestionably aware of the implementation of this reckless program. Therefore, it is necessary to review communications between and among these senior officials. As such, please provide all records relating to communications between and among the following individuals regarding Operation Fast and Furious:

1) David Ogden, Former Deputy Attorney General;

2) Gary Grindler, Office of the Attorney General and Former Acting Deputy Attorney General;

3) James Cole, Deputy Attorney General;

4) Lanny Breuer, Assistant Attorney General;

5) Kenneth Blanco, Deputy Assistant Attorney General;

6) Jason Weinstein, Deputy Assistant Attorney General;

7) John Keeney, Deputy Assistant Attorney General;

8) Matt Axelrod, Associate Deputy Attorney General;

9) Ed Siskel, Former Associate Deputy Attorney General;

10) Brad Smith, Office of the Deputy Attorney General;

11) Kevin Carwile, Section Chief, Capital Case Unit; and

12) Joseph Cooley, Criminal Fraud Section.

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These records should include e-mails, memoranda, briefing papers, and handwritten notes. Additionally, any records related to communications referring to a large firearms trafficking case within the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) or in Phoenix should be included in any production.

Please provide this information no later than July 18, 2011, at noon. If you have any questions regarding this request, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. I look forward to receiving your response.

Sincerely,

Darrell Issa
Chairman
House Committee on
Oversight and Government Reform

Charles E. Grassley
Ranking Member
Senate Committee on the Judiciary

cc: The Honorable Elijah E. Cummings, Ranking Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Patrick J. Leahy, Chairman
U.S. Senate, Committee on the Judiciary

Congress of the United States
Washington, DC 20515

July 11, 2011

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Director Mueller:

For the past six months, we have been conducting an investigation into Operation Fast and Furious, conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). This program allowed approximately 2,000 heavy-duty assault type firearms to be illegally trafficked, and hundreds of these weapons have already been recovered at crime scenes in Mexico. Operation Fast and Furious was an Organized Crime Drug Enforcement Task Force (OCDETF) prosecutor-led strike force case where ATF worked in coordination with other agencies. The Federal Bureau of Investigation (FBI) was one of these agencies. To help us better understand the role of the FBI in this multi-agency OCDETF case, we request that you produce communications relating to Operation Fast and Furious by FBI personnel based in Phoenix, Arizona, Tucson, Arizona, and El Paso, Texas, including the below-listed officials:

1) Nathan Gray, Former Special Agent in Charge, Phoenix Field Division

2) Annette Bartlett, Assistant Special Agent in Charge, Phoenix Field Division

3) Stephen Cocco, Acting Special Agent in Charge, Phoenix Field Division

4) Steven Hooper, Assistant Special Agent in Charge, Phoenix Field Division

5) John Iannarelli, Assistant Special Agent in Charge, Phoenix Field Division

6) John Strong, Assistant Special Agent in Charge, Phoenix Field Division

7) David Cuthbertson, Special Agent in Charge, El Paso Field Division

8) The Case Agent from the Tucson office in charge of the Brian Terry murder investigation

Such communications should include e-mails, documents, memoranda, briefing papers, and handwritten notes. You should also produce communications these individuals had with any ATF employee between October 1, 2009, and June 30, 2011.

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Paid FBI Informants

In recent weeks, we have learned of the possible involvement of paid FBI informants in Operation Fast and Furious. Specifically, at least one individual who is allegedly an FBI informant might have been in communication with, and was perhaps even conspiring with, at least one suspect whom ATF was monitoring. We are interested in determining the veracity of these claims. To that end, please provide a response to the following questions:

1) How many paid FBI informants, prospective informants assigned an informant number, or cooperating defendants ("informants") were in communication with any of the ATF suspects or their associates under Operation Fast and Furious? What was the nature of, and how frequent were, these contacts?

2) Were any of these informants previously deported by the Drug Enforcement Administration or any other law enforcement agency? If so, when did these deportations take place?

3) What is the process for repatriation for FBI informants? What other agencies are notified? Did that process occur here?

4) Were FBI personnel in Arizona aware of the involvement of these informants during Operation Fast and Furious?

5) Did other law enforcement agencies learn of the involvement of FBI informants related to Operation Fast and Furious? If so, please explain in detail when and how?

Additionally, please provide the following:

6) Any FBI 302s relating to targets, suspects, defendants or their associates in the Fast and Furious investigation, including the 302s provided to ATF Special Agent Hope MacAllister during the calendar year 2011.

7) Any other investigative reports prepared by the Bureau relating targets, suspects or defendants in the Fast and Furious case.

Jaime Zapata

Additionally, we understand that the FBI is the lead investigative agency into the death of Immigrations and Customs Enforcement (ICE) Special Agent Jaime Zapata, who was murdered in Mexico on February 15, 2011. The family of Jaime Zapata is still seeking answers about the circumstances involving his death. On June 14, 2011, attorneys for the Zapata family wrote a letter to José Angel Moreno, U.S. Attorney for the Southern District of Texas, Cory Nelson, the FBI Special Agent in Charge for San Antonio, and several ICE officials in Texas requesting information about the specific circumstances of Jaime Zapata's death.[1] Given the FBI's lead role in this investigation, we respectfully ask the following questions related to the Zapata murder:

[1] Letter from Benigno Martinez & Raymond Thomas to José Angel Moreno et al. (Jun. 14, 2011).

1) Was Jaime Zapata armed? If not, why not?

2) Was Jaime Zapata traveling in a bulletproof vehicle? If so, how was he killed inside of the vehicle?

3) Please describe, in detail, the actual circumstances leading up to, and including, the shooting of Jaime Zapata.

4) What investigative steps have been taken by the Bureau since the shooting?

Additionally, please provide the following:

5) Any FBI 302s relating to this investigation.

6) Any other investigative reports prepared by the Bureau regarding the Zapata murder.

7) Any photographs of the crime scene taken by FBI personnel.

Please provide the requested documents and information as soon as possible, but no later than noon on July 25, 2011. If possible, the preference is to receive all documents in electronic format.

If you have any questions regarding these requests, please contact Brian Downey in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner in Chairman Issa's office at (202) 225-5074. We look forward to receiving your response.

Sincerely,

Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives

Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

GUS M. BILIRAKIS

Congress of the United States

House of Representatives

Washington, DC 20515-0909

July 12, 2011

Mr. Eric H. Holder, Jr.
Attorney General
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Mr. Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue NE
Washington, DC 20226

Dear Attorney General Holder and Director Melson:

I am writing to share my deep concern about reports that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and the Department of Justice (DOJ) have participated in multiple acts of "gun walking," purposely allowing firearms to pass from straw purchasers into the possession of criminals and other dangerous third party organizations. These reports raise troubling questions about the motives, intentions, and competency of the ATF and the DOJ.

The ATF has noted that illegal weapons trafficking is a "problem with consequences on both sides" of our border, and that ATF's objective should be to prevent dangerous foreign groups and organizations from obtaining firearms "which they employ to murder rival drug traffickers, civilians, as well as political, military, and law enforcement figures in order to strengthen their grip on the lucrative drug and firearms routes into and out of the United States." However, two weapons found at the scene of the murder of U.S. Border Patrol Agent Brian Terry were traced back to the ATF's "Operation Fast and Furious" – a gun walking operation conducted by the ATF's Phoenix Field Division. This evidence suggests that the federal government has severely failed the very objective it proposed for Project Gunrunner, the ATF's comprehensive strategy to reduce violent crime associated with foreign criminal organizations.

In recent days, it has come to light that the ATF and DOJ may have participated in the act of "gun walking" beyond the acts conducted within the scope of "Operation Fast and Furious." Recent reports have suggested that Project Gunrunner may not have been limited to weapons trafficking to Mexico and that similar programs included the possible trafficking of arms to dangerous criminal gangs in Honduras with the knowledge of the ATF's Tampa Field Division.

and the Department of Justice's Middle District of Florida through an operation known as "Operation Castaway."

As a member of the House Committee on Homeland Security and a member of the House Committee on Foreign Affairs, I find it troubling that the United States government would willfully allow weapons to be acquired by dangerous criminal and drug trafficking organizations, in direct contravention to our strategic and national interests.

I would therefore appreciate your answers to the following questions.

1. Can you confirm whether or not the ATF Tampa Field Division and/or the Department of Justice's Middle District of Florida participated in a "gun walking" scheme that allowed weapons to be trafficked to Honduras?
2. If so, does the ATF or the DOJ have knowledge of any of these firearms ending up in the possession of the notorious MS-13 gang?
3. How many guns have been allowed to pass into Honduras and how many have since been accounted for?
4. Were trafficked weapons subject to any special monitoring processes once they left the United States?
5. Has "Operation Castaway" been terminated? If not, does the DOJ or the ATF plan to terminate this program or urge its termination?
6. Has the DOJ or the ATF established any criteria or guidance pertaining to what is admissible for future operations aimed at preventing firearms from being obtained and used by dangerous foreign criminal organizations in crimes similar to the murder of U.S. Border Patrol Agent Brian Terry?

It is my belief that the ATF and the DOJ operated in an extremely misguided manner in allowing guns to walk across the border and end up in the possession of dangerous criminal organizations. These actions have already resulted in the loss of human life and property. I hope that you would agree that we must not allow flawed programs to continue to operate to the detriment of the safety and security of the United States of America.

In that regard, I look forward to receiving your answers to these questions in a timely manner.

Sincerely,

GUS M. BILIRAKIS
Member of Congress

Congress of the United States
Washington, DC 20510

July 12, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

There has been public speculation that gun control politics may have been a motivating factor behind approving the risky strategy used in Operation Fast and Furious. In other words, by allowing straw purchasers to continue to operate and by encouraging gun dealers to go through with what were obviously suspicious sales, the ATF helped create a "big case" in order to justify additional regulatory authorities. Unfortunately, yesterday's announcement, requiring firearms dealers in border states to alert officials anytime they sell more than two semi-automatic rifles to someone in a five-day period, only serves to fuel such speculation.

While we have seen no evidence that this was the initial aim of Operation Fast and Furious, senior ATF officials did contemplate using the case to justify imposing additional requirements on gun dealers as early as July 2010, when straw buyers were still purchasing weapons with the approval of ATF and DOJ.[1] E-mails also indicate that six months later, after Border Patrol Agent Brian Terry was killed, senior ATF officials again discussed using the case to justify the long gun sale reporting requirement.[2]

There were about 93 multiple handgun purchases by Fast and Furious suspects, averaging nearly five handguns per purchase. Even if gun dealers had not been cooperating, each of these sales did trigger reporting requirements under existing regulations. Yet ATF did not use this information to interdict the flow of firearms to the

[1] E-mail from Mark R. Chait to William D. Newell, cc William G. McMahon (July 14, 2010, 10:25 AM).
[2] E-mail from William D. Newell to William G. McMahon (Jan. 4, 2011, 6:19 PM); e-mail from William D. Newell to William G. McMahon (Jan. 5, 2011, 1:10 PM) (talking points attached); e-mail from Mark Chait to William D. Newell, cc William G. McMahon (Jan. 26, 2011, 09:30:54).

cartels. There were about 148 multiple long gun purchases by Fast and Furious suspects, averaging over nine long guns per purchase, mostly by just a few straw purchasers. Cooperating gun dealers reported the vast majority of these sales to the ATF contemporaneously even in the absence of a reporting requirement because they were suspicious sales to known straw purchasers. Yet ATF did not use this information to interdict the flow of firearms to the cartels.

The problem with Operation Fast and Furious was not the failure to collect enough information. It was the failure to act on information that the government had already collected.

In light of this information, please answer the following questions:

1. Is there any other evidence suggesting that ATF or DOJ officials discussed how Operation Fast and Furious could be used to justify additional regulatory authorities for the ATF? If so, are there any such indications prior to July 14, 2010?
2. Rather than collecting additional information on law-abiding gun owners, what steps have you taken to ensure that the ATF is better able to act on the information it already possesses to interdict the flow of firearms to criminals?

Thank you for cooperation and attention in this matter. We would appreciate a response by July 26, 2011. If you have any questions regarding this letter, please contact Jason Foster at (202) 224-5225 or Steve Castor at (202) 225-5074.

Sincerely,

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

Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

Attachment

cc:

The Honorable Elijah E. Cummings, Ranking Member
U.S. House of Representatives, Committee on Oversight & Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 12, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 31 pages of documents that we produced to the House Oversight and Government Reform Committee on July 12, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about a pending investigation, sensitive techniques, and information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

M. Faith Burton for

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member

Bill Pribil, Sheriff

July 13, 2011

Mr. Henry Kerner
[redacted]
On behalf of Chairman Darrell Issa
Committee on Oversight & Government Reform
U.S. House of Representatives

Mr. Tristan Leavitt
[redacted]
On behalf of Ranking Member Charles Grassley
Committee on the Judiciary
United States Senate

Dear Mr. Kerner and Mr. Leavitt,

This letter and attachments are in response to your June 2, 2011 request for firearms related information.

The Coconino County Sheriff's Office did not participate in any fashion with the Bureau of Alcohol, Tobacco and Firearms on Operation Fast and Furious. We have no Departmental Reports that we are aware of, that are in any way connected to this operation. We have no Departmental Reports that list Emory Hurley. Additionally, our records are shared and maintained by the Flagstaff Police Department's Records Section, and they advised they have no request for our departmental reports by either the A.T.F. or the Unites States Attorney's Office.

Attached you will find a list that includes the Department Report number, date, make, model and serial number of all weapons that have come into this agency's possession during the time frame you requested. These are not necessarily "recovered" weapons, but rather any firearm we have taken into possession.

Attached also is an invoice for the cost of providing these records. Payment can be made to: the Coconino County Sheriff's Office, 911 E. Sawmill, Flagstaff, AZ 86001.

If we can be of any further assistance, please feel free to call me at [redacted]

Sincerely,

Rex Gilliland
Operations Commander

911 E. Sawmill Rd.
Flagstaff, AZ 86001
928-774-4523 or 1-800-338-7888
www.coconino.az.gov/sheriff.aspx

"SERVICE TO COMMUNITY"

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 13, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 74 pages of documents that we produced to the House Oversight and Government Reform Committee on July 13, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. In addition, we have redacted from multi-subject documents text that is not responsive to your requests. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional nine pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by Committee staff. There are limited redactions of text that would disclose sensitive techniques and specific details about the pending investigation. In addition, text that is not responsive to your requests has been redacted from a multi-subject document. In response to Chairman Smith's request, the documents will also be made available for review at the Department by staff of the House Committee on the Judiciary.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

M. Faith Burton for

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 14, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 36 pages of documents that we produced to the House Oversight and Government Reform Committee on July 14, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member

Congress of the United States
Washington, DC 20515

July 15, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Michele M. Leonhart
Administrator
U.S. Drug Enforcement Administration
700 Army Navy Drive
Arlington, VA 22202

Dear Administrator Leonhart:

On March 15, 2011, Senator Grassley sent you a letter requesting a briefing to gain a better understanding of the Drug Enforcement Administration's (DEA) involvement in Operation Fast and Furious. Conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Operation Fast and Furious, was an Organized Crime Drug Enforcement Task Force (OCDETF) case. That letter is attached for your ready reference. Nearly four months later, your agency has yet to respond directly.

On April 12, 2011, the Department of Justice (DOJ) responded on behalf of DEA. In its letter, DOJ stated:

> Generally speaking, . . . when another Department component leads an OCDETF investigation, DEA works cooperatively to support drug-related aspects of the investigation. Such cooperation means that DEA may share investigative expertise, report leads, and provide manpower to assist in an investigative or enforcement operation as requested by the lead investigative agency.[1]

This information sharing, or lack thereof, is precisely the reason Senator Grassley made the initial request. Consequently, we request that you make arrangements by no later than July 22, 2011 for DEA supervisors and personnel with specific knowledge of details

[1] Letter from Assistant Attorney General Ronald Weich to Senator Charles E. Grassley (Apr. 12, 2011).

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related to Operation Fast and Furious and the parallel DEA case to brief members of both of our staffs.

In addition to the aforementioned briefing, please provide the following documents:

1) The number of informants or cooperating defendants handled by other agencies identified in the course of any investigations related to Operation Fast and Furious defendants. For each informant or cooperating defendant, please identify the other agency, the date that DEA learned of their informant or cooperating defendant's status, and a description of how the DEA learned of their informant or cooperating defendant's status.

2) All information related to indicted Fast and Furious suspect Manuel Fabian Celis-Acosta.

3) A list of all personnel designated as DEA liaisons with other federal law enforcement agencies in Arizona, New Mexico, and Texas.

Please also include any communications of the following individuals at DEA relating to Operation Fast and Furious or Manuel Fabian Celis-Acosta:

1) Elizabeth Kempshall, Special Agent in Charge, Phoenix

2) Doug Coleman, Acting Special Agent in Charge, Phoenix

3) Chris Feistle, Assistant Special Agent in Charge, Phoenix

4) Albert Laurita, Assistant Special Agent in Charge, Tucson

5) David Hathaway, Resident Agent in Charge, Nogales

6) Joe Muenchow, Resident Agent in Charge, Yuma

These records should include emails, memoranda, briefing papers, and handwritten notes. You should also produce communications these individuals had with any ATF employee from between October 1, 2009, and June 30, 2011.

The Honorable Michele M. Leonhart
July 15, 2011
Page 3

Please provide the documents and information requested no later than July 29, 2011. If you have any questions regarding this request, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. Thank you for your prompt attention to this important matter.

Sincerely,

Darrell Issa
Chairman
Committee on Oversight and
Government Reform
United States House of Representatives

Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Enclosure

cc: The Honorable Eric H. Holder, Jr., Attorney General
United States Department of Justice

The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

Congress of the United States
Washington, DC 20515

July 18, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

We received your letter of July 6, 2011.[1] Your letter responded to our letter of the evening before where we informed you that ATF Acting Director Kenneth Melson testified about ATF's Operation Fast and Furious on the 4th of July. We were surprised by the tone of your letter and also by your willingness to mischaracterize Chairman Issa's words. The Department's extraordinary steps to restrict the flow of information to Congress served no one's interest in this case.

In his July 6 letter, the Assistant Attorney General for Legislative Affairs claimed to be "puzzled" by our criticism of the Department's lack of cooperation in this investigation.[2] Since Senator Grassley personally informed you about Operation Fast and Furious in January of this year, the Department seems to have been unable to fully grasp the magnitude and seriousness of this issue. Acting Director Melson's 4th of July testimony shed new light on what has been going on inside the Department as it comes to grips with what happened in its once prized, multi-agency Operation Fast and Furious case.

The Justice Department prevented Acting Director Melson from communicating with Congress and even his own staff.

The Department has blocked the flow of information from the Acting Director's office. Mr. Melson testified:

> [A]fter receiving [Senator Grassley's initial] letter, our first instinct and intuition was to directly march over to Senator Grassley's office and brief him on what Fast and Furious was for purposes of explaining the concept and the role it played and how it got there, and where ATF was going in it. And we expressed that desire to the [Deputy Attorney General]'s office.[3]

As you know, the Department did not permit Mr. Melson to brief Senator Grassley. Instead, the Department devised a strategy to withhold information from the Senator. Mr. Melson testified further:

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[1] Letter from Asst. Att'y Gen. Ronald Weich to Chairman Darrell Issa and Ranking Member Charles Grassley, July 6, 2011, at 1 [hereinafter Letter of July 6].
[2] *Id.*
[3] Transcript, Transcribed Interview of Acting Director Kenneth Melson, July 4, 2011, at 30. [hereinafter Melson Tr.]

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> I sat in [the office of the Associate Deputy Attorney General with responsibility for ATF] one day when they were writing the letter to Senator Grassley about him being only a ranking member and not the chair of the committee. I sat there across the desk from [him], as I recall, and said, this is really just poking [Senator Grassley] in the eye. What's the sense of doing this? Even if you say you can't give it to him, he's going to get it through the back door anyhow, so why are we aggravating this situation.[4]

Instead of giving Congress information, the Department quarantined ATF and sent officials with no personal knowledge of the facts to deny the whistleblower allegations in a widely attended briefing open to all Senate Judiciary staff on February 10, 2011. Instead of providing Congress answers from the individuals best-positioned to provide them, Mr. Melson and his staff were muzzled. The decision to withhold information at the earliest sign of congressional interest set the Justice Department on a course that required Congress to aggressively pursue testimony and documents elsewhere. As you now know, this was entirely avoidable. The Department's leadership chose to protect its own interests at the expense of exposing the leadership of a subordinate agency to Congressional scrutiny.

While Congress waited, ATF's senior leaders examined how and why Fast and Furious happened. Mr. Melson and his staff identified institutional problems. They concluded that the Phoenix Field Division needed new supervision and reassigned every manager involved in Fast and Furious. Mr. Melson wanted to share this important development with Congress to show that ATF was taking the allegations seriously. The Department resisted. Mr. Melson observed that "[t]he [Deputy Attorney General's] office wasn't very happy with us, because they thought this was an admission that there were mistakes made. **Well, there were some mistakes made.**"[5]

Your Department's leadership chose not to share this information with Congress. Instead, congressional investigators learned of this development directly from ATF agents interviewed without the Department's cooperation in Phoenix and Washington. The Department treated the Fast and Furious inquiry as merely a public relations problem, rather than a legitimate topic in need of congressional oversight and corrective action.

The Department needs to transition out of damage control mode. Just two days after Mr. Melson raised concerns about ATF's failure to communicate with the FBI and DEA about the potential role of paid informants in Fast and Furious—and just one day after the House Committee on Oversight and Government Reform held a hearing that highlighted ATF's missteps—an anonymous source leaked a report to the *Wall Street Journal* that Mr. Melson was about to be ousted. According to the unnamed source, Andrew Traver, head of ATF's Chicago Field Division, would replace him. The rumor mill had Mr. Traver on the job as soon as July 5, 2011:

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[4] *Id.* at 133.
[5] *Id.* at 70 (emphasis added).

Q You mentioned earlier that after our hearings, hearings on the 15th, you had a meeting with the [Deputy Attorney General James Cole] on the 16th.

A On the 16th.

Q And during that meeting, was there any discussion about whether you would be leaving the agency.

A I think that was the meeting that I asked to have a couple minutes with him, and he and I discussed the reason for Traver coming in.

* * *

Q On Friday night around 7:00 or 8:00 at night *The Wall Street Journal* reported that you were going to be asked to step down.

A Uh-huh.

Q Did that surprise you, given that that you as recently as the day before had a personal interaction with your immediate supervisor, the [Deputy Attorney General James Cole], and you were told that you would be told in person rather than read it in the newspaper.

A Yes, I was surprised at it.

* * *

Q When you had become aware that Mr. Traver was coming to town -- was he coming to meet [Mr. Cole,] the [Deputy Attorney General].

A That's what I understand.

Q Did you hear any rumor that Mr. Traver was telling people that he would be in your office by July 4th.

A That was the rumor that was circulating around ATF headquarters, that he would be in not on the 4th but shortly after the 4th.[6]

Melson's interview with congressional investigators was originally scheduled through the Justice Department to occur on July 13 in the presence of Department lawyers. The Inspector General then scheduled an interview with him for July 7, in advance of his congressional interview.

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[6] *Id.* at 184-188.

However, once Mr. Melson was advised directly by our staff about the option to appear without Department minders, he chose to appear immediately with his own lawyer instead.

Your staff's July 6 letter contains a misinterpretation of our concern about the Department's failure to communicate to Mr. Melson his option to appear outside the presence of Department lawyers. The issue was not whether Mr. Melson had a right to personal counsel, which we presume he knew. The issue was whether he knew that the Department had agreed to allow witnesses to appear *voluntarily* and *without* DOJ handlers. He did not. By contrast, the agent interviews cited in your staff's letter were conducted to satisfy obligations pursuant to House Committee subpoenas and were not agreed to by the Department. Once again, this demonstrates why it is so important that congressional staff have direct communications with agency personnel.

The Department's efforts to isolate Mr. Melson went so far as to prevent him from communicating with his own staff about Fast and Furious. Mr. Melson testified:

> Part of the problem, and one of the things that frustrated me was that I have not been allowed to communicate to the troops about anything. So, for example, earlier on, I wanted to do a broadcast that just talked about the case, because everybody was wondering what's this case about? What are you doing at headquarters? How come you were not issuing press releases and how come you were not ordering press conferences and pushing back and things like that? And **I was told not to do that**. Then after we wanted to do several things to talk to our people about what this case was about, what it wasn't about, and you know, where we were going and the fact that we were cooperating as much as we could with the committee and with the Department, but **we were restrained from doing that**. And even after your hearings on the -- was it the 16th or whatever that Wednesday was, we wanted to do the same thing, and they said, well, let us read it first. So we finally drafted something and sent it over to them. I don't know whether we ever got it back, but **it has restrained our ability to work with our people** ....[7]

In short, we asked to speak to Mr. Melson months ago. Mr. Melson desired to speak as far back as January. Now that he has shared what he knows with Congress, the Department needs to move from spin mode to disclosure mode.

According to the July 6 letter, Main Justice took over the document production process because it "wanted to ensure that the information being provided to the Committee was accurate, complete and timely."[8] In fact, the Department's management of the process has prevented the Committee from gaining access to documents and information. The Department has repeatedly pointed to the existence of ongoing criminal cases to justify withholding evidence. Yet months

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[7] *Id.* at 110-111 (emphasis added).
[8] Letter of July 6 at 2.

ago, ATF leadership realized that they could have provided information to Congress if they had been allowed to do so:

> [W]e were concerned that the information was not getting to you all. I'm not saying that I would have given you what we call open discovery . . . . [B]ut we don't need to talk -- in order to let you know what's going on, we don't need to talk about [hypothetically] what happened on [a particular date] at the 7-11 parking lot on [a particular] Street in Phoenix. We don't have to get into that type of detail to explain what our role was and what the proposed strategy was, and what we did well and what we did badly, and what we won't do again, and what we have done to fix it. And so there were ways in which I think it could have been handled differently.[9]

The Slow Roll

In your July 6 letter, the Department touted the fact that, "To date, hundreds of thousands of pages of documents have been reviewed for responsiveness and over 2000 pages of documents have either been produced to the Committee or made available for review. . . ."[10] It was also noted that the Department has assigned dozens of attorneys to work on our "extremely broad requests for information about the Operation."[11] Contrary to that assertion, however, our requests have been specific and tailored as narrowly as possible to obtain the necessary information. This is no fishing expedition.

We identified several specific documents for immediate production, yet the Department has refused to produce them. For example, we sought a narrow category of records relating to a key December 17, 2009 meeting between ATF, Arizona U.S. Attorney's Office officials, and a cooperating gun dealer. These documents have yet to be provided or made available for review. The only explanation offered for withholding them has been a vague and undefined assertion that the records are "law enforcement sensitive." Meanwhile, the Department acknowledges that we are already in possession of many more truly sensitive documents that have not been inappropriately disclosed. The December 2009 meeting is critical because it occurred immediately after an unusual spike of activity by the straw buyers in which just a few of them purchased 212 guns in six days, primarily from one cooperating gun dealer. According to witnesses, that meeting was for the purpose of convincing the gun dealer to continue selling to the suspects and continue providing information to the ATF despite misgivings caused by the high volume of purchases. The Department withheld records about that meeting. Yet, we learned from Mr. Melson that a key record purporting to memorialize that meeting was dated sometime *after* the controversy broke. Creating such a record more than a year after the meeting could suggest an attempt to paper the file with an after-the-fact rationalization rather than an honest attempt to record an accurate and contemporaneous account of the meeting. However, we are unable to fully evaluate these issues because the Department is still withholding the documents.

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[9] Melson Tr. at 134.
[10] Letter of July 6 at 2.
[11] *Id.* at 1.

After issuing a subpoena, Chairman Issa wrote numerous letters to ATF and DOJ – dated April 8, April 11, April 20, May 3, May 5, and June 8 – before receiving a single piece of paper responsive to the subpoena that was not already public. It was not until the eve of a hearing in which constitutional law experts testified that contempt proceedings may be necessary that the Department turned over the first non-public documents. On June 10, 2011, we went from having received zero non-public documents to having received just 69 pages of non-public documents. At the time, it seemed like an initial act of good faith. Accordingly, Chairman Issa acknowledged what appeared to be a "breakthrough." Despite being fully aware of this context, in the July 6 letter your staff chose to cite Chairman Issa's comment as evidence of the Department's full cooperation. Acknowledging that the Department had finally provided a few non-public documents is hardly an excuse for withholding the vast majority of documents for months. Nor does it justify continuing to withhold key documents now. It has always been our position that Congress is entitled to receive possession of every single responsive page.

Chairman Issa's acknowledgment of an initial "breakthrough" came *before* we learned that Mr. Melson had identified for the Deputy Attorney General's office certain documents, including a particular report of investigation that he characterized as a "smoking gun."[12] That report is still being withheld. The acknowledgment of a "breakthrough" also came *before* we learned that Mr. Melson identified for the Deputy Attorney General's office information in the wiretap application that contradicted the Department's previous public denials. That information is also still being withheld. Thus, we are disappointed that the Department is now throwing those words back at the Chairman publicly while keeping these important facts secret. This is not productive or conducive to arriving at mutually agreeable accommodations of one another's legitimate interests.

The 2,000 pages of documents made available to date are a tiny fraction – less than one percent – of the documents the Department, by its own admission, has reviewed. This is alarming. If the attorneys working on the Department's response to the Committee spent less time redacting documents and more time producing them, we would be much closer to understanding the failures in leadership surrounding Operation Fast and Furious.

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[12] Melson Tr. at 78-79 (emphasis added). Mr. Melson testified:

> I assigned a task force of agents to read through all the [Reports of Investigation or ROIs] to determine whether or not the allegations that were being made by individuals in CBS and Senator Grassley were true or not, because frankly we didn't think they were true.
>
> They did a review of those and found nothing that would indicate that that was true. I then asked them to bring to me all the ROIs that pertained to [one defendant] in particular and **I read through those and found ROIs that indeed suggested that interdiction could have occurred, and probably should have occurred, but did not occur.**
>
> And it was at that point that I took that ROI and gave it to our people and the Department. In fact, we briefed and gave it to [the Associate Deputy Attorney General with responsibility for ATF] in particular, because to me that was a **smoking gun** that we really needed to look at the rest of this particular case.

The FBI's Role

In its July 6 letter, the Department questioned whether information concerning the involvement of other law enforcement agencies should be provided, yet carefully avoided denying the validity of the concerns raised in our letter. Undoubtedly, all relevant information must be provided. Congress expects a full and complete production of documents responsive to the subpoena issued on March 31, 2011—more than 3 months ago—as well as all documents responsive to related letter requests.

Witnesses have testified that some of the very targets of Operation Fast and Furious – the high-level weapons suppliers to the cartels – may have been paid informants. While this is preliminary information, if true, the implications are dramatic. Not only would this mean taxpayer dollars could have funded those helping to arm Mexican drug cartels, it would also mean ATF unwittingly targeted unindictable defendants:

> Q [W]e've come to learn, not from you but from other witnesses, plural, that the folks immediately up the line from [the straw purchasers and moneymen] are unindictable folks, because they are working with [government agencies]. Is that consistent with your understanding.
>
> A That's consistent with my understanding, yes.
>
> Q That they may be, in fact, FBI informants and they may be receiving money from the FBI, which presents the remarkable situation that you've got the moneyman in this firearms trafficking matter that is perhaps ATF's biggest case in years, a most sophisticated case, you are trying to track money, you are trying to get the cartel contacts, and all along the money is possibly being supplied by an FBI informant. How does that make you as the head of ATF, the head of an agency, how does that make you -- how does that make you feel.
>
> A Well, it makes me feel very torn. Torn between doing my job as a good citizen . . . on the one hand. And on the other hand, representing my agency and not letting my agency be dragged through the dirt unnecessarily. And so – that's why I raised the issue with the IG. That's why I raised the issue with the [Deputy Attorney General], so that it can be handled appropriately. And that's why I continue to defend ATF as a whole, and hope that its agony right now is not compounded by the acts of other agencies in our government.

* * *

> Q So when you shared the information that you obtained with the [Deputy Attorney General], what was the reaction that you got from Mr. Cole.
>
> A His words were, "we'll have to look into this."
>
> Q Does that give you the impression that this was the first time he was learning about it.
>
> A I couldn't draw that conclusion one way or another, although I know that others in the room had been -- I had mentioned that, too, on more than one occasion.
>
> * * *
>
> That's why the issue is so difficult for us in ATF, and why the issue should have been addressed immediately to determine whether there was corrective action that needed to be taken or at least someone informed of what was happening, so we were comfortable in knowing that it wouldn't just unravel at some point and really make us look bad. And the reaction I got from the [Deputy Attorney General]'s office was, oh, we'll get to that after we do the Fast and Furious investigation.[13]

There is no question that this information is relevant to our investigation. Inter-agency cooperation, especially in an Organized Crime Drug Enforcement Task Force (OCDETF) case, is of paramount importance. Any failure to communicate between and among fellow law enforcement agencies is a legitimate subject of public concern and congressional scrutiny. The Department must gather all the relevant documents in its possession related to the role of other law enforcement agencies and provide them without further delay.

<u>The Department's response to this investigation has been a "disaster."</u>

Acting Director Melson was totally frustrated with the Department's handling of the congressional inquiries into Operation Fast and Furious. In his view, the Department was more concerned with protecting its political appointees than with obtaining and sharing the truth. He believed that a more forthcoming approach would have been preferable for all interested parties:

> Q. I will represent to you that the Department came and briefed our staff in May.
>
> A. Yes. And that was in May. And in conjunction with ATF. . . .

[13] *Id.* at 119-123.

Q. Mr. Hoover and [the Associate Deputy Attorney General with responsibility for ATF] came in, and it was a sense by then that this was a case that perhaps warranted some congressional oversight. I think the terminology shared with us was that maybe there is a there there. And I wonder if you recall at what point the Justice Department realized that indeed this was a matter worthy of congressional interest.

A. Well, I don't know that I can say precisely when they thought it was of congressional interest. I might characterize it, and I hope I'm not going too far abroad, but I think they were doing more damage control than anything.

My view is that the whole matter of the Department's response in this case was a disaster. That as a result, it came to fruition that the committee staff had to be more aggressive and assertive in attempting to get information from the Department, and as a result, there was more adverse publicity towards ATF than was warranted if we had cooperated from the very beginning. And a lot of what they did was damage control after a while. Their position on things changed weekly and it was hard for us to catch up on it, but it was very clear that they were running the show.[14]

* * *

Q. What is your -- given your experience with the Justice Department, are you disappointed with the Department as a whole, that this has shaken out as it has.

A. Well, let me say that I am frustrated and disappointed in the way the whole thing has been handled, unfortunately. Of course, this is unfortunately my first experience with something like this with a congressional investigation.

But I think the way it was handled went sideways and it could have been avoided with perhaps a more thoughtful approach to what was going on instead of such a strident approach to it. I think there could have been accommodations made between the Hill and ATF and DOJ has to how information was shared. **It was very frustrating to all of us, and it appears thoroughly to us that the Department is really trying to figure out a way to push the**

[14] *Id.* at 30-31.

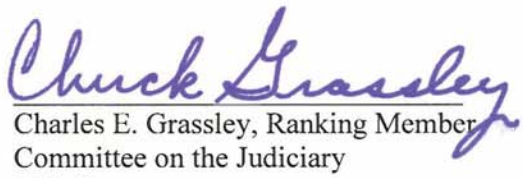
> **information away from their political appointees at the Department.**[15]

The Department should produce the documents identified by Mr. Melson months ago for the Deputy Attorney General's Office as critical to his understanding that the allegations in this case raise valid concerns. Specifically, the Department should not be withholding what Mr. Melson described as the "smoking gun" report of investigation or Mr. Melson's emails regarding the wiretap applications.[16] Mr. Melson said he reviewed the affidavits in support of the wiretap applications for the first time after the controversy became public and immediately contacted the Deputy Attorney General's office to raise concerns about information in them that was inconsistent with the Department's public denials.[17] The Department should also address the serious questions raised by Mr. Melson's testimony regarding potential informants for other agencies. These steps would be far more productive and would advance the Department's interests more effectively than sending a letter that takes Chairman Issa's words out of context and makes unsupported, self-serving, and conclusory assertions of full cooperation.

We are hopeful that this letter clarifies for you and your staff why we believe the Department's response has been unsatisfactory thus far and how we believe the Department could move forward more productively in the future. This should not be a public relations project. It should be a mutual effort to understand how and why the Department allowed American guns to fall into the hands of Mexican drug cartels with deadly consequences. We look forward to increased cooperation as we continue to investigate this matter.

Sincerely,

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



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

cc: The Honorable Elijah E. Cummings, Ranking Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

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[15] *Id.* at 123-124 (emphasis added).
[16] *Id.* at 79.
[17] *Id.* at 36-37.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 18, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 66 pages of documents that we produced to the House Oversight and Government Reform Committee on July 18, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. In addition, we have redacted from multi-subject documents text that is not responsive to your requests. The nature of specific redactions is indicated by a redaction code ("RC") in accordance with the attached index. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 14 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by Committee staff. There are limited redactions of text that would identify investigative targets. In response to Chairman Smith's request, the documents will also be made available for review at the Department by staff of the House Committee on the Judiciary.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member

Pinal County Sheriff's Office

Paul Babeu
Sheriff

To Whom It May Concern:

The Pinal County Sheriff's Office is in receipt of your request for a weapons check concerning "Fast and Furious". Under the direction of Sheriff Paul Babeu we have conducted a weapons inventory focusing on the types of crimes indicated in your request and specific types of weapons you are focusing on. During this inventory search we have located the following weapons which meet your criteria:

Case#	Weapon type	Serial #
110506271	AK	CS05222
110321012	AK	A0342682
110321012	AK	GR2709
110321012	AK	DC031610
110218275	UKN used in homicide	613207
110328008	AK	94112034
110218001	ROMARM AK	1712054
110218136	AK	1985SBH1648
100911064	AK	1706119
100911064	AK	47802000
100223009	AK	1971081762
100128066	AK	1 20490 2001
100216017	WASR AK	18618287
100216017	AK	KR2247-80
110221216	WASR 10 Folder	0699680 (possible hard to read)

If you have any further request/questions for follow up please contact:

HG

Lt. Harry Grizzle
Pinal County Sheriff's Office
520-866-5241
harry.grizzle@pinalcountyaz.gov

971 Jason Lopez Circle Building C * P.O. Box 867 * Florence, AZ 85232
Main (520) 866-6800 * Fax (520) 866-5195 * TDD (520) 868-6810

JUL-20-2011 14:53 P.02/18

MARICOPA COUNTY SHERIFF'S OFFICE

JOSEPH M. ARPAIO
SHERIFF

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

Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

July 20, 2011

Dear Representative Issa and Senator Grassley,

Sheriff Arpaio has asked me to respond to your information request. Enclosed with this letter are the records of the Maricopa County Sheriff's Office that are responsive to your June 2, 2011 request. We have searched our data base for any DR's which would match the three categories set out in your request and have transmitted the face sheets and summaries by facsimile and hard copy letter.

There is no separate criminal code charge for home invasion in the Arizona Criminal Code. We did however; search any DR's which would fit the generally assumed fact pattern for that criminal conduct. If you have any questions, please feel free to contact me at [redacted] or write to me at the address listed above.

Sincerely,

Deputy Director John J. MacIntyre
Maricopa County Sheriff's Office
Wells Fargo Plaza
100 W. Washington, 19th Floor
Phoenix, AZ 85003

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 19, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 53 pages of documents that we produced to the House Oversight and Government Reform Committee on July 19, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. In addition, we have redacted from multi-subject documents text that is not responsive to your requests. The nature of specific redactions is indicated by a redaction code ("RC") in accordance with the attached index. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 21, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Chairman Issa and Ranking Member Grassley:

This responds to your letter to the Attorney General dated July 18, 2011. As an initial matter, we reject the unfounded allegations leveled at the Department and its personnel with regard to the Department's response to the Committee's Fast and Furious investigation. The facts refuting these allegations are set forth at length in our letter to you dated July 6, 2011.

Your most recent criticisms are predicated in large part on selected excerpts from what is represented to be the testimony of Acting Director Melson on July 4. As you know, we have not been provided with a transcript of the Acting Director's interview with Committee staff. In order to allow us to provide an informed response to your criticisms, we ask that you provide us with a transcript of Acting Director Melson's interview.

Other criticisms in your letter are premised on a misapprehension about the materials we have already provided the Committee. For example, your letter states that documents "relating to a key December 17, 2009 meeting between ATF, Arizona U.S. Attorney's Office officials, and a cooperating gun dealer . . . have yet to be provided or made available for review," and that this supposed failure of production demonstrates that the Department has withheld documents and failed to cooperate with your investigation. In fact, the documents you were referring to were physically produced or made available to the Committee weeks prior to your July 18, 2011 letter. The documents are Bates numbered HOGR-ATF A 001105 to 001107; HOGR-ATF A 001672 to 001673; and HOGR-ATF 001665 to 001667.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
Page Two

In addition to providing the transcript to us, we request that you consider providing the transcript to the Department's Acting Inspector General, who is conducting an independent review of Operation Fast and Furious. Since you recently asked that we send copies of all documents we provide to the Committee to the Acting Inspector General, we ask that you consider whether you should provide her with a copy of the transcript of the Acting Director's interview.

The truth-seeking process will be enhanced if the Department is able to respond to your concerns in an informed manner, and we look forward to receiving your response regarding our request for a copy of the transcript of Acting Director Melson's interview.

Sincerely,

Ronald Weich
Assistant Attorney General

cc:

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 21, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 57 pages of documents that we produced to the House Oversight and Government Reform Committee on July 21, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. In addition, we have redacted from multi-subject documents text that is not responsive to your requests. The nature of specific redactions is indicated by a redaction code ("RC") in accordance with the attached index. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 16 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by Committee staff. In response to Chairman Smith's request, the documents will also be made available for review at the Department by staff of the House Committee on the Judiciary.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member

U.S. Department of Justice
Drug Enforcement Administration

Office of the Administrator

Springfield, Va 22152

July 22, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, DC 20515

The Honorable Charles E. Grassley
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letter of, July 15, 2011, regarding the Committee's investigation of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation called Operation FAST AND FURIOUS. Your inquiry seeks a direct response from the Drug Enforcement Administration (DEA), a briefing of your staff, and any related documents and electronic messages meeting established criteria.

DEA is reviewing its role in the OCDETF investigation, and our efforts to identify responsive documents are ongoing. We look forward to providing you with a briefing on DEA's role and deconfliction processes, but we would like to defer the briefing until our document survey and assessment are concluded. In the meantime, we hope that the summary below—based on the preliminary information available to us—will be helpful.

DEA works cooperatively with its federal, state and local partners in support of drug-related aspects of their investigations, in many cases simply sharing investigative expertise and leads or responding to ad hoc manpower requests for an investigative or enforcement operation by the lead agency. Relative to ATF Operation FAST AND FURIOUS, the targeted criminal organization is under investigation through the Organized Crime Drug Enforcement Task Force (OCDETF), whereby the resources and expertise of its member agencies, which include DEA and ATF, are brought to bear for the purpose of disrupting and dismantling the most serious drug trafficking and money laundering organizations and those primarily responsible for the nation's drug supply. Task forces dedicated to this prosecutor-led model of enforcement are known as Strike Forces.

DEA's preliminary review to identify any investigative activity associated with ATF Operation FAST AND FURIOUS revealed that the DEA El Paso Division and Phoenix Division have been indirectly involved in the ATF operation through DEA-associated investigative activity. The DEA El Paso Division responded to a duty call in March 2010 from ATF for assistance in conducting an ongoing surveillance operation in the El Paso area as part of Operation FAST AND FURIOUS.

The DEA Phoenix Division had the most notable associated investigative activity, though DEA personnel had no decision-making role in any ATF operations. During the course of a DEA Phoenix Division investigation conducted in late 2009, which was unrelated to ATF's Operation FAST AND FURIOUS, DEA intercepted conversations pursuant to court authorized electronic surveillance indicating that a subject was involved in the trafficking of weapons and small quantities of drugs. DEA performed a background check and case deconfliction on the subject and telephone number through established mechanisms. During this deconfliction, DEA discovered that the Phoenix ATF Strike Force Group had initiated an investigation in October 2009 on the subject intercepted in the DEA case. Since the subject who was intercepted was not the target of the current DEA investigation and was involved in relatively small scale drug trafficking activities, the DEA group passed the information and an audio copy of the intercepted call to the Phoenix ATF Strike Force Group. On February 19, 2010, the DEA opened a case file and assigned a DEA Special Agent to assist the ATF Strike Force in drug-related aspects of the subject's affiliated weapons and drug trafficking organization.

While we are continuing to develop information responsive to your requests, as noted above, the information currently available to us indicates that the DEA Phoenix Division support during the investigative phase of Operation FAST AND FURIOUS included the following:

- Telephone and address deconfliction through established deconfliction mechanisms.
- Issuance of administrative subpoenas for telephone subscriber information related to telephone numbers identified during the investigation.
- Funding linguist costs in the amount of $128,000 in support of the court authorized electronic intercepts that were conducted by the ATF.
- Assistance in the "round up" phase of the case with the execution of search warrants.
- Assistance in processing four drug exhibits and submission of the same to the DEA laboratory system for evidence processing.
- Participation in defendant debriefings.
- Upon invitation from ATF, participation in the press conference held in Phoenix on January 25, 2011, along with ATF, IRS and the U.S. Attorney's Office, although DEA did not have a speaking role.

DEA does not generally designate particular personnel in the field to serve as liaisons with other federal law enforcement agencies, in part, because DEA agents often work closely with other law enforcement personnel on a routine basis. The Special Agents in Charge (SACs) have responsibility for addressing any unresolved liaison issues and a list of the current SACs in Arizona, New Mexico, and Texas is set forth below.

Phoenix, Arizona Field Division – Acting SAC Douglas Coleman
El Paso, Texas Field Division (Note: New Mexico is within the El Paso Field Division's area of responsibility) – SAC Joseph Arabit
Dallas, Texas Field Division – SAC James Capra
Houston, Texas Field Division – Acting SAC Thomas Hinojosa

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this, or any other matter.

Sincerely,

Michele M. Leonhart
Administrator

cc: The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

DARRELL E. ISSA, CALIFORNIA
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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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JACKIE SPEIER, CALIFORNIA

July 25, 2011

Mr. William J. Hoover
Deputy Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE
Washington, D.C. 20226

Dear Deputy Director Hoover:

On the afternoon of Friday July 22, 2011, a witness scheduled to testify before this Committee at a hearing tomorrow, July 26, 2011, received an intimidating letter from Barry Orlow, Associate Chief Counsel for Field Operations and Information at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) seeking to set certain conditions on the witness's testimony. The letter suggests to the witness the possibility of criminal prosecution for participating in our hearing. It has thus had a chilling effect on the individual's desire to provide complete and candid recollections to Members of this Committee. Fearing reprisals, that witness is now reluctant to testify and has requested that the Committee relieve him of his obligation to appear under subpoena.

The timing and content of this letter strongly suggest that ATF is obstructing and interfering with the congressional investigation into Operation Fast and Furious. Unfortunately, this problem is not new. In April, Senator Grassley expressed his unwillingness to tolerate such behavior in no uncertain terms:

> [A]ttempts to prevent direct communications with Congress are not a lawfully authorized activity of any officer or employee of the United States whose salary is paid with appropriated funds. Specifically, no officer or employee may attempt to prohibit or prevent "any other officer or employee of the Federal Government from having direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress" about a matter related to his employment or the agency "in any way, irrespective of whether such communication or contact is at the initiative" of the employee or Congress.[1]

[1] Letter from Sen. Charles E. Grassley, Ranking Member, Senate Judiciary Committee, to Kenneth E. Melson, Acting Director, ATF (Apr. 8, 2011) (citations omitted).

In response to inquiries about retaliation at the Committee's June 15, 2011, hearing, Assistant Attorney General Ronald Weich said, "The Department of Justice will not, would never, retaliate against whistleblowers."[2] In addition, I sent you a letter following that hearing, noting that "no other ATF employees who cooperate with Congress should face retaliation either."[3] In your response, you assured me that "ATF will not engage in any reprisal against any ATF employee because of his or her having testified before the Committee on Oversight and Government Reform, and will in all respects act towards such employees exactly as they would have had such employee not so testified."[4] Your letter reflected the same promise you made in person to my staff on May 5, 2011, and again at your transcribed interview on July 21, 2011.

ATF's July 22, 2011, letter appears to be an inappropriate effort to intimidate ATF personnel and discourage them from testifying before Congress. Any such action could be construed an unlawful attempt to interfere with a Congressional inquiry.[5] As such, ATF's letter may provide guidance that is contrary to law.

I expect you to abide by your unequivocal promises. Please assure all witnesses personally that they will face no retaliation of any kind for participating in the hearing or for testifying truthfully and completely to the best of their abilities. Anything short of complete cooperation is simply unacceptable.

Sincerely,

Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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

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[2] *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes: Hearing before the House Committee on Oversight & Government Reform*, 112th Cong. 153 (testimony of Hon. Ronald Weich).
[3] Letter from Rep. Darrell E. Issa, Chairman, House Committee on Oversight & Government Reform, to William J. Hoover, Deputy Director, ATF (June 21, 2011).
[4] Letter from William J. Hoover to Chairman Darrell E. Issa (June 28, 2011).
[5] *See* 18 U.S.C. § 1505.

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

Washington, DC 20226

JUL 28 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter to me dated July 25, 2011 regarding a July 22, 2011, letter from Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Associate Chief Counsel Barry Orlow to an ATF special agent who was subpoenaed as a witness before your committee at a hearing, July 26, 2011. Your letter describes the July 22 letter as "intimidating" and states that it "suggests to the witness the possibility of criminal prosecution for participating" in your hearing.

A copy of the July 22 letter is enclosed for your reference. That letter is similar to the standard document provided to ATF witnesses subpoenaed to testify in court and that I understand has been used since ATF became part of the Department of Justice in 2003. It provides guidance to our employees in the event that an attempt is made to compel them to reveal information the disclosure of which is statutorily prohibited, i.e., grand jury information, tax information; and Title III or classified information. Moreover, in an effort to encourage cooperation with the Committee, the letter further provides guidance on the types of information DOJ has already provided to Congress regarding Operation Fast and Furious and that therefore properly is the subject of testimony by the witnesses. These disclosure tenets comport with longstanding DOJ policy. I am also enclosing a copy of DOJ's letter to Senator Grassley, dated April 28, 2011, which explains that the DOJ policies and practices in this regard are consistent with the appropriations statutes Senator Grassley cited in the portion of his April 8 letter that you quote in your letter.

We did not intend -- and do not believe -- the July 22 letter to be in any way "intimidating." In that regard, the first sentence after the introductory paragraph states that the witness "is encouraged to answer fully and candidly all questions concerning matters within his personal knowledge." Moreover, the letter is devoid of any mention of criminal prosecution for participating in your hearing. In any event, ATF remains committed to ensuring that no witness will face retaliation of any kind for participating in the hearing or testifying truthfully and completely to the best of their abilities. I spoke with each of our employees who received the letter to ensure they were so informed.

The Honorable Darrell Issa

We trust that this letter has addressed your concerns. Please do not hesitate to contact me if I may be of further assistance on this matter.

Sincerely yours,

William J. Hoover
Acting Deputy Director

cc: Representative Elijah Cummings
Senator Charles Grassley

Enclosures

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Chief Counsel

Washington, DC 20226
www.atf.gov

Counsel
Federal Law Enforcement Officers Association
1100 Connecticut Ave., NW, Suite 900
Washington, DC 85004

JUL 22 2011

Dear Sir/Madam:

We understand that the House Committee on Oversight and Government Reform has issued a subpoena for your client, Special Agent Carlos Canino, to testify before the Committee at a hearing on July 26, 2011. The Committee's subpoena directs Special Agent Canino to testify about information derived from his employment with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and we understand that he wishes to provide testimony.

In testifying at a hearing before the House Committee on Oversight and Government Reform, Special Agent Canino is encouraged to answer fully and candidly all questions concerning matters within his personal knowledge. His appearance before the Committee does not, of course, relieve him of any obligations of secrecy concerning certain matters arising from his official duties as an ATF Special Agent. For example, he may not reveal any information covered by Rule 6(e) of the Federal Rules of Criminal Procedure relating to matters occurring before a grand jury; tax information; or Title III or classified information. An extended, but not exhaustive, list of such matters may be found in 28 C.F.R. § 16.26. We note that section 16.26 does not apply on its face to Congressional hearings and it is cited only by way of illustration.

In sum, he should not reveal any information prohibited from disclosure by statute, regulation, or court rule. In addition, longstanding Department policy precludes discussing any information regarding the details of any ongoing investigation, such as witnesses; targets or subjects; evidence; the identity of a confidential informant; or investigative techniques. In this instance, the Department has provided documents and other information about the genesis and strategy of Operation Fast and Furious, with particular reference to strategic decisions, if any, about the timing of arrests in connection with alleged sales of firearms to suspected straw purchasers, the legal basis to seize such firearms, and any efforts to track the firearms to individuals higher up the chain of command in firearms and drug trafficking enterprises. Consistent with the limitations above, he is authorized to testify about such matters within his personal knowledge.

Counsel

If you have any questions regarding this matter, please contact me at [redacted]. Your cooperation in this matter is appreciated.

Sincerely Yours,

Barry S. Orlow
Associate Chief Counsel
(Field Operations and Information)

August 2011

Assistant Secretary for Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

August 3, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

Thank you for your July 11, 2011 request for information relating to the murder of Special Agent Jaime Zapata. Special Agent Zapata's death is a loss that has been felt by the entire law enforcement community and DHS in particular. DHS has made, and will continue to make, a concerted effort to ensure proper communication of developments in the case where sharing information will not interfere with the ongoing investigation being conducted by the Federal Bureau of Investigation (FBI). We welcome the opportunity to provide a representative from U.S. Immigration and Customs Enforcement (ICE) to brief you on these matters. Within the constraints of the investigation and ongoing prosecution, we have made every effort to respond to your specific questions.

With regard to items one (mission), three (circumstances), six (reports of investigation), and eight (photographs), which specifically relate to the investigation, we regret that DHS is unable to comment on these questions at this time due to the sensitivities of the ongoing criminal investigation led by the FBI. DHS cannot release information uncovered during the investigation, including answers to the specific questions you asked that could potentially interfere with the successful prosecution of those involved.

With regard to item two (whether Agent Zapata was armed), as this is related to the circumstances of the event under investigation, we must defer to the FBI. With regard to any more general questions related to U.S. Government personnel carrying weapons in foreign countries, we refer you to the Department of State. Because DHS personnel working in Mexico follow the policies and protocols established by the U.S. Embassy in Mexico, the Department of State is the proper entity to address such questions.

We note that ICE is currently in the process of responding to a request for information from the Zapata family. In doing so, ICE is reviewing all Reports of Investigation (ROIs) relating to the incident and will provide responsive information in accordance with applicable laws. We will, of course, be happy to share the results of this review with you as soon as they are available; this will respond to item six of your letter. As mentioned above, however, ROIs relating specifically to the investigation may not be released due to the ongoing investigation. In response to item seven, the Department has not prepared any investigative reports, other than those referenced above.

With respect to items four and five (investigative steps and changes in policy), in coordination with the FBI and Department of Justice, and consistent with ICE policy on review of critical incidents, ICE is undertaking a review of the incident and surrounding circumstances. Finally, ICE continues to work with the Department of State on recommended policies and procedures for Embassy personnel stationed in Mexico. We will be happy to provide additional information on these efforts in a briefing.

We assure you that DHS, and ICE in particular, have made a concerted effort to ensure the Zapata family is aware of developments in the case in a timely manner and answer as many questions as possible within the constraints of the ongoing investigation and prosecution. In addition to the close and continuing relationship ICE San Antonio Special Agent in Charge Jerry Robinette has developed with the Zapata family, ICE leadership, including Director Morton, Deputy Director Kibble, and Homeland Security Investigations Executive Associate Director Dinkins continue to meet with and support the entire Zapata family.

Unfortunately, until such time as the investigation is closed and those responsible for these heinous acts are prosecuted, we are unable to release any information beyond what is outlined above, as it may substantially interfere with efforts to bring the perpetrators of this terrible crime to justice.

Thank you again for your letter. If I can be of any further assistance, please contact me at [redacted] An identical letter has been sent to Chairman Issa, who cosigned your letter.

Respectfully,

Nelson Peacock
Assistant Secretary for
Legislative Affairs

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

JOHN CORNYN
TEXAS

United States Senate

WASHINGTON, DC 20510–4305

August 11, 2011

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

Dear Attorney General Holder:

I write to express my deep concerns regarding press reports of an ATF "gun-walking" program that allegedly operated in the state of Texas. I request that the Department of Justice immediately brief my office regarding the scope and details of any past or present ATF "gun-walking" programs operated in the state of Texas.

As you are aware, recent congressional investigations have revealed the existence of a controversial "gun-walking" program operated by the ATF in Phoenix, Arizona. As a part of that program, known as "Operation Fast and Furious," ATF agents instructed federally licensed firearms dealers to illegally sell more than 1,000 weapons to straw purchasers working for drug cartels in Mexico. These ATF agents were also ordered by their superiors to ignore well-established practice and refrain from interdicting these weapons before they flowed into the hands of Mexican drug cartels. Sadly, this ill-advised program had tragic consequences, with these "walked" weapons showing up at the scene of multiple violent crimes—including the murder of United States Border Patrol Agent Brian Terry.

Unfortunately, the Department of Justice has been less than forthcoming during congressional investigations into the failed "Operation Fast and Furious." For instance, Assistant Attorney General Ronald Weich initially told Congress that the allegation that "ATF sanctioned or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico—is false." Additionally, Acting ATF Director Kenneth Melson told congressional investigators that "ATF's senior leadership would have preferred to be more cooperative" with the congressional investigation of "Operation Fast and Furious," but "Justice Department officials directed [ATF] not to respond and took full control of replying to briefing and document requests from Congress."

I believe it is important that you promptly disclose the details of any past or present Texas-based ATF "gun-walking" program similar to "Operation Fast and Furious." My constituents deserve a full accounting of any such activities in Texas. I look forward to your reply.

Sincerely,

JOHN CORNYN
United States Senator

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

August 12, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Grassley:

Thank you for your letter to Director Mueller, dated July 11, 2011, requesting documents and other information concerning certain FBI activities and their relationship to the Operation Fast and Furious investigation led by the Bureau of Alcohol Tobacco Firearms and Explosives ("ATF"). The FBI has started the process of identifying and reviewing documents responsive to Committee's requests and that process is ongoing; a summary of our preliminary findings are below. As we have discussed with staff, we appreciate the Committee's willingness to work with us to provide information in an appropriate way to protect the integrity of ongoing investigations and to protect sources and methods.

Operation Fast and Furious was an Organized Crime Drug Enforcement Task Force ("OCDETF) investigation led by the ATF. The FBI did not have agents assigned to the Fast and Furious investigation, and at this time, the FBI is not aware of our agents having an operational role in the Fast and Furious investigation. In addition, at this time, the FBI is not aware of our agents authorizing or approving any gun purchases or sales related to Operation Fast and Furious.

The FBI does participate along with other federal law enforcement agencies in the Phoenix OCDETF Local Committee. As a result, the investigative proposal for Operation Fast and Furious was reviewed by the Phoenix OCDETF Local Committee, which has representation from several federal law enforcement agencies including the FBI. OCDETF investigative proposals are subject to approval by this committee, which serves to deconflict potential targets and provide resources for the investigations. We understand that the initial OCDETF proposal for the Fast and Furious investigation, along with later proposals to extend the investigation, have been made available for your review. The initial OCDETF proposal and its extensions make clear that the FBI was not a participating agency in Operation Fast and Furious.

Honorable Darrell Issa and Honorable Charles E. Grassley

Your letter asks questions about whether FBI sources were involved in Operation Fast and Furious, as well as seeking documents related to informant activities. As an initial matter, the discussion of FBI sources and their activities is a particularly sensitive matter, as the safety of those cooperating with U.S. law enforcement is essential to the success of our investigations and to the security of individuals and their families who provide information to federal authorities. As a result, the FBI is severely limited in what it can discuss publicly about sources and their use in particular investigations. At this time, however, the FBI is not aware of any circumstances where the FBI paid, directed, or authorized a source to participate in gun trafficking activities with the targets or subjects of the Fast and Furious investigation as identified in the OCDETF proposal or its extensions. The FBI is continuing to review whether sources had contact with subjects or targets of the Fast and Furious investigations prior to becoming sources, and we will provide an update to the Committee after our review is complete. We are aware of circumstances where the FBI provided information and assistance, including deconflicting targets, sharing intelligence, and giving access to case files and sources, to assist the ATF and other law enforcement agencies related to investigations in the Phoenix OCDETF strike force. We would welcome the opportunity to brief the Committee on this assistance and information sharing in a secure setting, given the need to protect sources and methods and the ongoing nature of investigations. We believe that this briefing will clarify how the FBI deconflicts targets and shares source information with other law enforcement agencies, as well as answer the specific questions in your letter.

Your letter also asks for specific information related to the crime scene and events leading to the murder of ICE Agent Jaime Zapata in Mexico on February 15, 2011. As you know, crime scene evidence and the circumstances of a crime are generally not made public in an ongoing investigation. Furthermore, the investigative reports of an ongoing investigation are kept confidential during the investigation to preserve the integrity of the investigation and to ensure its successful conclusion. We regret that we cannot provide more details about the investigation at this time, but we need to ensure all appropriate steps are taken to protect the integrity of the investigation.

We look forward to working with you and your staff to answer your questions related to your investigation.

Sincerely,

Stephen D. Kelly
Assistant Director
Office of Congressional Affairs

1 - Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

1 - Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Congress of the United States
Washington, DC 20510

August 16, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

We received your letter of July 21, 2011,[1] which responded to our letter of July 18, 2011. In your letter, you ask that we provide both the Justice Department and the Office of Inspector General (OIG) the transcript of the July 4, 2011 interview of Acting Director Kenneth Melson conducted by Committee staff. Since the OIG is supposed to be conducting an independent inquiry, it seems odd that the Department would make a document request on behalf of that office. We presume that if the OIG would like to make such a request, it is capable of doing so on its own initiative. However, we have not received any such request from the OIG.

As you know, your agreement with Senator Grassley on proceeding with voluntary interviews of Department personnel stipulated you would not seek "immediate possession of interview transcripts."[2] One of the many goals served by this provision of our agreement was to accommodate the Department's concerns about our inquiry providing defense counsel with specious arguments regarding discovery obligations under *Brady.*[3] Additionally, given that Mr. Melson chose to appear outside the presence of Department lawyers, we intend to respect his decision and would hope that you would as well.

We all have mutual interests in facilitating successful criminal prosecutions, maintaining the integrity of our inquiry, guarding the independence of the OIG's inquiry, and fostering candid, direct communications with Congress. Therefore, we respectfully request that you abide by your previous commitment not to seek possession of interview transcripts at this time, including the transcript of Mr. Melson's interview as well as the transcripts of future interviews.

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[1] Letter from Asst. Att'y Gen. Ronald Weich, Dep't of Justice, to Chairman Darrell Issa & Ranking Member Charles Grassley (July 21, 2011).

[2] "Good Faith First Steps," term sheet used during negotiations between Attorney General Holder and Senator Grassley (June 7, 2011).

[3] *Brady v. Maryland*, 373 U.S. 83 (1963). Prosecutors have a duty to disclose exculpatory material in the custody of other prosecuting agencies. *U.S. v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989). However, Congress is not a prosecuting agency, and we are not in possession of any exculpatory material. *U.S. v. Trie*, 21 F. Supp. 2d. 7, 25 n.17 (D.D.C. 2005) ("The Congress is not an 'agency' and the DOJ has no obligation under *Brady* to disclose information in the possession of Congress that is not also in the possession of the DOJ or [another executive branch agency].").

Your agreement with Senator Grassley also stipulated that "*responsive*, written answers to *each subpart of each question* for the record related to the ATF controversy submitted by Senator Grassley" would be provided on an expedited basis.[4] While we received a reply to that request on July 22, it did not contain answers to each subpart of each question. Moreover, many of the answers were non-responsive. For example, Question 37(a) asked whether you had read the ATF briefing paper which states, "Currently, our strategy is to *allow the transfer of firearms to continue to take place*." There is no response enumerated specifically to subpart (a) of Question 37. Rather, the first sentence of what purports to respond to subparts (a) through (d) of Question 37 says, "The Department is aware of the briefing paper." Simply put, that does not answer the question.

Moreover, there is no enumerated response to subpart (b) of Question 37, which asked whether the briefing paper was "ever provided to the Deputy Attorney General's Office or any other component of the Justice Department other than ATF" and if so to describe the circumstances in detail. The second sentence of the response to subparts (a) through (d) is presumably meant to reply to subpart (b). However, it is so vague and incomplete as to be non-responsive to the question. It says merely that "based on information presently available, Justice Department officials outside of ATF became aware of the briefing paper in connection with" the House Committee investigation. That may be true and somewhat related to the question, but it falls far short of being responsive. Whether *some* unnamed DOJ officials may have learned of the briefing paper during the Congressional investigation in 2011 tells us nothing about which other officials at Department components outside ATF may have received the briefing paper in 2010.

Subpart (g) of question 37 asked for the names of *each official* who reviewed a draft of the February 4, 2011 letter to Senator Grassley. The reply failed to answer the question, stating only that the Department "followed its standard practice" in drafting the letter and seeking input from other components. Moreover, the replies to questions 43, 44(a-b), and 45(a-b) merely refer back to responses from earlier questions that are non-responsive and merely indicate that the Department is producing documents that "may relate to this matter."

Perhaps the most troubling reply is to question 49(a), which asked how many Fast and Furious weapons have been recovered in connection with violent crimes in the United States, other than the guns recovered from the Brian Terry murder scene. The question specifically asked you to "describe the date and circumstances of each recovery in detail." However, the reply fails to do so. It indicated that there are 11 instances of Fast and Furious guns recovered in the United States in connection with violent crimes. However, the reply also claimed that "ATF does not have complete information available to respond to the question." Regardless of whether "complete information" is available, it seems clear that much more information could easily have been provided.

---

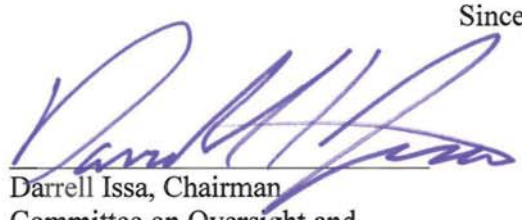
[4] "Good Faith First Steps," term sheet used during negotiations between Attorney General Holder and Senator Grassley (June 7, 2011) (emphasis added).

The answer states that "when a law enforcement agency submits a trace request, the information provided by the law enforcement agency does not indicate if the firearm recovered has been *used* in connection with a violent crime" (emphasis added). However the question was not phrased in terms of firearms used in connection with a violent crime. It was phrased in terms of firearms recovered in connection with a violent crime. Yet the answer leads the reader to believe that there is no additional information available from the trace request. At a minimum, the date of the request, the jurisdiction submitting the request, the make and model of the weapon, and the serial number of the weapon could have been provided, since all of that information is available from the trace request.

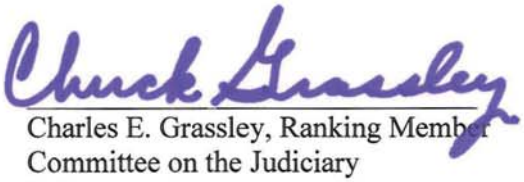
More troubling than the failure to provide those requested details, however, is that the answer adds the element of whether the firearm was "used" even though that was not an element of the question. That addition serves to obscure key information about the content of trace requests. Contrary to the implication in the reply, law enforcement agencies actually do indicate as part of a trace request whether the firearm was recovered in connection with a violent crime. One of the required data elements of a trace request is the National Crime Information Center (NCIC) crime code. The NCIC crime code indicates whether the weapon was recovered in connection with a "homicide" or other specific violent crimes. Yet, the Department's reply to question 49(a) leads the reader to believe that such information is unavailable.

We are disappointed that the Department has chosen to play word games rather than simply responding with as much detail as possible about these additional 11 cases. Our staff inquired about this matter on July 27, and it is our understanding that the Department is working on a correction to the answer provided to Question 49(a). However, it has been nearly three-and-a-half months since the initial inquiry and nearly three weeks since the follow-up inquiry. Accordingly, as our staff previously requested, please provide unredacted copies of all records related to these 11 trace requests.

Sincerely,



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



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

cc: The Honorable Elijah E. Cummings, Ranking Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

U.S. Department of Justice

United States Attorney
District of Arizona

Two Renaissance Square
40 N. Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408

(602) 514-7500
FAX: (602) 514-7693

The President
The White House
Washington, D.C.

Dear Mr. President:

I want to thank you for the extreme honor of serving my country and the Department of Justice as the United States Attorney for the District of Arizona for the last two years.

My office has made considerable progress during my tenure in prosecuting cases in the areas of border security/immigration, Indian Country and White Collar fraud as well as the creation of the first Civil Rights Unit in this District. We have made unprecedented gains in so many areas. I am very proud of the dedication and success of the employees in this office. They epitomize public service.

Nonetheless, I believe it is an appropriate time for me to step down so that the office can continue its progress under new leadership. I will assist in any and all aspects of transition.

It has really been an extreme pleasure to serve you in this Administration and I am confident this office will continue in its immense success and impact.

Sincerely,

Dennis Burke

DENNIS K. BURKE
United States Attorney
District of Arizona

cc: The Honorable Eric H. Holder, Jr.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 31, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Issa and Senator Grassley:

This corrects and updates information provided in our original responses to Questions for the Record (QFRs) of the Senate Judiciary Committee Hearing on May 4, 2011. In particular, we would like to correct and update the information provided in our original responses to QFRs 49(a) and (b) on July 22, 2011. In addition, and in response to your letter dated August 16, 2011, we are reviewing information about the circumstances of recoveries of firearms related to Operation Fast and Furious. We will supplement this response with appropriate information as soon as possible.

Our original response to QFR 49(a) stated that, as of May 26, 2011, "ATF is aware of eleven instances where a recovered firearm associated with this case was recovered in connection with a crime of violence in the United States." That answer mistakenly combined the total number of known traces for such recoveries in the United States and Mexico, instead of providing the number for the United States alone, as the Question requested. Moreover, the response included the two firearms recovered at the scene of the tragic death of Border Patrol Agent Brian Terry, even though the Question asked that those firearms be excluded. In fact, beyond these two firearms, ATF is aware of only one instance where a firearm associated with Operation Fast and Furious was traced and coded as recovered in connection with a crime of violence in the United States.

In our first response, we also erroneously included one firearm which, when recovered in the United States in connection to Operation Fast and Furious, was traced with a non-violent crime code. The error stemmed from a previous trace of the same firearm in May 2009, before

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
Page Two

Operation Fast and Furious began, to a purchaser unconnected with Operation Fast and Furious, which used a domestic violence crime code. The other seven traces included in the eleven firearms reported in our original answer involved recoveries in Mexico, not in the United States.

In response to QFR 49(b), ATF advises that, as of August 16, 2011, it has identified twenty-one additional firearms associated with Operation Fast and Furious that were recovered in Mexico and reportedly were associated with violent crimes. As further firearms are traced and additional analysis of recoveries occurs, ATF advises that additional firearms associated with Operation Fast and Furious may be identified.

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc:

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 31, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy:

This corrects and updates information provided in our original response to Questions for the Record (QFRs) of the Senate Judiciary Committee Hearing on May 4, 2011. In particular, we would like to correct and update the information provided in our original responses to QFRs 49(a) and (b) on July 22, 2011. We are reviewing information on the circumstances of recoveries of firearms related to Operation Fast and Furious, as requested in questions 49(a) and 49(b), and will supplement this response further. In the interim, we request that you include the information below in the record of the hearing as a formal correction of our previous response.

Our original response to QFR 49(a) stated that, as of May 26, 2011, "ATF is aware of eleven instances where a recovered firearm associated with this case was recovered in connection with a crime of violence in the United States." That answer mistakenly combined the total number of known traces for such recoveries in the United States and Mexico, instead of providing the number for the United States alone, as the Question requested. Moreover, the response included the two firearms recovered at the scene of the tragic death of Border Patrol Agent Brian Terry, even though the Question asked that those firearms be excluded. In fact, beyond these two firearms, ATF is aware of only one instance where a firearm associated with Operation Fast and Furious was traced and coded as recovered in connection with a crime of violence in the United States.

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The Honorable Patrick Leahy
Page Two

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Sincerely,

Ronald Weich
Assistant Attorney General

cc:

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

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Associate General Counsel
GEORGIA DEPLAS
Associate General Counsel

JON ADLER
President
NATHAN CATURA
Executive Vice President

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 pinion on the situation. It now appears to GS Forcelli that an 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 it 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 Sinaloan 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,

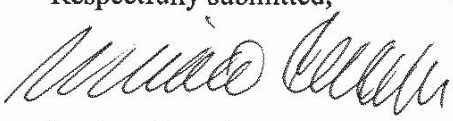
who are more intent on diverting blame, than holding some of their own accountable. The options which ATF management have heretofore given GS Forcelli would not adversely affect him financially, though he believes same were given in good faith (should they come to fruition). Assignments which have been 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

September 2011

Congress of the United States
Washington, DC 20510

September 1, 2011

The Honorable Ann Birmingham Scheel
Acting U.S. Attorney for the District of Arizona
Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, AZ 85004-4408

Dear Ms. Scheel:

We understand that you are currently the Acting U.S. Attorney for the District of Arizona. As you are undoubtedly aware, many questions about your office's role in Operation Fast and Furious remain unanswered.

The level of involvement of the United States Attorney's Office for the District of Arizona in the genesis and implementation of this case is striking. Operation Fast and Furious was a prosecutor-led Organized Crime Drug Enforcement Task Force (OCDETF) Strike Force case. The congressional investigation has revealed that your office, and specifically Assistant United States Attorney (AUSA) Emory Hurley, played an integral role in the day-to-day, tactical management of the case. In fact, Mr. Hurley served as a prosecutor on this case until very recently.

Witnesses have reported that AUSA Hurley may have stifled ATF agents' attempts to interdict weapons on numerous occasions. Many ATF agents working on Operation Fast and Furious were under the impression that even some of the most basic law enforcement techniques typically used to interdict weapons required the explicit approval of your office, specifically from AUSA Hurley. It is our understanding that this approval was withheld on numerous occasions. It is unclear why all available tools, such as civil forfeitures and seizure warrants, were not used in this case to prevent illegally purchased guns from being trafficked to Mexican drug cartels and other criminals. We have further been informed that AUSA Hurley improperly instructed ATF agents that they needed to meet unnecessarily strict evidentiary standards merely in order to temporarily detain or speak with suspects.

It is essential for Congress to fully understand your office's role in Operation Fast and Furious. Therefore, please provide documents and communications of the following individuals in your office regarding Operation Fast and Furious:

1) Dennis Burke, former U.S. Attorney for the District of Arizona

2) Ann Scheel, Acting U.S. Attorney for the District of Arizona

3) Emory Hurley, Assistant United States Attorney

4) Michael Morrissey, Assistant United States Attorney

5) Patrick Cunningham, Chief of the Criminal Division

6) Robert Sherwood, Spokesperson

The requested documents include e-mails, memoranda, briefing papers, and handwritten notes. They should also include communications between and among the individuals listed above and any ATF or Department of Justice employee regarding Operation Fast and Furious between October 1, 2009 and the present.

In addition, it is imperative that the Committee have an opportunity to discuss the facts above with individuals in your office who are familiar with the details of this operation. It is not our intention to second guess day-to-day decisions of your staff, but rather to make sense of them. The Attorney General has said that "letting guns walk is not something that is acceptable. . . . We cannot have a situation where guns are allowed to walk, and I've made that clear to the United States Attorneys as well as the agents in charge of various ATF offices."[1] Operation Fast and Furious is unique in that guns were allowed to walk with the apparent knowledge of, and authorization by, officials in your office.

Although our staffs spoke two weeks ago with then-U.S. Attorney Dennis Burke, he was unable to answer detailed questions about what his subordinates knew about the case. Given the national and international implications of the Fast and Furious scandal, Congress has an obligation to find out to what extent other individuals in your office were involved. To further that goal, we now request transcribed interviews with the following individuals from your office:

1) Emory Hurley, Assistant United States Attorney

2) Michael Morrissey, Assistant United States Attorney

3) Patrick Cunningham, Chief of the Criminal Division

<u>The Terry Prosecution</u>

Your office's recent court filing in opposition to the rights asserted by the family of slain Border Patrol Agent Brian Terry under the Crime Victims' Rights Act (CVRA) is disquieting.[2] In Mr. Burke's transcribed interview, he acknowledged that the office had never previously filed such a motion, and he wished he had handled it differently. In the motion, your office asserts: "Defendant Avila's offenses are too factually and temporally attenuated from the murder – if connected at all."[3] Your office's filing asked the court to deny the Terry family basic rights as

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[1] *Hearing on the FY 12 Dept. of Justice Budget: Hearing Before the Subcomm. on Commerce, Justice, Science, and Related Agencies of the S. Comm. on Appropriations,* 112th Cong. (2011) (testimony of Eric H. Holder, Jr., Att'y Gen. of the United States).
[2] *See* 18 U.S.C. § 3771.
[3] Pl. Resp. to Mot. to Intervene on Behalf of Victims of a Crime, U.S. v. Avila, et al., No. 11-126 (D. Ariz. Aug. 8, 2011).

crime victims due to the lack of a connection between the cases. Yet in Mr. Burke's transcribed interview, he readily admitted the connection and stated that he believed they *should* be extended rights as crime victims under CVRA, although not as intervening parties. This contradicts the basic premise of your office's opposition brief, namely that the Terry family should not be treated as victims of Avila's crimes.

We find it difficult to understand why anyone would oppose the Terry family's motion on the grounds that there is potentially no connection at all between the case against Mr. Avila and the case against Agent Terry's murderers. As you know, two firearms recovered at the Terry murder scene were traced to a purchase by Jaime Avila on January 16, 2010.[4] Although it is the general practice of your office to obtain indictments prior to arrest, it was obviously imperative to arrest Mr. Avila immediately upon learning that the trace results linked the weapons he purchased to the murder scene. In fact, Jaime Avila was in custody less than four hours after this trace was completed.[5] The speed of Avila's arrest contradicts the claims that there was not enough evidence to legally arrest straw purchasers earlier in Operation Fast and Furious. It also shows that your office understood the nexus between Mr. Avila and the Terry murder instantly.

Indeed, ATF immediately prepared a criminal complaint for Mr. Avila stemming from the January 16, 2010 purchase.[6] That charge was ultimately delayed, however, until it appeared in Count 7 of the January 19, 2011 indictment, which alleges that Mr. Avila purchased these weapons illegally.[7] Instead, Avila was initially charged with other violations. Your subordinate, AUSA Hurley, apparently engaged in communications about that decision in the hours after Agent Terry's death that both contemplated the connection between the two cases and sought to prevent the connection from being disclosed. According to an ATF e-mail documenting communications with Mr. Hurley, the motivation behind initially charging Avila with firearm offenses unrelated to the weapons found at the murder scene was to not "complicate" the FBI's investigation.[8] Worse yet, AUSA Hurley signed your office's recent motion to the court denying the connection between the two cases despite apparently working with ATF agents to conceal the connection in the days and weeks following the murder of Agent Terry.[9]

Furthermore, AUSA Hurley has since acknowledged this nexus. In a January 28, 2011 memorandum to Mr. Burke, Mr. Hurley clearly demonstrates his understanding of the connection between Mr. Avila's purchase and its connection to the Terry murder: "The two AK-47 type rifles associated with the U.S. Border Patrol shooting, specifically two ROMARM WASR-10 7.62x39mm rifles . . . were purchased by Jaime Avila, Jr., (AVILA) on Friday, January 16, 2010."[10] Moreover, at the time of Avila's straw purchases, he was known to be working with Uriel Patino. Patino previously purchased weapons that had been recovered in Mexico in connection with drug trafficking organizations as early as November 2009.[11] He and

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[4] E-mail from George T. Gillett, Jr. to William D. Newell (Dec. 15, 2010) [Attachment 1].
[5] E-mail from William D. Newell to David J. Voth, et al. (Dec. 15, 2010) [Attachment 2].
[6] E-mail from George T. Gillett, Jr. to William D. Newell (Dec. 16, 2010) [Attachment 3].
[7] U.S. v. Jaime Avila, Jr., et al., No. 11-126 (D. Ariz. Jan 19, 2011).
[8] E-mail from David J. Voth to William D. Newell, et al. (Dec. 16, 2010) [Attachment 4].
[9] *Id.*
[10] Memorandum from Emory Hurley to Dennis K. Burke re: Jaime Avila, Jr. (Jan. 28, 2011) [Attachment 5].
[11] ATF Firearms Trace Summary, Nov. 30, 2009; ATF Firearms Trace Summary, Nov. 30, 2009 [Attachment 6].

Avila had visited a cooperating gun dealer together on November 24, 2009; the dealer provided contemporaneous notice to ATF, which dispatched surveillance.[12] Clearly, your office and ATF did not suddenly develop probable cause to arrest Avila in the hours after Agent Terry died. Your office could have done so much earlier, perhaps even before Avila purchased the weapons that were later found at the murder scene. In light of this information, it appears that your office has a direct interest in avoiding or minimizing these facts.

Additionally, given your office's entanglement in Operation Fast and Furious, we remain concerned that the current prosecution team on the Terry murder might be hesitant to develop additional evidence on other potential defendants who may have ties to Operation Fast and Furious. Witnesses in the congressional investigation have related that the suspects in the Terry criminal case told law enforcement officers they obtained the weapons found at the murder scene in backpacks that were stashed in a hiding place near the scene. A thorough prosecution would identify the accomplices who placed the weapons-filled backpacks near the scene and bring appropriate charges against them.

Since your office directed and approved the daily tactical decisions in Operation Fast and Furious, it is hard to avoid the perception that a conflict of interest exists. Your office's unusual intervention in the motion filed by the Terry family heightens that perception.

Please provide the requested documents and information as soon as possible, but no later than noon on September 14, 2011. If you have any questions regarding these requests, please contact Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. We look forward to receiving your response.

Sincerely,

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

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

cc: The Honorable Elijah E. Cummings, Ranking Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

[12] ATF Case Management Log, Case 785115-10-[redacted], 11/24/2009; *see also* Testimony of Sen. Charles Grassley before House Oversight and Government Reform Committee, Jun. 15, 2011, at 3.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 1, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 193 pages of documents that we produced to the House Oversight and Government Reform Committee on September 1, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. In addition, we have redacted from multi-subject documents text that is not responsive to your requests. The nature of specific redactions is indicated by a redaction code ("RC") in accordance with the attached index. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure.

We have also located an additional 36 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by Committee staff. There are limited redactions of text that would identify investigative targets, sensitive techniques, and sensitive information about pending investigations. In response to Chairman Smith's request, the documents will also be made available for review at the Department by staff of the House Committee on the Judiciary.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member

PAUL G. CASSELL
Ronald N. Boyce Presidential Endowed Chair in Criminal Law
[redacted]

September 2, 2011

The Honorable Charles E. Grassley
Ranking Member, Committee on the Judiciary
135 Hart Senate Office Building
United States Senate
Washington, DC 20510

Dear Ranking Member Grassley:

I am writing in regard to your September 1, 2011, letter to Hon. Ann Birmingham Scheel, Acting U.S. Attorney for the District of Arizona. The letter expresses concern about the Office's opposition to efforts by the family of slain Border Patrol Agent Brian Terry to assert rights under the Crime Victims' Rights Act (CVRA), ostensibly because of "attenuation" between the crime and the Agent Terry's murder. The letter also notes that the Office may be withholding information from the family of Agent Terry.

I am writing to express my concern that the actions of the U.S. Attorney's Office in the *Terry* case are to be part of a larger pattern by the Justice Department to prevent crime victims from receiving their rights under the CVRA. I urge you to investigate whether the Department is withholding evidence from crime victims that might enable them to assert their CVRA rights in court.

I first wanted to call to your attention to a similar effort by the Justice Department to prevent the family of a slain woman to assert her rights under the CVRA several years ago here in Utah. Ken and Sue Antrobus were prevented from obtaining rights under the CVRA to deliver a victim impact statement at the sentencing of the man who illegally sold the murder weapon to the killer. As in the *Terry* case, in the *Antrobus* case the Justice Department alleged that any connection between the illegal fireman sale and the death was too "attenuated" to allow the Antrobuses to have rights. Most troubling, however, it appears that the Justice Department withheld evidence in that case which would have proven the clear and foreseeable connection between the illegal sale and the ultimate death. The details of this suppression of evidence are discussed at length in my law review article, *Protecting Crime Victims in Federal Appellate Courts: The Need to Broadly Construe the Crime Victims' Rights Act's Mandamus Provision*, 87 DENV. U.L. REV. 599, 605-14 (2010).

Another example of Justice Department suppression of evidence is currently taking place in the Southern District of Florida. In *Jane Doe #1 and Jane Doe #2 v. United States*, No. 08-80736-CV-Marra/Johnson, the Justice Department is withholding relevant evidence that would allow two victims of sexual assault to prove that the Government violated their

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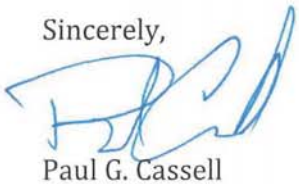
CVRA rights by not informing them of a non-prosecution agreement reached with a politically-connected billionaire, Jeffrey Epstein. The victims have repeatedly attempted to work out a resolution of the case with the U.S. Attorney's Office, but the Office has broken off settlement discussions. This has forced the victims to file a motion for enforcement of their rights (copy attached) as well as a motion for an order directing the U.S. Attorney's Office not to withhold relevant evidence (copy attached). As you will see from review of these briefs (which I helped to draft), it is quite clear that the U.S. Attorney's Office is withholding evidence that would help the victims prove their claims. And this withholding of evidence is taking place in clear contravention of the direction in the CVRA that the Justice Department employees "shall make their best efforts to see that crime victims are notified of, and according, the rights described in [the CVRA]." 18 U.S.C. § 3771(c)(1).

I am gravely concerned that a similar suppression of evidence may be occurring in the Terry case. For this reason, I have recently joined the legal team seeking to protect the Terry family's rights. I hope that you will prevent any suppression of evidence from occurring in this case. More generally, I hope that you will investigate ways in which crime victims can obtain information from the Justice Department that is necessary to obtain protection of their rights under the CVRA in all CVRA cases.

I would be glad to discuss these issues at greater length with you or your staff if you would find it helpful. I have been involved in pro bono CVRA litigation around the country and believe that the Government is not meeting its obligation to use its "best efforts" to help crime victims obtain their rights under the CVRA.

Sincerely,



Paul G. Cassell
Ronald N. Boyce Presidential Professor of Criminal Law

Enclosures (3)

cc: The Honorable Darrell Issa, Chariman
U.S. Senate, Committee on Oversight and Government Reform

GUS M. BILIRAKIS

Congress of the United States

House of Representatives

Washington, DC 20515-0909

September 06, 2011

Mr. Eric H. Holder, Jr.
Attorney General
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Holder:

Earlier this summer, I wrote to share with you my deep concern regarding reports that the Department of Justice (DOJ) and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) had participated in multiple acts of "gun walking," allowing firearms to pass from straw purchasers into the possession of criminal and other dangerous third party organizations. Since that time, further reports and developments have only deepened my concerns regarding the activities and conduct of the leadership within the DOJ and ATF.

As a Member of Congress, I strongly support efforts to disrupt criminal syndicates that traffic firearms and drugs, and conduct other illicit and illegal activities. However, when those efforts serve to fuel the operations of criminal enterprises through the provision of firearms, they must be stopped. It is extremely troubling that the United States government would willfully allow weapons to be acquired by dangerous criminal and drug trafficking organizations, in direct contravention of our strategic and national interests.

When I last wrote to you, I raised a number of concerns regarding reports that DOJ's and ATF's gun walking practices may have extended beyond the area of the southwestern United States and our border with Mexico. Having gone unanswered, many of those questions still stand. I therefore still await your answers to the following questions:

1. Can you confirm whether or not ATF field divisions, other than the Phoenix Field Division, and/or any other Department of Justice office participated in gun walking schemes that allowed weapons to be trafficked outside of the United States?
2. If so, does the DOJ or ATF have knowledge of any of these firearms ending up in the possession of criminal gangs?
3. How many firearms were allowed to pass outside of the United States and how many have since been accounted for?
4. Were trafficked weapons subject to any special monitoring processes once they left the United States?

5. Has the DOJ or the ATF established any criteria or guidance pertaining to what is admissible for future operations aimed at preventing firearms from being obtained and used by dangerous foreign criminal organizations in crimes similar to the murder of U.S. Border Patrol Agent Brian Terry?

As I previously noted to you, it is my belief that the ATF and the DOJ operated in an extremely misguided manner in allowing weapons to walk across the border and end up in the possession of dangerous criminal organizations. These actions have resulted in the loss of human life and property. I hope that you would agree that we must not allow flawed programs to continue to operate to the detriment of the safety and security of the United States of America.

It has now been nearly two months since I first expressed my concerns and questions to you regarding these practices and reports. The replacement of ATF leadership and a United States Attorney is a first step towards restoring the public's faith and trust that the DOJ is competently taking actions to ensure the public's safety against foreign and domestic threats and that it will defend the interests of the United States according to the law. However, at its worst, the lack of response and forthrightness to Congressional inquiries regarding troubling reports about the DOJ demonstrates a disconcerting ambivalence towards the representative branch of government. At best, it represents a lost opportunity to put to rest a troubling chapter within the DOJ.

In this regard, I look forward to receiving your response in a timely manner.

Respectfully,

GUS BILIRAKIS
Member of Congress

JOHN McCAIN
ARIZONA

COMMITTEE ON ARMED SERVICES
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
COMMITTEE ON INDIAN AFFAIRS

United States Senate

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SUITE 103
TUCSON, AZ 85701
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TELEPHONE FOR HEARING IMPAIRED
(602) 952-0170

September 7, 2011

Senator Joseph Lieberman, Chairman
Senator Susan Collins, Ranking Member
U.S. Senate Homeland Security and
Governmental Affairs Committee
340 Dirksen Senate Office Building
Washington, DC 20528

Dear Chairman Lieberman and Ranking Member Collins:

As a member of the Senate Homeland Security and Governmental Affairs Committee, I am writing to request the committee hold a hearing concerning the Southwest Border that is of great importance to the State of Arizona and the nation.

As you are aware, Operation Fast and Furious was created in order to identify Mexican drug cartel leaders and gun-smuggling operations and routes across the border. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) allowed straw purchasers to buy weapons in the U.S. and planned to track the guns to Mexico and drug cartel leaders. Unfortunately this programs appears to have been ill conceived and poorly implemented. As a result many of the weapons vanished and turned up at crime scenes in Mexico and the U.S., including at the killing of U.S. Border Patrol agent Brian Terry in Arizona last December.

Last week additional information was released concerning Operation Fast & Furious that raises yet more questions over the decision making process behind the operation. The Committee must exercise its oversight authority to ensure further damage from this operation does not persist. I request the Committee hold a hearing as soon as possible to examine these new revelations and determine what additional measures are needed to help prevent this type of malfeasance from occurring again.

I believe the Committee should hear from the Attorney General of the United States, the Secretary of Homeland Security, and the Acting Director of the ATF. I hope you will schedule this hearing immediately and respectfully request that these witnesses be invited to testify.

Thank you for considering my requests and I look forward to hearing from you.

Sincerely,

John McCain

John McCain
United States Senate

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U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC 20226

SEP 08 2011

Chairman Darrell Issa
United States House of Representatives
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Chairman Darrell Issa,

On June 28, 2011, I voluntarily appeared before your investigative team for a transcribed interview. On July 26, 2011, I voluntarily testified before the Committee on Oversight and Government Reform. Both of these interactions involved your investigation into the Bureau of Alcohol, Tobacco, Firearms and Explosives' Operation Fast and Furious.

On August 10, 2011, I received a letter from you requesting answers to additional questions. The majority of these questions involve some type of clarification to previous answers I had given both to your investigative team and your committee. Over the past few weeks, I have attempted to answer these questions but I have found that impossible without unfettered access to the transcripts of both my interview and the hearing testimony. I have also conferred with agency counsel and we both believe that to ensure I accurately and thoroughly respond to your questions, I require the official transcripts of both of these events.

I know we both want the review of Operation Fast and Furious to be thorough and complete. For me to do my part, I require copies of the above transcripts. Once I receive these copies, I will be able to completely answer your questions within a two week period.

I thank you for your assistance in this matter.

Sincerely,

William McMahon

Congress of the United States
Washington, DC 20515

September 9, 2011

Via Electronic Transmission

The Honorable Thomas E. Donilon
Assistant to the President and National Security Advisor
The White House
Washington, DC 20500

Dear Mr. Donilon:

For more than six months we have been investigating a case conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) called Operation Fast and Furious. New e-mails provided to the Committee by the Justice Department last week raise additional questions about which White House personnel were apprised of Operation Fast and Furious.

According to the e-mails, William Newell, at the time the Special Agent in Charge of ATF's Phoenix Field Division, provided regular updates to Kevin O'Reilly, Director of North American Affairs on the National Security Council staff, as early as the summer of 2010.[1] In July 2010, Newell wrote to O'Reilly about "the 'large OCEDTF case' I mentioned." Newell had been aware for at least three months that one of the straw purchasers in Fast and Furious who had been allowed to buy nearly 700 firearms while under investigation by ATF was on food stamps,[2] and pointed out: "When a 22 year old kid on State [sic] financial assistance walks into a gun store and plops down $12,000 in cash to buy a tripod mounted .50 caliber rifle that's a clue (even for us) that he's involved in trafficking firearms for a Mexican DTO."[3] It is therefore clear that the case Mr. Newell and Mr. O'Reilly were communicating about was Fast and Furious.

In addition, the newly produced e-mails indicate that O'Reilly asked to share information about Operation Fast and Furious with others, such as Dan Restrepo, a Special Assistant to the President and a Senior Director for Western Hemisphere Affairs at the National Security Council, and Greg Gatjanis, Director for Terrorist Finance and Counternarcotics. Newell replied, "Sure, just don't want ATF HQ to find out, especially since this is what they should be doing (briefing you)!"[4]

In light of these e-mails, we ask that you provide all records involving the following current or former White House staff members related to: (a) Operation Fast and Furious; (b) any ATF gun trafficking cases in Phoenix, Arizona, and; (c) communications with ATF Phoenix Field Division personnel:

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[1] *E.g.*, e-mail from William D. Newell to Kevin M. O'Reilly (Aug. 9, 2010, 9:17 am) (HOGR ATF – 002674).
[2] "Operation Fast and Furious Exit Strategy," attachment to e-mail from William D. Newell to William G. McMahon (Apr. 27, 2010) (HOGR ATF – 001178).
[3] E-mail from William D. Newell to Kevin M. O'Reilly (Jul. 28, 2010, 7:50 pm) (HOGR ATF – 002664).
[4] *Id.*

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1) Kevin O'Reilly, former Director of North American Affairs, National Security Council

2) Dan Restrepo, Special Assistant to the President and Senior Director for Western Hemisphere Affairs, National Security Council

3) Greg Gatjanis, Director for Terrorist Finance and Counternarcotics, Counterterrorism Policy, National Security Council

The documents we seek include e-mails, memoranda, briefing papers, and handwritten notes. They should also include relevant communications between and among the individuals listed above and any ATF or Department of Justice employee between October 1, 2009 and the present.

We also request a transcribed interview with Kevin O'Reilly by the end of this month. Please inform us by September 14, 2011 when you plan to make Mr. O'Reilly available. His testimony will enable us to begin to determine the extent of the involvement of White House staff in Operation Fast and Furious.

Please provide the requested documents and information as soon as possible, but no later than noon on September 23, 2011. If you have any questions regarding these requests, your staff may contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-[redacted] We look forward to receiving your response.

Sincerely,

Darrell Issa, Chairman
Committee on Oversight and
Government Reform
United States House of Representatives

Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 9, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Issa and Senator Grassley:

This responds further to the Questions for the Record (QFRs) of the Senate Judiciary Committee Hearing on May 4, 2011, and your letter, dated August 16, 2011. We understand that you are interested in details of the circumstances in which firearms associated with Operation Fast and Furious, an investigation by the Bureau of Alcohol, Tobacco, and Firearms (ATF), were recovered in relation to crimes of violence.

For the purposes of responding to this question, we consider a firearm to be associated with Operation Fast and Furious if it was purchased by an individual who is a target of that investigation. It is important to note that many of the purchases described below took place before ATF opened the case that became known as Operation Fast and Furious on November 16, 2009; before the purchaser had been identified as a target of the investigation; or without ATF's knowledge at the time that the firearm was purchased.

ATF has compiled the information below from data provided by the National Tracing Center (NTC) in June 2011 and a review of Reports of Investigation (ROIs) from Operation Fast and Furious. ATF advises that, while it is providing the best information available at this time from these sources, ATF has not conducted a comprehensive, independent investigation into each incident and it is possible that there may be other such recoveries not reflected within this data.

United States Recoveries

Other than the firearms recovered at the scene of the shooting death of Agent Brian Terry, the single incident reflected in NTC trace data in which a firearm purchased by a target in

Operation Fast and Furious was traced with a violent crime code in the United States was traced on May 26, 2011 by the Arizona Department of Public Safety (DPS). The firearm was a 7.62mm Romarm/Cugir GP WASR 10. The crime code was "Aggravated Assault on a Police Officer – Gun." ATF was not able to glean additional details about this incident from NTC trace data or ROIs. Other information available to ATF indicates that the firearm in question had been purchased in September 2009, before Operation Fast and Furious began, by an individual who has not been indicted in connection with the case. ATF also advises that information from DPS indicates that, after an aggravated assault on a DPS officer, DPS recovered the firearm. Although DPS traced the firearm using the code above, the firearm was not used in the assault on the officer.

The Department's June 22, 2011 response to QFR 49(a) erroneously included a firearm that was not recovered in connection with a violent crime. Rather, the firearm, a .40 caliber Beretta PX4 Storm, was traced by the Phoenix Police Department on September 20, 2009 using a non-violent crime code. The firearm had been purchased on August 1, 2009, before Operation Fast and Furious began, by Francisco Javier Ponce, who was later indicted in the case. The error stemmed from the fact that this firearm appears to have been traced previously in May 2009 in relation to a violent incident, but before the gun was related in any way to Fast and Furious.

Mexico Recoveries

ATF estimates that there have been eight events in which guns purchased by targets in Operation Fast and Furious have been recovered in Mexico in relation to violent crime, although the firearms were traced using violent crime codes in only five of those events. Those events are as follows:

- On January 8, 2010, four firearms purchased by targets in Operation Fast and Furious were recovered in Baja California, Mexico. These were traced with the crime code "Kidnap/Ransom." Three of these firearms were 7.62mm Romarm/Cugir FPK Dragunovs that had been purchased by Sean Christopher Steward on December 14, 2009. One firearm was a 7.62mm Romarm/Cugir GP WASR 10 that had been purchased by Uriel Patino on November 24, 2009.

- On February 25, 2010, three 7.62mm Romarm/Cugir GP WASR 10 firearms purchased by targets in Operation Fast and Furious were recovered in Baja California, Mexico. Two of these firearms were traced with the crime code "Homicide – Attempted." Jacob Wayne Chambers and Joshua David Moore, who were ultimately indicted in Operation Fast and Furious, made these purchases on October 13, 2009 and October 31, 2009, respectively, before the investigation was opened. ATF is also including a third firearm that was traced with the non-violent crime code "Found Firearm," because it was recovered on February 25, 2010 in the same incident. This purchase was made by an individual who was not a target at the time of the purchase, and who has not been indicted in connection with Fast and Furious.

- On July 1, 2010, two 7.62mm Romarm/Cugir GP WASR 10 firearms purchased by targets in Operation Fast and Furious were recovered in Sonora, Mexico, following a violent exchange between two cartels. One of these firearms was traced twice, once with the code for "Homicide/Willful Kill – Gun" and once with the code for "Firing a Weapon." The other was traced with the code for "Homicide/Willful Kill – Gun." The first firearm had been purchased by Joshua David Moore on November 11, 2009, before Fast and Furious was opened. The other firearm was purchased in September 2009, before the investigation was opened, by an individual who has not been indicted in connection with Fast and Furious.

- On July 26, 2010, a .50 caliber Barrett rifle purchased by a target in Operation Fast and Furious was recovered in Durango, Mexico, and traced with the code "Firing a Weapon." This firearm had been purchased by Uriel Patino on March 19, 2010.

- On May 27, 2011, three 7.62mm Romarm/Cugir GP WASR 10 firearms purchased by targets in Operation Fast and Furious were recovered in Jalisco, Mexico and were traced with the code "Firing a Weapon." Two of these firearms had been purchased by Jonathan Earvin Fernandez on August 5, 2010 and August 16, 2010, and one by Danny Cruz Morones on August 4, 2010.

ATF is aware of three other incidents in which firearms purchased by targets in Operation Fast and Furious were later traced with non-violent crime codes, but which ATF believes may have been recovered in relation to an incident of a violent nature.

- On November 14, 2009, eleven 7.62mm Romarm/Cugir GP WASR 10 firearms purchased by targets in Operation Fast and Furious were recovered in Atoyac de Alvarez, Mexico, after the Mexican Military rescued a kidnap victim. Ten of these firearms were traced with the code for "Weapons Trafficking." One of these weapons, purchased before Operation Fast and Furious was opened, was not traced but was listed in the Suspect Gun Database as related to the Fast and Furious investigation. Six of these weapons had been purchased by Jacob Wayne Chambers—one on September 26, 2009, two on October 2, 2009, and three on October 7, 2009—before Operation Fast and Furious was opened. The five others had been purchased in September and October 2009 by individuals who have not been indicted in connection with Fast and Furious.

- On August 13, 2010, two 7.62mm Romarm/Cugir GP WASR 10 firearms purchased by targets in Operation Fast and Furious were recovered in Durango, Mexico, following a confrontation between the Mexican military and an armed group. These firearms were traced with the code for "Found Firearm." One of these firearms had been purchased by Jacob Wayne Chambers on October 26, 2009, before the case was opened. The other had been purchased in October 2009 by an individual who has not been indicted in connection to Fast and Furious.

- On November 4, 2010, two 7.62mm Romarm/Cugir GP WASR 10 rifles purchased by targets in Operation Fast and Furious were recovered in Chihuahua, Mexico, after the kidnapping of two individuals and the murder of a family member of a Mexican public official. These firearms were traced with the code for "Firearm Under Investigation." One had been purchased by Sean Christopher Steward on December 14, 2009, and the other by Uriel Patino on January 30, 2010.

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide assistance with this or any other matter.

Sincerely,

M. Faith Burton for
Ronald Weich
Assistant Attorney General

cc:

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 19, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letter, dated July 11, 2011, to the Attorney General regarding our efforts to respond to the Committee's requests relating to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigation known as Operation Fast and Furious. Your letter seeks information about a shared network drive that was developed to house documents that may be responsive to inquiries being carried out by both the Committee and the Department's Office of the Inspector General (OIG). We apologize for the delay in responding to your letter.

ATF established the shared network drive referenced in your letter on April 1, 2011, as a mechanism for organizing, reviewing, and processing records collected by ATF employees in response to the inquiries of both the Committee and OIG. It has been an important tool in the effort to preserve records and to provide documents in as timely a manner as possible. In addition and consistent with their management responsibilities, the shared network drive served as a mechanism for senior ATF officials to learn the factual basis of issues the Committee and OIG are exploring. Although the shared network drive contains some pertinent email files, it is separate from a database maintained by a contractor that contains the emails and their attachments of twenty current and former ATF employees in whom Committee staff has indicated a primary interest. This separate database was created to facilitate review of the large volume of email records.

Approximately twenty-four employees of the Department (including ATF) have had access to the entire contents of the shared network drive. This access included access to a folder created on June 13, 2011 for the purpose of housing records produced or made available to the Committee. On or about July 1, 2011, in response to concerns raised by Committee staff, ATF removed access to the shared network drive from five ATF officials who had been interviewed or who were scheduled to be interviewed by Committee staff. These ATF officials were Kenneth Melson, William Hoover, William McMahon, William Newell, and Mark Chait. ATF systems did not record which of these individuals, if any, may have accessed the folder containing materials produced or made available to the Committee. On or about July 1, 2011, ATF also removed access to the shared network drive from five other Department employees because their access was not necessary for the performance of their duties. After July 1, 2011, to assist them in preparation for interviews with Committee staff or testimony before the Committee, Messrs. Hoover, McMahon, Newell and Chait were given copies of their own emails that had been produced or made available to the Committee.

In addition, at one time or another during the Department's efforts to respond to the Committee's requests, more than fifty other employees and contractor staff have had access to portions of the shared network drive. These personnel include information technology systems administrators, paralegals, agents, and attorneys who have been assigned tasks relating to preserving, organizing, searching, and reviewing documents that may be responsive to the Committee's subpoena and related document requests. The scope of access given to these individuals was limited to that necessary to fulfill their roles in the review process. The documents produced or made available by the Department from the shared network drive were reviewed by one or more of these individuals during the review process, but most of the individuals never had access to the folder containing records that were produced or made available to the Committee.

We note that Assistant Special Agent in Charge James Needles, whom Committee staff requested to interview but did not interview, participated in the document review process in this matter and had access to materials related to the inquiry that were not otherwise accessible to him in the normal course of his duties, as well as the folder on the shared network drive containing documents produced or made available to the Committee. Mr. Needles no longer has any access to the shared network drive. Similarly, Mr. Newell participated in the document review process, but not until after his interview with the Committee had taken place.

As of September 6, 2011, for reasons related to ongoing efforts to preserve and provide records related to the pending inquiries, six individuals continue to have access to the shared network drive. Responding to specific questions in your letter, ATF did not record the date particular records were placed onto the shared network drive. Also, other than through participation in the review of records contained in the shared network drive or the aforementioned separate email database, ATF is not able to ascertain what other records relating to the Committee's investigation may have been accessible to individual employees.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

Congress of the United States
Washington, DC 20515

September 20, 2011

VIA ELECTRONIC TRANSMISSION

Cynthia A. Schnedar
Acting Inspector General
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Acting Inspector General Schnedar:

Thank you for taking the time to meet with members of our staffs last Friday. We wanted to reiterate the deep concerns that we have about your decision to turn over to the U.S. Attorney's Office for the District of Arizona (USAAZ) audio recordings your office obtained in its investigation of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Operation Fast and Furious. These recordings are mostly between a cooperating Federal Firearms Licensee (FFL) and an ATF case agent. The recordings corroborate the cooperating FFL's allegation that personnel at the ATF and the USAAZ sought to recruit him in an effort to obstruct the congressional inquiry and obscure the truth about Operation Fast and Furious from public scrutiny.

We understand that you had not personally reviewed these recordings as of Friday. Nevertheless, you told our staffs that you decided to provide them to the USAAZ before you even obtained them. You cited as your reason for doing so your desire to assist the USAAZ with its discovery obligations in the prosecution of Operation Fast and Furious suspects. However, it is unclear why you did not reconsider that decision after your office obtained the recordings and learned that they corroborate allegations of misconduct on the part of the USAAZ.

For instance, in one tape the FFL describes his concern about statements Assistant U.S. Attorney Emory Hurley made to the FFL's counsel at the time, Christopher Rapp.[1] This tape corroborates what both the FFL and his current attorney have each told our Committees about the USAAZ's initial denials of basic facts surrounding Operation Fast and Furious and the murder of Border Patrol Agent Brian Terry. Specifically, Mr. Hurley allegedly told Mr. Rapp to tell his client, the FFL, that the U.S. Attorney's Office, the ATF and the FFL were "all in the same boat."[2] On another occasion, the ATF Group Supervisor, David Voth, allegedly told the cooperating FFL, "we are all on the same sheet of music. And if we stay on the same sheet of music, we will be all right."[3] These statements were made in the context of discussing our congressional inquiry. As you can imagine, we believe that allegations of USAAZ and

[1] Audio recording, WS600003, 2:00, unidentified date between March 12 and March 17, 2011.
[2] Interview with Cooperating FFL at 105 (May 18, 2011).
[3] *Id* at 55.

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ATF personnel seeking to influence the testimony of witnesses in a congressional investigation deserve thorough, aggressive, and independent investigation.

There would have been considerable investigative advantages to questioning the USAAZ and ATF personnel about these issues directly before these recording were disclosed to them. However, the Justice Department delayed Congress's access to these individuals, and you provided them with copies of the recordings on June 22, 2011.

Sometime after you provided the recordings to the U.S. Attorney's Office, someone provided them to both to the ATF Public Information Officer in the Phoenix Field Division as well as to the ATF case agent who can be heard on the recordings. Then, they were leaked to the press.[4] Each of these disclosures undermines our ability to assess the candor of witnesses in our investigation and thus obstructs it. Moreover, your decision to immediately disclose the recordings to those you are investigating creates at least the appearance, if not more, that your inquiry is not sufficiently objective and independent.

It appears that you did not consider the significant harm that providing these recordings to the very individuals under investigation could cause to either our inquiry or your own. You did not consult with us about the recordings even though the congressional inquiry and reactions to it are discussed at length. The recordings even contain a glib suggestion by an Executive Branch official that a private investigator be used to investigate Members of Congress to make the issue "go away."[5]

Your conclusion that discovery obligations existed once you were in possession of the tapes was premature. Given that the criminal trial of defendants connected to Operation Fast and Furious who were indicted in January 2011 has been postponed until at least next February, it seems unlikely that disclosure would be required at this point. Even if disclosures pursuant to Rule 16 of the Federal Rules of Criminal Procedure might be required at some point in the future, those obligations certainly are not ripe at this early stage.

Therefore, please answer the following questions:

1) After obtaining the recordings and realizing that they contained information about misconduct at the USAAZ, why did you not reconsider your decision to provide them directly to the USAAZ?

2) What steps, if any, did you take when you provided the recordings to USAAZ to ensure that they wouldn't be further disseminated, either to ATF or to the press?

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[4] Sharyl Attkisson, *Secret recordings raise new questions in ATF 'Gunwalker' operation*, CBS News, Sep. 19, 2011, *available at* http://www.cbsnews.com/8301-31727_162-20108240-10391695.html.
[5] Audio recording, WS500007, 1:01:20, February 24, 2011.

3) How would potential discovery obligations justify the USAAZ providing the tapes to the ATF case agent and numerous other ATF personnel?

4) Will you be examining the circumstances of how the recordings made their way from the USAAZ to the ATF to the press as part of your investigation?

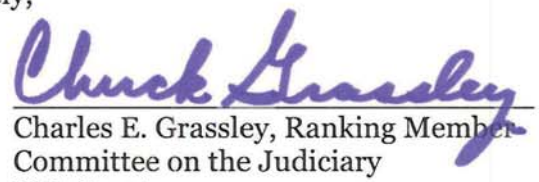
5) Will the cooperating FFL's allegations of witness tampering or obstruction of the Congressional inquiry by USAAZ personnel be a part of your investigation?

We look forward to your prompt answers on these matters. Furthermore, we request that in the future you notify us immediately if you obtain evidence of obstruction of a congressional inquiry.

Please respond as soon as possible, but by no later than September 26, 2011. Should you have any questions regarding the issues we have raised, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. We look forward to your response.

Sincerely,

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



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

cc: The Honorable Elijah E. Cummings, Ranking Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

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September 23, 2011

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

Dear Attorney General Holder,

Recent resignations and reassignments at the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and at the United States Attorney's Office that oversaw *Operation Fast and Furious* suggest that there has been, at long last, some accounting for the failed law enforcement operation. I have continuing concerns, however, about the adequacy of these measures and about the appointment of a new acting director who will serve the agency only part-time.

The Department of Justice (Department) recently reassigned the ATF's former Acting Director Kenneth Melson. Dennis Burke, the U.S. Attorney for the District of Arizona, has resigned.

The Department cannot, however, pin this scandal on a few individuals and expect it to be forgotten. *Fast and Furious* was a result of systemic problems at the ATF. Congressional interest will continue until we fully understand who authorized the failed program and how a federal agency could allow such decision-making to occur.

Email exchanges obtained through congressional investigations make clear that the U.S. Attorney's Office in Arizona worked closely with ATF officials. Special agents Bill Newell, Bill McMahon, and David Voth were all intimately involved in a supervisory capacity with the conception, design, and day-to-day operations of *Fast and Furious*. While the lawyers in the U.S. Attorney's Office have been disciplined, the ATF transferred their partners within the bureau to high level positions. The Department insists that these were "lateral transfers," but many observers with knowledge of the ATF characterize them as promotions.

It is similarly difficult to believe that no one at main justice was aware of the long-standing operation. The ATF considered *Fast and Furious* a centerpiece of its enforcement operations. It solicited additional funding from the Department's Organized Crime and Drug

Enforcement Task Force, worked with the Department to obtain a wire tap, and briefed the Department and even the White House about the operation. The Department's insistence that the ATF never shared the operational details beyond its Phoenix field division is therefore difficult to believe. Resolution of this matter demands a more upfront accounting of the approval process that allowed the strategy to move forward.

In the wake of this scandal, more than ever, the ATF needs strong leadership. Despite this, the Department recently announced that it would appoint Todd Jones as acting director of the ATF and that Mr. Jones would continue to serve in his current role as U.S. Attorney in Minnesota.

Not only is Mr. Jones' role as U.S. Attorney time-intensive, but it also carries legal restrictions on his residency. 28 U.S.C. 545 states that "[e]ach United States attorney shall reside in the district for which he is appointed." Congress has made clear that the Attorney General cannot exempt a U.S. Attorney from these restrictions. Section 213 of the FY2010 Omnibus Appropriations Act stated that:

> Notwithstanding any other provision of law, no funds shall be available for the salary, benefits, or expenses of any United States Attorney assigned dual or additional responsibilities by the Attorney General or his designee that exempt that United States Attorney from the residency requirements of 28 U.S.C. 545.[1]

Acting Director Jones will therefore be legally required to maintain his residence in Minnesota for as long as he continues to serve as U.S. Attorney. Minnesota residence requirements likely require that he spend more than half his time in Minnesota.[2] While U.S. Attorneys have served as acting directors of ATF in the past, the currently embattled agency requires more dedicated leadership.

I would be remiss if I did not express my growing concern with the Department's handling of the *Fast and Furious* investigation. This Committee's initial letter regarding the operation was dated March 9. Of the six questions posed, five were unanswered. My follow-up letter, dated May 3, set a deadline of May 20 for response. I still have not received a response.

More troubling, many of the Department's responses have seemed calculated to obscure the facts of *Fast and Furious* from Congress. The Department's initial response to Senator Grassley, dated February 4, 2011, relied on clever wording to obfuscate the Department's conduct and potentially mislead Congress.[3] The Department similarly attempted to distance

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[1] FY2010 Omnibus Appropriations Act, P.L. 111-117 (2009)
[2] Minnesota Administrative Rules, § 8001.0300 Resident and Domicile Defined; Considerations.
[3] The Department's response to Senator Grassley's initial oversight letter has several statements that are likely untrue. In a February 4, 2011 letter to Senator Grassley, the Department wrote:

> At the outset, the allegation described in your January 27 letter --that ATF 'sanctioned' or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico – is false.

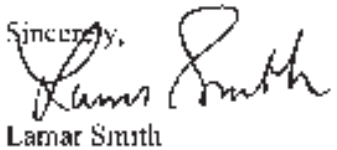
itself from the scandal by arguing that ballistics tests proved that, while two *Fast and Furious* weapons were found at the scene of Agent Brian Terry's murder, neither was used to fire the fatal shot. In fact, the ballistics tests were inconclusive. Further, according to recently released tapes of an ATF agent, it appears that there may have been three *Fast and Furious* guns at the scene, not two.

Following his election in 2008, President Obama promised to usher in a new era of openness and transparency. Despite this promise, the Justice Department has been less than cooperative with this Committee's requests. Moving forward, the Committee expects cooperation in uncovering the facts related to this operation. Please respond to the following questions by October 21, 2011:

1. Is the Department considering additional staff changes at the ATF in response to *Fast and Furious*?
2. How does the Department justify accepting the resignation of the U.S. Attorney while the ATF's managers in charge of *Fast and Furious* appear to have faced no discipline?
3. What role did the Department play in oversight of *Operation Fast and Furious*?
4. Does Todd Jones intend to maintain his residence in Minnesota while serving as acting director of the ATF?
5. Is the Department confident that the ATF can fulfill its mission with a part-time director who is based in Minnesota?
6. Have you issued a waiver of the residency requirement for Todd Jones under 28 U.S.C. § 545? If so, for what period does the waiver extend?[4]

Thank you in advance for your prompt attention.

Sincerely,



Lamar Smith
Chairman

cc: The Hon. John Conyers, Jr.

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border. Thus, technically, the Department argues that its statement is true. In the same letter to Senator Grassley, the Department wrote, "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." This statement does not appear to be defensible. According to numerous agents and several ATF documents, ATF made a strategic decision to not interdict weapons.

[4] "Pursuant to an order from the Attorney General or his designee, a United States attorney or an assistant United States attorney may be assigned dual or additional responsibilities that exempt such officer from the residency requirement in this subsection for a specific period as established by the order and subject to renewal." 28 U.S.C. § 545(a).

THE WHITE HOUSE

WASHINGTON

THE WHITE HOUSE

Washington

September 23, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Issa and Ranking Member Grassley:

I am writing in response to your letter to the National Security Advisor dated September 9, 2011 seeking information about the extent to which certain members of the National Security Staff were apprised of "Operation Fast and Furious," a criminal investigation conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Your letter specifically expresses interest in certain communications between an ATF agent, William Newell, and Kevin O'Reilly, a former member of the National Security Staff.

It is my understanding that the Department of Justice has produced emails between these two individuals to the Committee and that those emails contain general information about ATF's efforts to combat gun trafficking along the Southwest Border (including non-specific references to a case that was subsequently disclosed as "Operation Fast and Furious" after the indictment was unsealed). It is also my understanding that these emails do not contain information about any decision to allow guns to "walk," which I understand to be the focus of the Committee's investigation. Nonetheless, in an effort to accommodate the Committee's interest in this matter, we are working to identify information related to "Operation Fast and Furious" in the files of the three NSS staff members you identified. I anticipate that we will be able to provide some information to the Committee by the end of next week.

In addition, as I understand my staff has already informed your staff, Mr. O'Reilly, who was on detail to the National Security Staff from the State Department during the time period of the communications you reference in your letter, has since returned to the State Department. We

SEP-23-2011 05:00 P.002

understand from the State Department that Mr. O'Reilly is currently on a previously scheduled assignment to Iraq.

Sincerely,

Kathryn Ruemmler

Kathryn Ruemmler
Counsel to the President

Cc: The Honorable Elijah E. Cummings
Ranking Member
House Committee on Oversight and Government Reform

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary

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September 26, 2011

The Honorable Darrell Issa
Chairman
House Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Re: Representation of Dennis Burke

Dear Chairman Issa:

I write to inform you that I represent Dennis Burke in connection with the investigation into Operation Fast and Furious. My co-counsel in this matter is Lee Stein, with the firm of Perkins Coie. Please direct any questions you may have to me or to Mr. Stein. My contact information is below; Lee's number is 602.[redacted] We ask, of course, that you and your staff do not contact Mr. Burke directly.

Sincerely,

Chuck Rosenberg
[redacted]

cc: Lee Stein

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Congress of the United States
Washington, DC 20515

September 27, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

As our investigation into the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Operation Fast and Furious continues, it is becoming increasingly apparent that there was a serious lack of information-sharing among the major law enforcement agency components of the Department of Justice. With supervisory authority over two principal members of the nation's intelligence community, including the nation's primary federal criminal investigation and enforcement agency, the Department must ensure that all of its components have effective information-sharing procedures in place. Since it appears that critical information may not have been shared with regard to Operation Fast and Furious, serious questions have arisen as to why such procedures did not exist or failed to work properly.

Organized Crime Drug Enforcement Task Force (OCDETF) Strike Force

The Department of Justice's web site states that "OCDETF is the centerpiece of the Attorney General's drug supply reduction strategy."[1] OCDETF cases are reserved for cases of highest importance to the Department. The original Fast and Furious OCDETF proposal from January 26, 2010, states that the "focus of the proposed investigation will be on . . . Manuel CELIS-ACOSTA."[2] The proposal further states that "CELIS-ACOSTA [is] believed to be supplying firearms to [drug cartel 1], a documented RPOT [Regional Priority Organized Target], and [drug cartel 2], a documented CPOT [Consolidate Priority Organized Target]."[3] Given that Acosta was believed to be supplying firearms to an RPOT and a CPOT, it is difficult to understand how the agencies that comprise OCDETF could have failed to share essential information about the main target of an OCDETF Strike Force case.

As Attorney General, you are responsible for ensuring that proper information-sharing takes place, at a minimum, among Department components. Additionally, the Department should share vital, sensitive information with those outside the Department in a responsible manner.

[1] ORGANIZED CRIME AND DRUG ENFORCEMENT TASK FORCES (OCDETF), http://www.justice.gov/dea/programs/ocdetf.htm (last visited Sept. 26, 2011).
[2] OPERATION: THE FAST AND THE FURIOUS at 4 (Jan. 26, 2010).
[3] *Id.*

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Information Sharing

Operation Fast and Furious evolved from a lead on a DEA intercept to an ATF investigation to an OCDETF Strike Force case. Due to this OCDETF Strike Force case designation, multiple federal agencies were supposed to pool resources, share information, and coordinate strategy for the investigation. Certain reporting requirements are also mandatory for OCDETF cases to ensure that designated funds are being properly spent and inter-agency coordination is being properly utilized. Unfortunately, despite this structured coordination among the various agencies, in Fast and Furious, it appears that vital information may not have been shared with those agencies that needed it the most.

The main target in Operation Fast and Furious from its inception as an OCDETF Strike Force case in January 2010 was Manuel Celis-Acosta (Acosta). Acosta was the "biggest fish" of the Fast and Furious January 19, 2011 indictments. We have obtained detailed information from confidential sources that the Drug Enforcement Administration (DEA) was aware of Acosta's arms trafficking activity as early as late 2009. It is our understanding that DEA knew Acosta was providing hundreds of firearms to members of Mexican drug cartels. We believe DEA shared this information about Acosta with the Federal Bureau of Investigation (FBI) before the OCDETF Strike Force case officially began in January 2010. The FBI and DEA both apparently knew by January 2010 that Acosta was trafficking guns from Phoenix to Juarez, Mexico but that he was uneasy about taking the guns across the border himself.

Moreover, FBI personnel in its Las Cruces, New Mexico office apparently knew that the subject of a separate DEA investigation was ordering weapons from Acosta in January 2010. Yet around the same time, the subject of that investigation received more than $3,500 in official law enforcement funds as payment for illegal narcotics. That subject—apparently the financier for Acosta's firearms trafficking ring—later began cooperating with the FBI and may have received additional government payments as a confidential informant (CI #1).

These facts raise some important questions:

1. Why was a transfer of more than $3,500 in official law enforcement funds authorized to CI #1 around the same time that Acosta was known to be selling weapons to CI #1?

2. Was CI #1 ever charged with any violation in connection with the sale of illegal narcotics to another government informant? If not, why not?

3. What is the total amount in official law enforcement funds transferred to CI #1 before that individual became a confidential informant? What is the total amount afterward?

4. When was the first payment transmitted?

5. Approximately how much money did CI #1 spend ordering weapons from Acosta and his straw purchasing ring in Phoenix from January 2010 to August 2010?

6. Was the information about Acosta supplying weapons to CI #1 shared with the ATF sometime between January 2010 and August 2010? If so, when and in what manner was it shared? If not, why not?

7. Was this information shared with DEA or FBI personnel assigned to the OCDETF strike force handling Operation Fast and Furious? If so, when and in what manner was it shared? If not, why not?

8. Was this information shared with the DEA or FBI representative on the OCDETF Southwest Border Regional Committee, which oversaw and approved Operation Fast and Furious? If so, when and in what manner was it shared? If not, why not?

9. What information regarding CI #1 was shared with ATF and when?

10. What information about CI #1 was shared with the FBI representative to the OCDETF Southwest Border Regional Committee and when?

11. What processes are in place for information sharing within the Department of Justice among ATF, FBI, and DEA for OCDETF cases?

12. Was information properly shared in Operation Fast and Furious according to these processes?

13. What is the purpose of an OCDETF Strike Force if information-sharing between agencies does not occur regarding targets of the OCDETF investigation?

14. What is the purpose of a multi-agency OCDETF Strike Force if the representatives to the Strike Force are unable to use the information at the full disposal of their particular agency?

If ATF had known in January 2010, as the DEA and FBI apparently knew, that the straw purchasing ring was procuring weapons for CI #1, then Operation Fast and Furious may have ended as many as ten months sooner than it did. This would have prevented hundreds of assault-type weapons from being illegally straw purchased on behalf of Mexican drug cartels.

According to confidential sources, over a two-year period CI #1 had contacted several DEA Agents, including Juarez, Mexico Resident Agent-in-Charge Jim Roberts, and passed information to these agents about Mexican drug cartels. If the information we have obtained is accurate, DEA had knowledge of CI # 1's activities going back to at least early 2009. Apparently, CI #1 was initially frustrated with the United States government because he could not get its full attention when he was providing good information.

Due to the failure to exploit this source of information earlier and the apparent failure to share information about the source, ATF was allegedly unaware that DEA and FBI knew CI #1 was ordering weapons from Acosta, the target of its Operation Fast and Furious. This failure to share vital information may have extended the use of gunwalking during Operation Fast and Furious, which sought to identify the higher-ups, like CI #1, who were paying for the weapons being obtained through straw purchasers.

We have also learned from confidential sources that ATF knew Acosta was orchestrating both narcotics and firearms transactions with the intent to sell narcotics, purchase firearms with the proceeds, and transport the firearms from the United States into Mexico. It is our understanding that as of February 2010, it was well known within the Department that Acosta intended to acquire heavy-duty firearms for the purpose of supplying them to the Mexican cartels. Sources have indicated that this information was communicated to numerous senior people in the Criminal Division, including Assistant Attorney General Lanny Breuer and several of his top deputies, including Jason Weinstein, Kenneth Blanco, and John Keeney.

Confidential sources have also indicated that law enforcement officers pulled over a vehicle in which Acosta was a passenger in early April 2010. One of the weapons recovered from this vehicle was bought by Acosta's most prolific straw purchaser, Uriel Patino, less than one week earlier. Yet Acosta was not arrested. He was allowed to leave the scene. We believe that ATF also knew that by July 1, 2010, Acosta made *fifteen* documented crossings into the United States from Mexico. These activities surely constituted the probable cause necessary to apprehend Acosta. Still, he was not arrested until late January 2011.

Cooperation with the Committees

Moreover, as we seek to learn who at the senior levels of the Department knew what and when regarding Operation Fast and Furious, the Department's recent lack of cooperation is distressing. Since the House Committee's last hearing on July 26, 2011, the Department has produced only 221 pages of documents pursuant to the March 31, 2011 subpoena. Of these 221 pages, several are in Spanish, several contain full redactions of the text, many contain nothing more than pictures from a presentation, and dozens are duplicates of material that had already been provided.

Further, we wrote to you on July 11, 2011 requesting communications regarding Operation Fast and Furious between and among twelve current and former senior-level Department employees, including Senate-confirmed presidential appointees. According to Department staff, the failure to produce these documents is due to technical difficulties. However, since it has been 11 weeks since our initial request and we have yet to receive any such documents, we now reiterate that request.

We also wrote to FBI Director Robert Mueller on that same date, requesting documents and communications of specific FBI officials, requesting information about possible paid FBI informants in contact with Operation Fast and Furious targets, and requesting information about the murder of Immigration and Customs Enforcement (ICE) Agent Jaime Zapata. On July 15,

2011, we wrote to DEA Administrator Michele Leonhart requesting documents and communications of specific DEA officials and information about Manuel Celis-Acosta and possible informants from other agencies. While we have yet to receive any documents from FBI or DEA pursuant to these requests, the Bureau has offered a confidential staff briefing with FBI, DEA, and ATF officials. We have scheduled the briefing and hope it will be productive.

FBI 302s

In a transcribed interview, ATF Deputy Director William Hoover discussed certain Reports of Investigation, commonly known as 302s, that relate to Operation Fast and Furious. We asked the FBI for these documents in our July 11, 2011 letter to Director Mueller. As Deputy Director Hoover recalled:

> Q: [The ATF Special Agent] sent some 302s. Do you remember how many, how many pages it was?
>
> A: Ultimately that she sent? I believe five 302s. I don't remember how many pages, but I believe there were a total of five 302s.
>
> Q: And did you read them?
>
> A: I did.[4]
>
> * * *
>
> Q: In your evaluation of the 302s, do you think the FBI has problems of their own?
>
> A: I would just hope -- a different word than hope -- I would just suggest that everyone completely gather the facts before they cast judgments and just make sure you understand what folks knew, when they knew, that kind of thing, that's all I'm asking.[5]

Multiple agencies are reportedly in possession of these 302s, but the Department has yet to produce them to the Committees, despite a request to the FBI more than two months ago.

Without full cooperation from all Department components, we are left to draw conclusions from incomplete information. We lack confidence that these components are cooperating with us fully. This lack of cooperation is not fair to the DOJ employees who are caught in the crosshairs of this investigation, or to the American public, which has a right to know how this operation was conceived and authorized. Therefore, please direct these components to comply with our document requests in addition to providing briefings on these serious issues.

---

[4] Transcribed Interview of ATF Deputy Director William Hoover at 31-32.
[5] *Id.* at 32-33.

Please provide the requested documents and information as soon as possible, but no later than noon on October 4, 2011. If you have any questions regarding these requests, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. We look forward to receiving your response.

Sincerely,

Darrell Issa, Chairman
Committee on Oversight and
Government Reform
United States House of Representatives

Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

Congress of the United States
Washington, DC 20515

September 28, 2011

Via Electronic Transmission

Colonel Michael A. Bills
Commander
Joint Task Force North
U.S. Department of Defense
Biggs Army Air Field
Fort Bliss, Texas

Dear Colonel Bills:

For more than six months, we have been investigating a case conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) called Operation Fast and Furious. According to several agents, ATF leadership encouraged gun dealers to engage in sales of multiple semi-automatic firearms to individuals suspected of illegally purchasing the guns for Mexican drug cartels.

We understand that Joint Task Force North (JTF North) is a Department of Defense (DOD) organization tasked to support federal law enforcement agencies in the identification and interdiction of suspected threats along the approaches to the continental United States. Furthermore, we understand that JTF North may have been aware of Operation Fast and Furious, which was an Organized Crime Drug Enforcement Task Force (OCDETF) case, or similar operations involving other agencies in which weapons may have been transferred south of the border.

Accordingly, please provide all JTF North records relating to the following:

(1) Operation Fast and Furious.

(2) Facts and circumstances connected to the March 2011 indictment of Columbus, New Mexico Mayor Eddie Espinoza, Blas Gutierrez, and others on charges that they bought firearms in the U.S. for illegal export to Mexico.

(3) Any other instance in which a U.S. government entity may have allowed firearms to be trafficked to Mexico.

The documents we seek include, but are not limited to, briefing papers, meeting minutes, briefing notes, all relevant records from Secret Internet Protocol Router Network (SIPRNet) and Non-Secure Internet Protocol Router Network (NIPRNet), e-mails, memoranda, and cables.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to this request. The House Committee can properly receive and store information up

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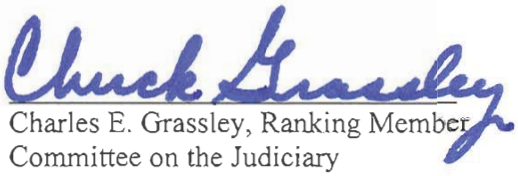
to the TS/SCI level. A complete response to this request should include the provision of any material with that or a lesser classification. The Senate Committee on the Judiciary provides oversight of the Department of Justice and the agencies under it, including the FBI, DEA, and ATF. The Judiciary Committee can also properly receive and store information up to the TS/SCI level, and all classified documents should be delivered to the Office of Senate Security. All responsive, unclassified material should be segregated from any classified material and should be delivered directly to the Committee offices.

Please provide the requested documents and information as soon as possible, but by no later than noon on October 12, 2011. If you have any questions regarding these requests, please contact Brian Downey in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. Thank you for your prompt attention to this important matter.

Sincerely,

Darrell Issa, Chairman
Committee on Oversight and
Government Reform
United States House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

U.S. Department of Justice

Office of the Inspector General

September 28, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20515

Dear Congressman Issa and Senator Grassley:

I write in response to your letter dated September 20, 2011, in which you questioned the Department of Justice Office of the Inspector General's (OIG) decision to provide to the United States Attorney's Office for the District of Arizona (USAO) copies of certain audio recordings made by a witness.

As we explained to members of your staffs at a meeting on September 16, 2011, the OIG first learned of the existence of the recordings during an interview the OIG conducted of a witness. The witness, who was represented by counsel, told OIG investigators that he had recorded certain conversations between the witness and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) case agent for the Fast and Furious investigation.

Prior to making a formal request after the interview for the recordings, the OIG first determined that one-party consent recordings were legal in Arizona. In addition, because the OIG is a component of the Department of Justice, the investigative team and senior OIG management discussed whether OIG's obtaining the recordings would affect the USAO's disclosure obligations in the pending criminal cases arising from the Fast and Furious investigation. As you know, prosecutors are obligated under the U.S. Constitution, statutes, and rules of procedure to disclose certain information to defendants in criminal cases. Among other things, prosecutors must disclose to defendants information in the prosecutors' custody that may be

exculpatory, including material that may be used to impeach witness credibility, prior statements of witnesses relevant to their expected testimony, and any recorded statement of a defendant. Information known by any part of the Department of Justice, including the Office of the Inspector General, is deemed to be within the prosecutor's custody. Because the recordings involved interaction between two individuals who we understood were likely to be important witnesses in the pending criminal cases, and in one instance a discussion between a witness and a defendant in a criminal case, we determined that if the OIG obtained the recordings, we would be required to promptly provide them to the USAO so that it could appropriately consider them in the ongoing assessment of the criminal cases and satisfy its legal disclosure obligations to the defendants in those cases.

Subsequent to the interview, OIG investigators called the witness's counsel and formally asked for the recordings. During the telephone call the OIG investigators informed the witness's counsel that if the OIG received the recordings, we would have to give the recordings to the USAO because the prosecutors are required to review the material to satisfy their legal disclosure obligations in the pending prosecutions of defendants arrested as a result of the Fast and Furious investigation. In an e-mail to the witness's attorney on the same day, the OIG confirmed its request for the recordings and the condition that if the OIG received the recordings we would have to provide them to the USAO.

The next day, the OIG received from the witness's attorney a CD containing a total of 12 recordings: two in-person conversations between the witness and the ATF case agent; nine telephone calls between the witness and the ATF case agent; and one telephone call between the witness and a defendant in a criminal case resulting from the Fast and Furious investigation. Several days later, after members of the investigative team listened to the recordings, the OIG provided a copy of the recordings to the USAO with a memorandum stating how the OIG obtained the recordings and that we were providing them to the USAO so that the USAO could satisfy its legal disclosure obligations in the pending criminal cases. Because the USAO was the entity with the necessary information to assess the recordings in view of its disclosure obligations, the OIG believed it should provide the recording to it without delay.

Your September 20, 2011, letter requests that the OIG respond to five questions related to the OIG's decision to provide a copy of the recordings to the USAO. Each question is quoted below and followed by a response.

1) *"After obtaining the recordings and realizing that they contained information about misconduct at the USAO, why did you not reconsider your decision to provide them directly to the USAO?"*

   The OIG investigative team listened to the recordings prior to providing the recordings to the USAO. Because they contained statements of the case agent, another anticipated trial witness, and a defendant in a pending criminal case, we believed the OIG had an obligation to provide a copy of the recordings to the USAO promptly so that it could consider them in connection with the government's legal disclosure obligations described above.

2) *"What steps, if any, did you take when you provided the recordings to the USAO to ensure that they wouldn't be further disseminated, either to ATF or to the press?"*

   In our memorandum transmitting the recordings to the USAO, we explained that we believed the USAO should be aware of these recordings so that it could consider them in connection with the government's discovery obligations in the pending investigations and prosecutions. Because the USAO was responsible for the cases arising from the Fast and Furious investigation, we concluded that the USAO was the entity most capable of reviewing the recordings for discovery and evidentiary purposes in the pending criminal cases. We expected that in discharging this obligation, the USAO would disseminate the recordings responsibly and properly.

3) *"How would potential discovery obligations justify the USAO providing the tapes to the ATF case agent and numerous other ATF personnel?"*

   We believe this question should be directed to the USAO as it is the entity with the necessary information to evaluate the government's discovery obligations in this instance.

4) *"Will you be examining the circumstances of how the recordings made their way from the USAO to the ATF to the press as part of your investigation?"*

   We are still gathering preliminary information and evaluating whether any issues arising from dissemination of the recordings should be made part of the OIG's Fast and Furious review.

5) *"Will the cooperating FFL's allegations of witness tampering or obstruction of the Congressional inquiry by USAO personnel be a part of your investigation?"*

We take allegations of witness tampering and obstruction of an investigation very seriously. We will evaluate the information from the recordings and other sources as our review continues and will make a determination about how to address any such allegations at the appropriate time.

If you have any further questions, please feel free to contact me or Senior Counsel Jay Lerner [redacted]

Sincerely,

Cynthia A. Schnedar
Acting Inspector General

cc: The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
United State House of Representatives

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

THE WHITE HOUSE

WASHINGTON

September 30, 2011

The Honorable Darrell E. Issa
Chairman
House Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Member
Senate Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Issa and Ranking Member Grassley:

I am writing in further response to your letter to National Security Advisor Tom Donilon dated September 9, 2011 seeking information about the extent to which certain members of the National Security Staff (NSS) were apprised of "Operation Fast and Furious," a criminal investigation conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

Enclosed with this letter are documents bearing bates numbers NSS F&F 000001 through NSS F&F 000102. These documents contain records from the three NSS members you identified relating to "Operation Fast and Furious" from October 2009 through the end of January 2011, when the indictment in *United States v. Avila* was unsealed and Senator Grassley began his inquiry into this matter. The vast majority of these documents were previously provided to you by the Department of Justice and almost all of them are communications between Mr. O'Reilly and ATF agent Newell. For the sake of completeness, we have included some communications that relate to emails previously produced by the Department of Justice, even though they do not appear to relate directly to "Operation Fast & Furious." Email addresses and phone numbers have been redacted from these documents, along with certain sensitive law enforcement information identified for us by the Department of Justice.

Within the timeframe noted above, there are additional communications between Mr. O'Reilly and Mr. Restrepo and/or Mr. Gatjanis, which forward certain of Mr. Newell's emails. These internal NSS emails are not included in the enclosed documents because the EOP has significant confidentiality interests in its internal communications. For the same reason, one

internal White House email and attachment, which references the unsealed indicted case *United States v. Avila* is also not included in the enclosed documents.

At the request of the Department of Justice, one email attachment, bates numbered WH F&F 000103 through WH F&F 000121, is not included with the enclosed documents except for the cover page, because it contains sensitive law enforcement information. We understand that the Department of Justice has previously provided your Committees with access to this document, which is titled "2009 Project Gunrunner Assessment." We can arrange to provide access again, if requested.

As today's production makes clear, none of the communications between ATF and the White House revealed the investigative law enforcement tactics at issue in your inquiry, let alone any decision to allow guns to "walk." I trust that the information provided today resolves your inquiry to Mr. Donilon.

Sincerely,

Kathryn H. Ruemmler
Counsel to the President

Cc: The Honorable Elijah E. Cummings
Ranking Member
House Committee on Oversight and Government Reform

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 30, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letter dated July 11, 2011, to the Attorney General requesting records relating to communications between and among twelve Department of Justice officials regarding ATF Operation Fast and Furious.

We are delivering today to your office 97 pages of material responsive to your request. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. In addition, we have redacted from multi-subject documents text that is not responsive to your request. The nature of specific redactions is indicated by a redaction code ("RC") in accordance with the enclosed list. Even with the redactions, many of these documents contain non-public material and are not appropriate for public disclosure. In response to a request from Chairman Smith, we also will provide these documents to the House Committee on the Judiciary.

We have also located an additional page of law-enforcement sensitive material that we are prepared to make available at the Department for review by staff of your respective Committees, as well as staff of the House Committee on the Judiciary. There are limited redactions of text that would identify law enforcement sensitive techniques.

Our search for records responsive to your request is ongoing, and we will supplement this response when we process additional responsive records.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary

October 2011

[illegible]

[illegible]

[illegible]

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

October 4, 2011

President Barack Obama
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear Mr. President,

I write to urge you to instruct the Department of Justice to appoint a special counsel to determine whether Members of Congress were misled by the Attorney General during his recent testimony before the House Judiciary Committee regarding what information he knew about the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Operation Fast and Furious, which allowed straw buyers to purchase guns in the United States and transfer them across the border to Mexico. The guns were used for illegal activity and ultimately were used in the shooting death of Customs and Border Patrol Agent Brian Terry.

At a hearing before the House Judiciary Committee on May 3, 2011, Attorney General Holder testified that he first heard of "Fast and Furious" in April, 2011. Congressman Issa asked, "When did you first know about the program, officially, I believe, known as Fast and Furious? Best of your knowledge, what date?" The Attorney General responded "I'm not sure of the exact date, but I probably heard about Fast and Furious for the first time over the last few weeks."

In response to ongoing Judiciary Committee oversight of Operation Fast and Furious, the Department of Justice recently provided to the Committee documents that raise significant questions about the truthfulness of the Attorney General's testimony.

Weekly updates from the National Drug Intelligence Center began briefing the Attorney General on Fast and Furious beginning, at the latest, on July 5, 2010. These updates mentioned, not only the name of the operation, but also specific details about guns being trafficked to Mexico.

An additional memo dated October 18, 2010 from Lanny Breuer to Attorney General Holder also discussed Operation Fast and Furious.

President Barack Obama
October 4, 2011
Page 2 of 2

The Department's consistent response to Congress has been that Operation Fast and Furious was a discrete law enforcement effort largely isolated to the ATF office in Phoenix. These documents appear to undermine this claim and bring into question statements made by Attorney General Holder to this Committee.

Allegations that senior Justice Department officials may have intentionally misled Members of Congress are extremely troubling and must be addressed by an independent and objective special counsel.

I urge you to appoint a special counsel who will investigate these allegations as soon as possible.

Respectfully,

Lamar Smith

Lamar Smith
Chairman

cc: The Honorable John Conyers, Jr.

The Attorney General

Washington, D.C.

October 7, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Minority Member
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lamar S. Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Messrs. Chairmen and Senator Grassley, Congressman Conyers, and Congressman Cummings:

I have watched for some months now as the facts surrounding Operation Fast and Furious have been developed on the public record. I have not spoken at length on this subject out of deference to the review being conducted, at my request, by our Department's Inspector General. However, in the past few days, the public discourse concerning these issues has become so base and so harmful to interests that I hope we all share that I must now address these issues notwithstanding the Inspector General's ongoing review.

For example, I simply cannot sit idly by as a Majority Member of the House Committee on Oversight and Government Reform suggests, as happened this week, that law enforcement and government employees who devote their lives to protecting our citizens be considered "accessories to murder." Such irresponsible and inflammatory rhetoric must be repudiated in the strongest possible terms. Those who serve in the ranks of law enforcement are our Nation's heroes and deserve our Nation's thanks, not the disrespect that is being heaped on them by those who seek political advantage. I trust you feel similarly and I call on you to denounce these statements.

I also want to be very clear that protecting American citizens from the devastating effects of gun violence is among the most important responsibilities of the Department of Justice. Likewise, ensuring that weapons sold here do not flow south to Mexico is of paramount importance. We are committed to disrupting and dismantling the organizations that traffic weapons across our borders and I am proud to

stand with our brave law enforcement officers who fight every day to protect our citizens and those of Mexico from the effects of gun violence and illegal gun trafficking.

A. Fast and Furious was a Flawed Response to a Serious Problem on the Southwest Border

According to ATF, it took into evidence nationwide approximately 35,000 firearms in FY 2011. In FY 2010, the number was approximately 37,500. During that same period, ATF reports that it took into evidence nationwide over 5 million rounds of ammunition. Still, the Southwest Border remains the front line in the battle against illegal gun trafficking. ATF and our prosecutors struggle mightily to make cases against gun smugglers and do outstanding work on a daily basis in an effort to stop the flow of guns across our borders.

Notwithstanding the seriousness of the problem faced on the Southwest Border, there is no doubt that Operation Fast and Furious was fundamentally flawed. Regrettably, its effects will be felt for years to come as weapons that should have been interdicted but were not continue to show up at crime scenes in this country and in Mexico. This is both tragic and completely unacceptable. I want to be very clear that we must aim to disrupt and dismantle the dangerous cartels that operate south of our border. That said, in our pursuit of that goal we must take all steps possible to prevent guns from crossing our border and the desire to bring cartel leaders to justice does not and cannot justify losing track of dangerous weapons.

For that very reason, in 2011, after the controversy about this matter arose, I took decisive action to ensure that such operations are never again undertaken. First, I referred the matter to the Department's Inspector General for review so the facts underlying it could come out. Second, I instructed the Deputy Attorney General to reiterate to our prosecutors and law enforcement components that Department policy prohibits the design or conduct of undercover operations which include the uncontrolled crossing of guns across the border. In addition, new leadership is now in place both at ATF and in the United States Attorney's Office in Arizona. It has become clear that the flawed tactics employed in Fast and Furious were not limited to that operation and were actually employed in an investigation conducted during the prior Administration. Regardless, those tactics should never again be adopted in any investigation.

B. No Knowledge of Fast and Furious' Misguided Tactics

Much has been made in the past few days about my congressional testimony earlier this year regarding Fast and Furious. My testimony was truthful and accurate and I have been consistent on this point throughout. I have no recollection of knowing about Fast and Furious or of hearing its name prior to the public controversy about it. Prior to early 2011, I certainly never knew about the tactics employed in the operation and it is my understanding that the former United States Attorney for the District of Arizona and the former Acting Director and Deputy Director of ATF have told Congress that they, themselves, were unaware of the tactics employed. I understand that they have also told Congress that they never briefed me or other Department leadership on the misguided tactics that were used in Fast and Furious. Of course, that is not surprising for, as Chairman Issa made clear in an interview on CNN just this week, even the former Acting Director of ATF "has said he didn't know about" the tactics being used in the field by his agency.

In the past few days, some have pointed to documents that we provided to Congress as evidence that I was familiar with Fast and Furious earlier than I have testified. That simply is not the case and those suggestions mischaracterize the process by which I receive information concerning the activities of the Department's many components. On a weekly basis, my office typically receives over a hundred pages of so-called "weekly reports" that, while addressed to me, actually are provided to and reviewed by members of my staff and the staff of the Office of the Deputy Attorney General. The weekly reports contain short summaries of matters that the agencies deem of interest that week. Sometimes, the summaries are simply a sentence-long and other times they consist of a paragraph. In some cases, the summaries are of policy-related issues or upcoming events. In other cases, the summaries are brief, high-level reviews of pending matters or investigations. It is important to look at the documents supposedly at issue here and, for that reason, I have attached them to this letter and am making them public in the form they previously were provided by us to Congress. Please note that none of these summaries say anything about the unacceptable tactics employed by ATF.

Attorneys in my office and in the Office of the Deputy Attorney General review these weekly reports and bring to my attention only those matters deemed to require my consideration or action; given the volume of material to which I must devote my attention, I do not and cannot read them cover-to-cover. Here, no issues concerning Fast and Furious were brought to my attention because the information presented in the reports did not suggest a problem. Rather, the entries suggest active law enforcement action being taken to combat a firearms-trafficking organization that was moving weapons to Mexico. For example, the ATF weekly report for July 19-23, 2010 briefly described the seizure in Phoenix of 73 firearms and 250 AK-47 drum magazines from a local business as part of Operation Fast and Furious, again with no mention of any unacceptable tactics.

If a component of the Department has concerns about a particular matter, there are established avenues for raising them with my office or that of the Deputy Attorney General and a weekly report is not one of them. As Attorney General, I am not and cannot be familiar with the operational details of any particular investigation being conducted in an ATF field office unless those details are brought to my attention. That did not happen with Fast and Furious until the public controversy arose in 2011.

Senator Grassley has suggested that I was aware of Operation Fast and Furious from letters he provided to me on or about January 31, 2011 that were addressed to the former Acting Director of ATF. However, those letters referred only to an ATF umbrella initiative on the Southwest Border that started under the prior Administration -- Project Gunrunner -- and not to Operation Fast and Furious.

To be sure, during 2010 I knew generally that ATF was conducting gun trafficking operations along the Southwest Border and elsewhere in the country since that is a core part of its mission given the large number of firearms flowing to Mexico each year from the United States. I also was aware of the existence of Project Gunrunner. More specifically, however, I now understand some senior officials within the Department were aware at the time that there was an operation called Fast and Furious although they were not advised of the unacceptable operational tactics being used in it. For example, I understand that we have provided to Congress materials from a March 2010 monthly meeting between the then-Acting Deputy Attorney General and senior ATF officials that included discussion of Fast and

Furious. That meeting, of course, occurred shortly before Chairman Issa received his own briefing regarding Fast and Furious from some of the same ATF officials. I am aware that Chairman Issa has said that he was not briefed on the unacceptable details of Fast and Furious. Like Chairman Issa, the then-Acting Deputy Attorney General was not told of the unacceptable tactics employed in the operation in his regular monthly meetings with ATF to discuss its activities throughout the United States and abroad.

C. Congress Has Failed to Consider Whether Additional Tools Are Needed to Stem the Flow of Guns into Mexico

ATF witnesses testified before the House Committee on Oversight and Government Reform that the agency's ability to stem the flow of guns from the United States into Mexico is severely impaired by a lack of effective law enforcement tools. For example, a number of witnesses indicated that current penalties for illegal straw purchases are inadequate to deter such activity or to induce cooperation with law enforcement authorities after a violation is detected. Likewise, the lack of reporting requirements for multiple long gun purchases in a short period of time hindered law enforcement efforts to combat gun trafficking. Yet, the House of Representatives has voted to block a rule that requires such reporting on the Southwest Border.

As I have said, the fact that even a single gun was not interdicted in this operation and found its way to Mexico is unacceptable. Equally unacceptable, however, is the fact that too many in Congress are opposed to any discussion of fixing loopholes in our laws that facilitate the staggering flow of guns each year across our border to the south. I cannot help but note that at the same time that some members of Congress understandably criticize the Fast and Furious operation, they vehemently refuse to consider whether ATF has the resources and legal tools it needs to do its job -- tools that would be entirely consistent with the constitutional rights of law-abiding citizens.

A telling moment in this regard came during one of the Fast and Furious hearings held by the House Committee on Oversight and Government Reform when Representative Maloney sought to question an ATF witness about potential reforms to our laws that would help stem the flow of illegal weapons. Representative Maloney was cut-off in mid-sentence by Chairman Issa, who then "cautioned" the witness that it would not be "valid testimony" to respond to such questions because the Committee was not interested in "proposed legislation and the like[.]" While failing to interdict weapons is an unacceptable tactic to stop the flow of illegal weapons, it seems clear that some in Congress are more interested in using this regrettable incident to score political points than in addressing the underlying problem. Even in the face of an unprecedented flow of guns across the border, too many in Congress still oppose every effort to reform our gun laws in ways that would make the United States and our Mexican neighbors safer.

The Honorable Darrell E. Issa, The Honorable Patrick J. Leahy,
The Honorable Lamar S. Smith, The Honorable Elijah Cummings,
The Honorable Charles E. Grassley, The Honorable John Conyers, Jr.
Page Five

Until we move beyond the current political climate -- where real solutions take a back seat to both political posturing and making headlines on cable news programs, and is deemed more important than actually solving our country's difficult challenges -- nothing is going to change. I hope we can engage in a more responsible dialogue on this subject in the future. There is much we all need to do together to stop gun violence on both sides of the border and make our Nation safer.

Sincerely,

Eric H. Holder, Jr.

Enclosures

DARRELL E. ISSA, CALIFORNIA
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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

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October 9, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

From the beginning of the congressional investigation into Operation Fast and Furious, the Department of Justice has offered a roving set of ever-changing explanations to justify its involvement in this reckless and deadly program. These defenses have been aimed at undermining the investigation. From the start, the Department insisted that no wrongdoing had occurred and asked Senator Grassley and me to defer our oversight responsibilities over its concerns about our purported interference with its ongoing criminal investigations. Additionally, the Department steadfastly insisted that gunwalking did not occur.

Once documentary and testimonial evidence strongly contradicted these claims, the Department attempted to limit the fallout from Fast and Furious to the Phoenix Field Division of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). When that effort also proved unsuccessful, the Department next argued that Fast and Furious resided only within ATF itself, before eventually also assigning blame to the U.S. Attorney's Office in Arizona. All of these efforts were designed to circle the wagons around DOJ and its political appointees.

To that end, just last month, you claimed that Fast and Furious did not reach the upper levels of the Justice Department. Documents discovered through the course of the investigation, however, have proved each and every one of these claims advanced by the Department to be untrue. It appears your latest defense has reached a new low. Incredibly, in your letter from Friday you now claim that you were unaware of Fast and Furious because your staff failed to inform you of information contained in memos that were specifically addressed to you. At best, this indicates negligence and incompetence in your duties as Attorney General. At worst, it places your credibility into serious doubt.

Following the Committee's issuance of a subpoena over six months ago, I strongly believed that the Department would fully cooperate with Congress and support this investigation with all the means at its disposal. The American people deserve no less. Unfortunately, the Department's cooperation to date has been minimal. Hundreds of pages of documents that have been produced to my Committee are duplicative, and hundreds more contain substantial redactions, rendering them virtually worthless. The Department has actively engaged in retaliation against multiple whistleblowers, and has, on numerous occasions, attempted to disseminate false and misleading information to the press in an attempt to discredit this investigation.

Your letter dated October 7 is deeply disappointing. Instead of pledging all necessary resources to assist the congressional investigation in discovering the truth behind the fundamentally flawed Operation Fast and Furious, your letter instead did little but obfuscate, shift blame, berate, and attempt to change the topic away from the Department's responsibility in the creation, implementation, and authorization of this reckless program. You claim that, after months of silence, you "must now address these issues" over Fast and Furious because of the harmful discourse of the past few days.[1] Yet, the only major development of these past few days has been the release of multiple documents showing that you and your senior staff had been briefed, on numerous occasions, about Fast and Furious.

The Mexican Cartels

A month after you became Attorney General, you spoke of the danger of the Mexican drug cartels, and the Sinaloa cartel in particular. The cartels, you said, "are lucrative, they are violent, and they are operated with stunning planning and precision."[2] You promised that under your leadership "these cartels will be destroyed."[3] You vowed that the Department of Justice would "continue to work with [its] counterparts in Mexico, through information sharing, training and mutual cooperation to jointly fight these cartels, both in Mexico and the United States."[4]

Under your leadership, however, Operation Fast and Furious has proven these promises hollow. According to one agent, Operation Fast and Furious "armed the cartel. It is disgusting."[5] Fast and Furious simply served as a convenient means for dangerous cartels to acquire upwards of 2,000 assault-style weapons. On top of that, the Government of Mexico was not informed about Fast and Furious. In fact, DOJ and ATF officials actively engaged in hiding information about Fast and Furious from not only Mexican officials, but also U.S. law enforcement officials operating in Mexico for fear that they would inform their Mexican

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[1] Letter from Att'y Gen. Eric Holder to Chairman Darrell Issa et al. (Oct. 7, 2011) [hereinafter Holder Letter].
[2] Statement by U.S. Att'y Gen. Eric Holder, Attorney General Eric Holder at the Xcellerator Press Conference (Feb. 25, 2009), available at http://www.justice.gov/ag/speeches/2009/ag-speech-090225.html [hereinafter Holder Statement].
[3] Associated Press, Mexican cartels' drugs, mayhem his U.S. cities, Feb. 26, 2009, available at http://www.msnbc.msn.com/id/29389404/ns/world_news-americas/t/mexican-cartels-drugs-mayhem-hit-us-cities/.
[4] Holder Statement, *supra* note 2.
[5] Transcribed Interview of ATF Acting Attaché to Mexico Carlos Canino at 25.

counterparts. This strategy is inapposite and contradicts the promises you made to the American people.

Your September 7, 2011 Statement

On September 7, 2011, you said that "[t]he notion that [Fast and Furious] reaches into the upper levels of the Justice Department is something that at this point I don't think is supported by the facts and I think once we examine it and once the facts are revealed we'll see that's not the case." Unfortunately, the facts directly contradict this statement.

Lanny Breuer, the Assistant Attorney General for the Criminal Division, clearly a member of the Department's senior leadership, knew about Fast and Furious as early as March 2010. In fact, I have learned that the amount of detail shared with Breuer's top deputies about Fast and Furious is simply astounding.

For example, Manuel Celis-Acosta was the "biggest fish" of the straw purchasing ring in Phoenix. From the time the investigation started in September 2009 until March 15, 2010, Manuel Celis-Acosta acquired at least 852 firearms valued at around $500,000 through straw purchasers. Yet in 2009, Celis-Acosta reported an Arizona taxable income of only $15,475. Between September 2009 and late January 2010, 139 of these firearms were recovered, 81 in Mexico alone. Some of these firearms were recovered *less than 24 hours after they were bought.*

This information, and hundreds of pages worth of additional information, was included in highly detailed wiretap applications sent for authorization to Breuer's top deputies. It is my understanding, the Department applied to the United States District Court for the District of Arizona for numerous wire taps from March 2010 to July 2010. These wire tap applications were reviewed and approved by several Deputy Assistant Attorney Generals, including Kenneth A. Blanco, John C. Keeney, and Jason M. Weinstein. Breuer's top deputies approved these wiretap applications to be used against individuals associated with the known drug cartels. As I understand it, the wire tap applications contain rich detail of the reckless operational tactics being employed by your agents in Phoenix. Although Breuer and his top deputies were informed of the operational details and tactics of Fast and Furious, they did nothing to stop the program. In fact, on a trip to Mexico Breuer trumpeted Fast and Furious as a promising investigation.[6]

Gary Grindler, the then-Deputy Attorney General and currently your Chief of Staff, received an extremely detailed briefing on Operation Fast and Furious on March 12, 2010. In this briefing, Grindler learned such minutiae as the number of times that Uriel Patino, a straw purchaser on food stamps who ultimately acquired 720 firearms, went in to a cooperating gun store and the amount of guns that he had bought. When former Acting ATF Director Ken Melson, a career federal prosecutor, learned similar information, he became sick to his stomach:

[6] *Id.*, at 22-23.

> I had pulled out all Patino's -- and ROIs is, I'm sorry, report of investigation -- and you know, my stomach being in knots reading the number of times he went in and the amount of guns that he bought.[7]

At the time of his briefing in March of last year, Grindler knew that Patino had purchased 313 weapons and paid for all of them in cash. Unlike Melson, Grindler clearly saw nothing wrong with this. If Grindler had had the sense to shut this investigation down right then, he could have prevented the purchase of an additional 407 weapons by Patino alone. Instead, Grindler did nothing to stop the program.

Following this briefing, it is clear that Grindler did one of two things. Either, he alerted you to the name and operational details of Fast and Furious, in which case your May 3, 2011 testimony in front of Congress was false; or, he failed to inform you of the name and the operational details of Fast and Furious, in which case Grindler engaged in gross dereliction of his duties as Acting Deputy Attorney General. It is fair to infer from the fact that Grindler remains as your Chief of Staff that he did not engage in gross dereliction of his duties and told you about the program as far back as March of 2010.

In the summer of 2010, at the latest, you were undoubtedly informed about Fast and Furious. On at least five occasions you were told of the connection between Fast and Furious and a specific Mexican cartel – the very cartel that you had vowed to destroy. You were informed that Manuel Celis-Acosta and his straw purchasers were responsible for the purchase of 1,500 firearms that were then supplied to Mexican drug trafficking cartels. Yet, you did nothing to stop this program.

You failed to own up to your responsibility to safeguard the American public by hiding behind "[a]ttorneys in [your] office and the Office of the Deputy Attorney General," who you now claim did not bring this information to your attention.[8] As a result of your failure to act on these memos sent to you, nearly 500 additional firearms were purchased under Fast and Furious.

The facts simply do not support any claim that Fast and Furious did not reach the highest levels of the Justice Department. Actually, Fast and Furious did reach the ultimate authority in the Department – you.

Your May 3, 2011 Statement

On May 3, 2011, I asked you directly when you first knew about the operation known as Fast and Furious. You responded directly, and to the point, that you weren't "sure of the exact date, but [you] probably heard about Fast and Furious for the first time over the last few weeks." This statement, made before Congress, has proven to be patently untrue. Documents released by the Department just last week showed that you received at least seven memos about Fast and Furious starting as early as July 2010.

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[7] Transcribed interview of Acting ATF Director Kenneth Melson at 42.
[8] Holder Letter, *supra* note 1.

In your letter Friday, you blamed your staff for failing to inform you about Operation Fast and Furious when they reviewed the memos sent to you last summer. Your staff, therefore, was certainly aware of Fast and Furious over a year ago. Lanny Breuer was aware of Fast and Furious as early as March 2010, and Gary Grindler was also aware of Fast and Furious as early as March 2010. Given this frequency of high level involvement with Fast and Furious as much as a year prior to your May 3, 2011 testimony, it simply is not believable that you were not briefed on Fast and Furious until a few weeks before your testimony. At the very least, you should have known about Fast and Furious well before then. The current paper trail, which will only grow more robust as additional documents are discovered, creates the strong perception that your statement in front of Congress was less than truthful.

The February 4, 2011 Letter

Perhaps the most disturbing aspect of this intransigence is that the Department of Justice has been lying to Congress ever since the inquiry into Fast and Furious began. On February 4, 2011, Assistant Attorney General Ronald Weich wrote that "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transport into Mexico."[9] This letter, vetted by both the senior ranks of ATF as well as the Office of the Deputy Attorney General, is a flat-out lie.

As we understand it, in March 2010, top deputies to Lanny Breuer were informed that law enforcement officers intercepted calls that demonstrated that Manuel Celis-Acosta was conspiring to purchase and transport firearms for the purpose of trafficking the firearms from the United States into Mexico. Not only was ATF aware of this information, but so was the Drug Enforcement Administration and the Federal Bureau of Investigation. This information was shared with the Criminal Division. All of these organizations are components of the Department of Justice, and they were all aware of the illegal purchase of firearms and their eventual transportation into Mexico.

These firearms were not interdicted. They were not stopped. Your agents allowed these firearms purchases to continue, sometimes even monitoring them in person, and within days some of these weapons were being recovered in Mexico. Despite widespread knowledge within its senior ranks that this practice was occurring, when asked on numerous occasions about the veracity of this letter, the Department has shockingly continued to stand by its false statement of February 4, 2011.

Mr. Attorney General, you have made numerous statements about Fast and Furious that have eventually been proven to be untrue. Your lack of trustworthiness while speaking about Fast and Furious has called into question your overall credibility as Attorney General. The time for deflecting blame and obstructing our investigation is over. The time has come for you to come clean to the American public about what you knew about Fast and Furious, when you knew it, and who is going to be held accountable for failing to shut down a program that has already had deadly consequences, and will likely cause more casualties for years to come.

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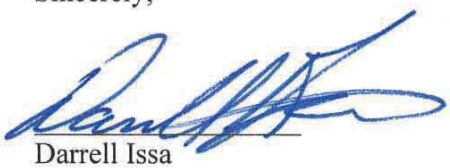
[9] Letter from Ass't Att'y Gen. Ronald Weich to Senator Charles Grassley (Feb. 4, 2011).

Operation Fast and Furious was the Department's most significant gun trafficking case. It related to two of your major initiatives – destroying the Mexican cartels and reducing gun violence on both sides of the border. On your watch, it went spectacularly wrong. Whether you realize yet or not, you own Fast and Furious. It is your responsibility.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform

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

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 11, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This responds to your letters, dated March 4, 2011 and March 28, 2011, to then Acting Director Kenneth E. Melson, of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, regarding the investigation into the death of U.S. Immigration and Customs Enforcement (ICE) Agent Jamie Zapata in Mexico. We apologize for the delay in responding to your letters.

We take seriously your concerns about the murder of Agent Zapata and gun trafficking more generally. That said, we have active, ongoing criminal investigations regarding those matters, which limits the information that we are in a position to disclose in response to your questions. We can advise you that, as indicated in our press release of March 1, 2011, one of the firearms used in the deadly assault on Agent Zapata was purchased by Otilio Osorio on or about October 10, 2010. We understand that ATF was not aware of the firearm's purchase at the time it occurred. We further understand that ATF was first made aware of the purchase on or about February 25, 2011, some ten days after the murder of Agent Zapata.

As you may know, Otilio Osorio, Ranferi Osorio, Kelvin Morrison and others have been charged with various federal offenses and are scheduled for trial in the near future. Our disclosure of additional information requested by your letters would be inconsistent with the Department's strong interest in successfully prosecuting this matter, as well as with our longstanding policy regarding the confidentiality of ongoing criminal investigations. We will continue to provide you and Chairman Leahy with other information responsive to your requests, as appropriate.

Please do not hesitate to contact this office if we may be of additional assistance on this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 11, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated April 14, 2011, requesting that the Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed please find 56 pages of materials that we produced to the House Committee on Oversight and Government Reform Committee on October 11, 2011. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques, plus information relating to line employees. In addition, we have redacted from multi-subject documents text that is not responsive to requests by the Committee. The nature of specific redactions is indicated by a redaction code ("RC") in accordance with the attached index.

We have also located an additional 60 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by Judiciary Committee staff. There are limited redactions of text that would identify law enforcement sensitive techniques, targets or subjects, and investigative details.

We believe that we have now substantially concluded our efforts to respond to requests by the Committee on Oversight and Government Reform for records from ATF. Our search for records requested by that Committee from other Department components is ongoing, and we anticipate that additional records will be processed and produced or made available to the House and Senate Judiciary Committees.

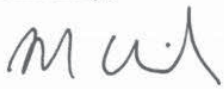
In the course of responding to Chairman Issa's subpoena and June 8th letter, we have described the reasons for redactions in the documents we have produced or made available for review. Other documents have not been produced or made available for these same reasons because neither redacting them nor making them available for review (as opposed to production) was sufficient to address our concerns. Our disclosure of the vast majority of the withheld material is prohibited by statute. These records pertain to matters occurring before a grand jury,

as well as investigative activities under seal or the disclosure of which is prohibited by law. Consistent with my testimony before the Committee on Oversight and Government Reform on June 15, 2011, we also have not disclosed certain confidential investigative and prosecutorial documents, the disclosure of which would, in our judgment, compromise the pending criminal investigations and prosecution. These include core investigative and prosecutorial material, such as Reports of Investigation and drafts of court filings.

Finally, we have also withheld internal communications that were generated in the course of the Department's effort to respond to congressional and media inquiries about Operation Fast and Furious. These records were created in 2011, well after the completion of the investigative portion of Operation Fast and Furious that the House Committee on Oversight and Government Reform has been reviewing and after the charging decisions reflected in the January 25, 2011 indictments. Thus, they were not part of the communications regarding the development and implementation of the strategy decisions that have been the focus of congressional inquiries. It is longstanding Executive Branch practice not to disclose documents falling into this category because disclosure would implicate substantial Executive Branch confidentiality interests and separation of powers principles. Disclosure would have a chilling effect on agency officials' deliberations about how to respond to inquiries from Congress or the media. Such a chill on internal communications would interfere with our ability to respond as effectively and efficiently as possible to congressional oversight requests.

We hope that this information is helpful. Please do not hesitate to contact this office if we can provide additional assistance regarding this or any other matter.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member

Congress of the United States
Washington, DC 20515

October 12, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Mr. Attorney General:

We write to request your assurance that neither the Department of Justice nor any of its subordinate agencies will retaliate against any witnesses who have provided information or cooperated with our investigation of Operation Fast and Furious. We ask you to reiterate this commitment in light of recent reports of apparently retaliatory measures taken against Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Group Supervisor Peter Forcelli.

As you may be aware, Special Agent Forcelli, pursuant to a subpoena, testified at the June 15, 2011, hearing, entitled "Operation Fast and Furious: Reckless Decisions, Tragic Outcomes." During his testimony, Special Agent Forcelli criticized certain decisions and actions of the United States Attorney's Office for the District of Arizona (USA-AZ), and in particular those of Assistant United States Attorney (AUSA) Emory Hurley. Special Agent Forcelli testified candidly about the difficulties he encountered in getting USA-AZ to prosecute certain cases conducted by ATF.

Recent actions by the Department confirm Special Agent Forcelli's concern about the handling of cases by AUSA Hurley and the USA-AZ. The Department made the rare decision to ask the U.S. Attorney's Offices for the Central and Southern Districts of California to step in and prosecute three high-profile cases that originated in USA-AZ. The Jean Baptiste Kingery case, on which Special Agent Forcelli served as the Group Supervisor, was one of these cases, having been recently reassigned from USA-AZ to the U.S. Attorney's Office for the Central District of California.

Mr. Kingery had purchased and transported hundreds of inert grenade hulls, grenade pins, and other grenade materials across the border into Mexico. Once in Mexico, he assembled the grenades, instructed individuals on how to build machine guns for drug cartels, and also trafficked heavy-duty weapons to the cartels. After being taken into custody by U.S. law enforcement agents, Mr. Kingery made a full and detailed confession. Yet USA-AZ, after having previously discussed the facts of this case with the Department's National Security

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Division – and over vigorous objections from Agent Forcelli – decided not to charge Mr. Kingery. Instead, USA-AZ ordered Mr. Kingery's release, allowing him to return to Mexico to continue arming the Sinaloa and La Familia drug cartels with military-type weapons and grenades.

ATF Group Supervisor Forcelli had been highly critical of the USA-AZ's failure to obtain an indictment against Mr. Kingery. Rather than offering an explanation of its decision based on relevant facts of the case, the Department has instead attempted to denigrate Special Agent Forcelli. On August 10, 2011, representatives from the Office of the Deputy Attorney General (ODAG) interrogated Special Agent Forcelli in Phoenix about the Kingery case. It is our understanding that the Department's Office of the Inspector General is also looking into USA-AZ's conduct of the Kingery case.

During Special Agent Forcelli's appearance at the June 15, 2011, hearing, Patrick Cunningham, Chief of the Criminal Division at USA-AZ, was at ATF Headquarters in Washington, D.C., simultaneously parsing and analyzing his testimony, especially regarding the "X-Caliber Arms" case.[1] As outlined in a letter to us last month, Special Agent Forcelli highlighted how USA-AZ suddenly found fault in his handling of the "X-Caliber Arms" case, which had concluded several years earlier.[2]

Even more disturbingly, last month, Michael Morrissey, Chief of the National Security Division at USA-AZ, informed Special Agent Forcelli that "he had been instructed to report **any** contact with [Agent] Forcelli to his chain of command because his office viewed [Agent] Forcelli as a 'Whistleblower.'"[3] When Special Agent Forcelli inquired whether former U.S. Attorney Dennis Burke, or even the Deputy Attorney General or Attorney General, would receive these reports of any contact with Forcelli, Mr. Morrissey replied only "that he needed to notify his local chain of command."[4]

Special Agent Forcelli has also discovered a memo written by USA-AZ dated August 10, 2011, regarding a May 5, 2011, meeting about the Kingery case. This memo – dated three months after the meeting, and the day before ODAG interviewed USA-AZ staff – apparently aimed to tar Special Agent Forcelli by improperly characterizing his demeanor as "visibly angry."[5] Taken together, the ODAG and USA-AZ's actions appear to be an attempt to retaliate against Agent Forcelli. The Department's decision to retaliate against Agent Forcelli is particularly egregious given that William Newell, Mr. Forcelli's former supervisor and Special Agent in Charge in Phoenix, said that "[Pete] had a lot of experience. He was new to Phoenix but he had a lot of experience and highly respected, and I respect Pete. And based on his years of street knowledge, and he is a good supervisor."[6]

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[1] Letter from Luciano Cerasi to Charles Grassley, Ranking Member, S. Jud. Comm., and Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, at 2 (Aug. 31, 2011).
[2]. *Id.*
[3] *Id.* at 3 (emphasis in original).
[4] *Id.* at 4.
[5] *Id.*
[6] Transcribed interview of Special Agent in Charge William Newell, at 202 (Jun. 8, 2011).

This is not the first time that the Department actively sought to smear an agent who has testified pursuant to a congressional subpoena. Indeed, on a prior occasion, the Department provided false and incomplete information to a reporter about Special Agent John Dodson in apparent violation of the Privacy Act as well as whistleblower protections. That matter is also currently under investigation by the OIG.

During the June 15 hearing, Ranking Member Cummings made an unequivocal statement:

> To the ATF officers, I thank you. As I said earlier, this has got to be very, very difficult. And I make a commitment to you, and it is what Senator Grassley said, and I want the word to go out, let it go forth, **that we want absolutely no retaliation against you.** You are simply standing up for what you believe in. You are simply carrying out your oath of office. You simply have been great Americans and continue to be, and we thank you. We thank you so very, very much. We thank you for your bravery; we thank you for what you are doing.[7]

We fully support the strong sentiments expressed by Ranking Member Cummings and ask you lend your support to them as well.

Additionally, in his testimony at the June 15 hearing before Chairman Issa's Committee, Assistant Attorney General Ronald Weich made a firm promise: "I want to assure the committee – I think a number of Members raised this – **that the Department of Justice will not, would never, retaliate against whistleblowers.**"[8] Mr. Weich's clear and unambiguous pledge makes the Department's actions with regard to Agent Forcelli especially disheartening.

For some time, ATF has also been aware of allegations of retaliation. Chairman Issa sent a letter following the aforementioned hearing to Deputy ATF Director William Hoover, noting that "no other ATF employees who cooperate with Congress should face retaliation either."[9] In his response, Mr. Hoover assured Chairman Issa that "ATF will not engage in any reprisal against any ATF employee because of his or her having testified before the Committee on Oversight and Government Reform, and will in all respects act towards such employees exactly as they would have had such employee not so testified."[10] This letter reflected the same promise Mr. Hoover made in person to Oversight Committee staff on May 5, 2011, and again at his transcribed interview on July 21, 2011.

In spite of prior commitments by the Department and ATF, retaliation still persists. Therefore, we now request your assurance that no one in the Department of Justice will act in a

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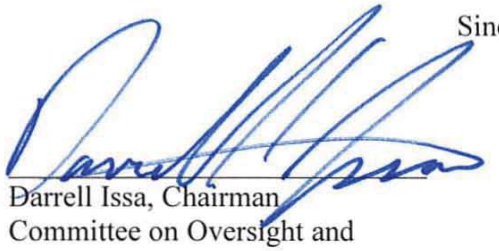
[7] *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes: Hearing before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. 50 (emphasis added).
[8] *Id.* at 153-4 (testimony of Hon. Ronald Weich) (emphasis added).
[9] Letter from Chairman Darrell E. Issa to William J. Hoover, Deputy Director, ATF (June 21, 2011).
[10] Letter from William J. Hoover to Chairman Darrell E. Issa (June 28, 2011).

retaliatory manner towards anyone who is cooperating with our investigation in any way. Any denial of or interference with employees' rights to furnish information to Congress is against the law.[11]

Thank to for your attention to this important matter.

Sincerely,



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

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

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

Cynthia A. Schnedar, Acting Inspector General
Department of Justice

[11] 5 U.S.C. § 7211 provides in pertinent part:

> The rights of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

Congress of the United States
Washington, DC 20515

October 12, 2011

The Honorable R. Gil Kerlikowske
Director
Office of National Drug Control Policy
Executive Office of the President
Washington, D.C. 20503

Dear Director Kerlikowske:

Recently, it has come to our attention that you may have received regular briefings from William D. Newell, former Special Agent in Charge of the Phoenix Field Division of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regarding the progress of an Organized Crime Drug Enforcement Task Force (OCDETF) case that has come to be known as Operation Fast and Furious. This surprising revelation has prompted us to explore further the exact details of these communications. To that end, we request that you please provide to the Committees the following information:

1) Documents, including e-mails, memoranda, briefing papers, and handwritten notes, regarding Operation Fast and Furious or a major Organized Crime Drug Enforcement Task Force case based out of ATF's Phoenix Field Division.

2) E-mails between William Newell and any member of the ONDCP staff, including yourself, sent or received between October 1, 2009 and August 31, 2011.

3) A list of meetings or teleconferences with William Newell, or any ATF official, and any member of the ONDCP staff, including yourself, between October 1, 2009 and August 31, 2011. Please include the dates, times, locations, and attendees for each meeting or teleconference.

Please provide the requested documents and information as soon as possible, but by no later than noon on October 21, 2011. If you have any questions regarding these requests, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. We look forward to receiving your response.

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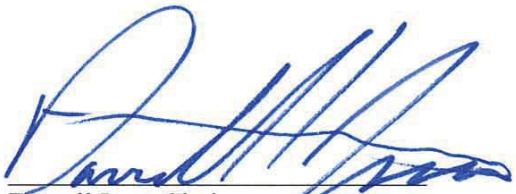
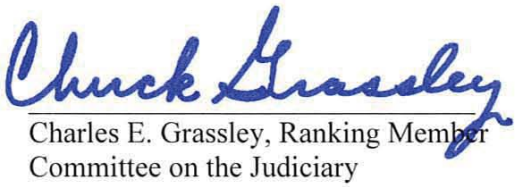
The Honorable R. Gil Kerlikowske
October 12, 2011
Page 2

Sincerely,



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



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

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

DEPARTMENT OF DEFENSE
JOINT TASK FORCE NORTH
Bldg 11603, Old Ironsides Rd.
FORT BLISS, TEXAS 79918-0058

REPLY TO
ATTENTION OF

11 October 2011

Colonel Mark R. Stammer
Commander, Joint Task Force North
Building 11603
Old Ironsides Drive
Fort Bliss, TX 79918-0058

The Honorable Charles Grassley
United States Senate
Washington, DC 20515-0001

Dear Senator Grassley:

In response to your request dated September 28th, we conducted and completed a diligent search of all documents in this command's possession, custody, and control which could contain responsive documents. We found no documents related to the planning or execution of Operation Fast and Furious.

Our investigation included individual and system-wide key word searches of documents on our SIPRNet and NIPRNet, search of our support request database, director certification of electronic and hardcopy files, and additional reviews and follow-up interviews as required by my Inspector General.

While we did not locate any internal or external records or communication in the areas you requested, we did discover that many members of this command received news reports on the subject after the fact, which I believe are not pertinent to your investigation.

In the interest of full disclosure, I also want to convey that my command occasionally coordinates engineering construction projects in the vicinity of Columbus, NM in order to increase the mobility of U.S. Border Patrol agents in the area. In the performance of their duties, two members of my command met with former Mayor Eddie Espinoza and former Chief of Police A.I. Vega in June 2009 and September 2010. I have determined that neither service member had any prior knowledge of Operation Fast and Furious or firearms trafficking. Additionally, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has not submitted any support requests to this command since at least January 1, 2009.

If you have any additional questions or requests, please feel free to contact me. A similar letter has also been sent to Chairman Issa's office.

Sincerely,

MARK R. STAMMER
Colonel, U.S. Army
Commanding

OCT-14-2011 15:39
TREY GOWDY

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

COMMITTEE ON THE JUDICIARY

COMMITTEE ON EDUCATION AND THE WORKFORCE

Rep. Trey Gowdy

P.01

Congress of the United States
House of Representatives
Washington, DC 20515-4004

October 14, 2011

Barack Obama
President of the United States of America
1600 Pennsylvania Avenue
Washington D.C. 20500

Dear Mr. President,

As you know, the House Committees on Judiciary and Oversight and Government Reform are seeking answers relevant to what was ostensibly a gun interdiction investigation commonly referred to as "Fast and Furious". The exchange below is from an interview conducted by "Univision" reporter Jorge Ramos with you on March 22, 2011. In this interview you make clear you did not authorize "Fast and Furious" and further make clear Attorney General Eric Holder did not authorize "Fast and Furious".

Were this simply an investigation flawed in its execution with guns "walking" away from law enforcement surveillance, guns crossing the border into Mexico, and "Fast and Furious" guns found at crime scenes both in Mexico and the United States, this congressional inquiry would be relevant and material.

However, in addition to being flawed in its execution, "Fast and Furious" was wholly flawed in its conception. Simply put, this investigation never would have met the objectives testified to (the disruption, dismemberment, and destruction of Mexican Drug Cartels). Consequently, it is not only significant when the Department of Justice learned of "problems" with this investigation, it is significant when the Department of Justice learned about the mere pendency, initiation, and attempted implementation of this ill-conceived investigation.

In connection with the exchange provided below, during Attorney General Holder's testimony in May of 2011, he stated that he learned of "Fast and Furious" a "few weeks ago". Would you inform us how you knew in March of 2011, 1 month prior to his testimony, that Attorney General Holder did not "authorize" this investigation?

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OCT-14-2011 15:54 Rep. Trey Gowdy P.03

TREY GOWDY

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

COMMITTEE ON THE JUDICIARY

COMMITTEE ON EDUCATION AND THE WORKFORCE

Congress of the United States
House of Representatives
Washington, DC 20515–4004

To that end, if you knew the Attorney General did not authorize "Fast and Furious" how did you learn that and when did you learn that? If you knew Attorney General Holder did not authorize it, inherent in that response is knowledge of who did authorize it. That information would be most helpful to the committee as we seek answers to this tragically ill-conceived and tragically ill-executed investigation.

Reporter:
THE MEXICAN GOVERNMENT COMPLAINS THAT THEY WERE NOT INFORMED ABOUT THE "FAST AND FURIOUS" OPERATION. DID YOU AUTHORIZE THIS OPERATION AND WAS PRESIDENT CALDERON PROPERLY INFORMED ABOUT IT?

President Obama:
Well, first of all I did not authorize it. Eric Holder, the Attorney General, did not authorize it. He's been very clear that our policy is to catch gunrunners and put them into jail. So what he's done is he's assigned an I.G., an inspector general, to investigate what exactly happened . . .

Sincerely,

Rep. Trey Gowdy
4th District of South Carolina

Rep. Jason Chaffetz
3rd District of Utah

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PATRICK MEEHAN
7TH DISTRICT, PENNSYLVANIA

HOMELAND SECURITY COMMITTEE
CHAIRMAN, SUBCOMMITTEE ON COUNTERTERRORISM AND INTELLIGENCE
SUBCOMMITTEE ON CYBERSECURITY, INFRASTRUCTURE PROTECTION AND SECURITY TECHNOLOGIES

Congress of the United States
House of Representatives
Washington, DC 20515–3807

OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
SUBCOMMITTEE ON TARP AND FINANCIAL SERVICES
SUBCOMMITTEE ON TECHNOLOGY, INFORMATION POLICY, INTERGOVERNMENTAL RELATIONS AND PROCUREMENT REFORM

TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
SUBCOMMITTEE ON AVIATION
SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT

October 18, 2011

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

I am writing to respectfully urge you to appear before the U.S. House Committee on Oversight and Government Reform to answer important questions on the "Fast and the Furious" operation. As a former U.S. Attorney from the Eastern District of Pennsylvania, I believe your testimony can provide critical insight into this matter and help ensure that this never happens again.

Unfortunately, the public – and the Committee – has more questions than answers about this ill-fated anti-gun-trafficking program. When senior officers of the Bureau of Alcohol, Tobacco, Firearms and Explosives appeared before the Committee in July, they were asked repeatedly how this operation was instigated and who along the chain of command approved it. No serious answers were forthcoming, and that is unacceptable. If it is true, as some believe, that this controversial program was conducted by local agents without the knowledge of senior Justice Department officials, then surely we need to know how such an ill-conceived and wide-ranging operation was allowed in the first place. And for that, we need your insight.

I agree with the Committee's ranking member Rep. Elijah Cummings (D-MD), who said on CBS's "Face the Nation" program Sunday that Democrats "want a responsible and balanced investigation because we are the Oversight and Government Reform committee … You cannot reform anything unless you have all the information … You look at the entire picture. That simply has not happened yet."

While the Committee has done important work on this issue, I believe only through your testimony can we conclude a "responsible and balanced investigation" that collects "all the information" that Ranking Member Cummings seeks.

As a former U.S. Attorney, I urge you to appear because in this serious and tragic case, we do owe it to the American people to conduct a thorough investigation and conduct responsible, proper oversight – not engage in a partisan witch hunt. Our shared goal is to uncover the truth and identify the right lessons-learned so this never happens again – not in scoring political points.

Sincerely,

Patrick Meehan

Pat Meehan
Member of Congress

WASHINGTON, DC OFFICE:
513 CANNON HOUSE OFFICE BUILDING, WASHINGTON, DC 20515
PHONE: (202) 225-2011 FAX: (202) 226-0280

email via website:
http://meehan.house.gov

DISTRICT OFFICE:
940 W. SPROUL ROAD, SUITE 202, SPRINGFIELD, PA 19064
PHONE: (610) 690-7323 FAX: (610) 690-7329

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Congress of the United States
Washington, DC 20515

October 20, 2011

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation
953 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Mr. Mueller:

The murder of Border Patrol Agent Brian Terry on December 14, 2010, is what motivated brave law enforcement agents from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to risk their careers and blow the whistle on Operation Fast and Furious. The Justice Department's false denials to Congress are what motivated them to speak out and testify publicly. A growing collection of documents and credible testimony has put the lie to those denials. It is in this context and because of this obstruction of our previous inquiries that we are now asking you to provide more than just conclusory statements by your Office of Congressional Affairs regarding the state of the evidence in the investigation of Agent Terry's murder.

Out of deference to the FBI's ongoing criminal inquiry, we have delayed asking the Bureau direct questions about the case for nearly ten months. However, Congress has a right and a duty to conduct oversight of federal law enforcement operations. It is a fundamental aspect of our Constitutional system of checks and balances. Agencies like the FBI can wield tremendous power and influence over individual citizens. With that power and influence comes responsibility, and nothing exempts the Bureau from accountability to Congress as well as to the courts.

While we are sensitive to the issues raised by asking questions about an ongoing case, Congress has frequently judged it necessary and has been successful in obtaining such information. The September 11th attacks, the Anthrax attacks, the sieges at Ruby Ridge and Waco, and ABSCAM are just a few of the most high-profile examples in modern times where Congress sought and obtained information related to ongoing criminal matters.[1] We are not required to wait years for lengthy court proceedings to gather information that we deem necessary to carry out our duties under the Constitution.

As you know, two weapons recovered at the scene of Agent Terry's murder have been traced to Fast and Furious. Yet the FBI has released very little information about the

[1] For additional examples, *see generally*, CRS Report RL34197, *Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice* (2008).

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circumstances surrounding the fatal shooting. Anonymous Justice Department sources initially told the press that the two Fast and Furious guns had been ballistically excluded as the murder weapon and that the murder weapon had not been recovered. However, we obtained a copy of the report, and in actuality, it does not exclude the Fast and Furious guns. Rather, it is inconclusive. So, apparently someone from the Justice Department attempted to deceive the press.

The lack of answers being given to Agent Terry's family about the circumstances surrounding his death and the delay in bringing his murderers to justice only compounds their anguish. After ten months of FBI investigation, Agent Terry's family and the American public deserve to know more about the status of the inquiry, the state of the evidence, and any connections to Operation Fast and Furious.

Although the Justice Department eventually released limited details about the two Fast and Furious weapons at the crime scene through the unsealing of a search warrant affidavit and the indictment, it only did so after the public controversy had erupted and documents describing the weapons and their serial numbers had been attached to Senator Grassley's initial letters asking about Fast and Furious.

Yet neither the search warrant affidavit nor the unsealed indictment describes the total number of weapons recovered at the scene.[2] The search warrant affidavit merely indicates that "one of the Border Patrol Agents, utilizing thermal binoculars, observed *at least two* of the suspected aliens carrying rifles."[3] It further states that when the one defendant in custody was interviewed, he "stated that he was traveling with four individuals" and that "all of the individuals were armed."[4] As for the indictment, it merely alleges that the defendants "did knowingly use and carry two" assault rifles.[5] It does not describe how many weapons were recovered by either Border Patrol or FBI authorities who arrived later at the scene.

So, from the limited information officially released about the circumstances, it appears that the illegal aliens who shot at Agent Terry may have been armed with a total of five rifles. And until recent public statements, it was unclear how many guns the FBI had recovered at the scene. According to documents we have obtained, we know that the two Fast and Furious rifles were part of a lot of three, all purchased at the same time over a year earlier. These circumstances naturally raise questions regarding the whereabouts of that third Fast and Furious

---

[2] Application and Affidavit for Search Warrant, Dec. 29, 2010, Case Number 10-10251M, D. Ariz. (Attachment 1); Superseding Indictment , Unsealed Apr. 20, 2011, Case Number 10-10251M , D. Ariz. (Attachment 2).
[3] Affidavit for Search Warrant, *supra* note 2 (emphasis added).
[4] *Id.*
[5] Superseding Indictment, *supra* note 2.

gun, whether the other firearms were also connected to Fast and Furious, and the current location of all the firearms involved.

At Agent Terry's funeral, border patrol agents told his mother that three weapons were recovered at the scene. Recent news reports about taped conversations also indicated there were three weapons involved, although only two appeared to be connected to Fast and Furious.[6] The conversation between an ATF agent and a cooperating gun dealer is as follows:

Agent: Well, there were two–

Dealer: There were three weapons.

Agent: There was actually three weapons.

Dealer: I know that. Three weapons recovered.

Agent: And, yes, they had the serial numbers for all three.

Dealer: So, that is correct. Is that–

Agent: And two of them came from this store.

Dealer: I understand that, yeah.

Agent: There's an SKS that I don't think came from – it was something else, from Texas or something.

Dealer: No, we're talking about the AKs.

Agent: No, the two AKs came from the store.[7]

On another portion of the recording, the agent claims that neither of the Fast and Furious guns from the cooperating dealer's store was the one that shot Agent Terry. This exchange also suggests the presence of other guns at the scene:

Dealer: [My attorney] was told in no uncertain terms the statement that DoJ said was false because guns [from my store] were part of it. I mean, I didn't even want to go –

[6] Recording between ATF agent and federal firearms licensee, Mar. 17, 2011.
[7] *Id.*

Agent: That's true. That's true, and I can tell you that's why he made the statement. The guns from your store were at the scene.

Dealer: Yeah.

Agent: They were not the gun, to the best of anybody's knowledge, that shot the Border Patrol agent.[8]

Additionally, several internal emails between ATF personnel initially indicated confusion over whether there were two or three weapons being traced. Given all these circumstances, it is reasonable to ask the FBI to clarify what it has learned about how many guns were possessed by the illegal aliens shooting at our Border Patrol agents and the current location of each of those firearms.

The FBI briefed our staff on October 5, 2011, on other matters potentially related to Fast and Furious. That briefing was the first time to our knowledge that the FBI asserted that it recovered two, and only two, guns. The Department's public statement on Monday evening that the FBI lab item labeled "K-1" was a blood sample was the first such explanation that we were aware of.

However, given that the ballistics report is inconclusive as to whether or not either Specimen K-2 or K-3 (the Fast and Furious weapons recovered from the scene) killed Agent Terry, we have the following questions:

1) Please explain why the ballistics test was inconclusive.

2) Despite the inconclusive ballistics test, are there other indications from the evidence or circumstances that would suggest that one of the Fast and Furious guns recovered at the scene was likely the murder weapon?

3) Despite the inconclusive ballistics test, are there other indications from the evidence or circumstances that would suggest that one of the Fast and Furious guns recovered at the scene was *not* likely the murder weapon?

4) Can the FBI conclusively rule out the possibility that Specimens K-2 or K-3 killed Agent Terry?

5) Does the FBI believe that a third weapon killed Agent Terry? If so, what steps has the FBI taken to locate that weapon and what is the status of the FBI's search?

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[8] *Id.*

6) How many total weapons does the evidence indicate were in the possession those encountered by Agent Terry's Border Patrol unit?

7) How many total shots and of what type does the evidence indicate were fired by those encountered by Agent Terry's Border Patrol unit? How many and of what type were fired?

8) What time did the FBI arrive on the scene?

9) Which other state, local, or federal agencies were already present when the FBI arrived?

10) What time did the first ATF personnel arrive at the scene?

11) When and how were the trace requests for weapons recovered at the scene submitted to ATF?

12) Has the FBI submitted any other trace requests to ATF in connection with the Terry murder case? If so, please describe the circumstances in detail, providing the serial number and date of each request.

13) Has the FBI submitted any trace requests to ATF in any of its other cases where the gun was connected to Fast and Furious? If so, please describe the circumstances in detail, providing the serial number and date of each request.

14) How many total suspects does the evidence indicate were encountered by Agent Terry's Border Patrol unit?

15) How many of those suspects are currently at large? What steps has the FBI taken to apprehend them and what is the status of the FBI's search?

16) According to press reports, three illegal immigrants were taken into custody "near the scene of the shootout" but were later "cleared by federal authorities," released, and deported to Mexico.[9] Please explain the circumstances of their arrest and why they were released.

In order to fully understand the context and meaning of the ballistics report and the circumstances surrounding the collection of forensic evidence related to Agent Terry's untimely demise, the House Committee subpoena requires production of all documents and communications between and among FBI employees in Arizona and the FBI Laboratory,

[9] Amanda Lee Myers and Jacques Billeaud, *Man Indicted in Arizona Border Agent's Killing*, ASSOCIATED PRESS, May 6, 2011.

including but not limited to employees in the Firearms/Toolmark Unit, referring or relating to the firearms recovered during the course of the investigation of Brian Terry's death.

Additionally, we now reiterate our previous request made more than three months ago on July 11, 2011, for all documents and communications between and among the following officials relating to Operation Fast and Furious and the investigation into Brian Terry's murder:

1) Nathan Gray, Former Special Agent in Charge, Phoenix Field Division

2) Annette Bartlett, Assistant Special Agent in Charge, Phoenix Field Division

3) Stephen Cocco, Acting Special Agent in Charge, Phoenix Field Division

4) Steven Hooper, Assistant Special Agent in Charge, Phoenix Field Division

5) John Iannarelli, Assistant Special Agent in Charge, Phoenix Field Division

6) John Strong, Assistant Special Agent in Charge, Phoenix Field Division

7) David Cuthbertson, Special Agent in Charge, El Paso Field Division

8) The Case Agent from the Tucson office in charge of the Brian Terry murder investigation

9) Erich Smith, Firearms/Toolmarks Unit

We request that you provide these documents as soon as possible, but by no later than noon on November 2, 2011.

Finally, this investigation will be more productive and beneficial for both the Bureau and Congress if there is mutual respect for the legitimate roles and responsibilities of both institutions, consistent with the principle of comity between our separate branches of government. That sort of respect is not fostered by the presumption that every question or document request is equivalent to an "accusation."

It is not our goal, intent, or Constitutional function to make accusations or attempt to prove them. Yet that presumption has been implicit in interactions with your staff and in official public statements from the Justice Department. For example, a spokesperson earlier this week dismissed any questions about these matters as a "false accusation" that "maligns the dedicated agents investigating the murder of Agent Terry." Nothing could be further from the truth. Our oversight efforts seek to ensure public confidence in federal law enforcement by providing an independent check on its operations in a matter of great controversy, such as this one. So, rather

than presuming the worst about our motives and interpreting our questions as accusations, it would be more productive to simply answer them.

If you have any questions regarding these requests, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. We look forward to receiving your response.

Sincerely,

Darrell Issa, Chairman
Committee on Oversight and
Government Reform
United States House of Representatives

Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20503

October 20, 2011

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

We are in receipt of your letter to Director Kerlikowske dated October 12, 2011, inquiring about information that ONDCP might have received regarding "Operation Fast and Furious." While we do not believe it is accurate that the Director received "regular briefings from William D. Newell," we have begun the process of reviewing records to determine if ONDCP has relevant information. ONDCP is proceeding expeditiously to complete its review and provide an appropriate response.

If you have any questions, please contact me at (202[redacted]

Sincerely,

Jeffrey Teitz
General Counsel

Cc: The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

GALLAGHER & KENNEDY
P.A.
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October 21, 2011

The Honorable Darrell Issa, Chairman
The Honorable Elijah E. Cummings, Ranking Member
House Committee on Oversight and Government Reform
Washington D.C. 20515

Re: *Brian Terry*

Dear Congressmen Issa and Cummings:

I represent the family of slain Border Patrol Agent Brian Terry in furtherance of a potential wrongful death action against those who ultimately will be held responsible for his death.

On behalf of the family, we want to thank you, as well as Senator Grassley, for your unfaltering commitment to reach the truth of the ATF/U.S. Attorney's operation "Fast and Furious."

The Terry family remains unsatisfied with the answers provided by government officials to date, not only about the genesis and operation of Fast and Furious, but what actually occurred precipitating Brian's death.

Ultimately the Terry family seeks full justice, both criminally and civilly, for those responsible for Brian's death.

Thank you for the support that you have shown the Terry family and, hopefully, through your continued efforts the totality of the truth will become known.

Thank you very much.

Yours truly,

GALLAGHER & KENNEDY, P.A.

Patrick J. McGroder III

PJM/jh
cc: Stephen Castor – via email only

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JOHN CORNYN
TEXAS

United States Senate

WASHINGTON, DC 20510–4305

October 24, 2011

The Honorable Darrell Issa
Chairman
House Committee on Oversight and Government Reform
2347 Rayburn House Office Building
Washington, DC 20515

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
135 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Issa and Ranking Member Grassley:

I am writing to commend your oversight efforts and to express my hope that you will use your authority to investigate allegations that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) conducted a "gun-walking" program similar to Operation Fast and Furious in the State of Texas. Clearly, ATF "gun-walking" schemes have had significant spillover effects in Texas—in two separate incidents in January and April of 2010, a total of 60 rifles that were "walked" during Operation Fast and Furious were recovered from the hands of criminals in El Paso.

As you know, the attorney for a federal firearms licensee (FFL) in Houston has alleged that its employees were ordered by the ATF to conduct suspicious sales of firearms to purchasers who may have been working on behalf of Mexican drug cartels. Last December, the Department of Justice convened a grand jury to investigate whether several of the Houston FFL's salespeople were criminally liable for selling weapons to straw purchasers. This investigation was dropped only after the FFL revealed that the illicit sales were carried out at the behest of the ATF. I fear that ATF may have pressured other FFLs in Texas to conduct illegal activities, and that many of these weapons may have ended up in the hands of cartels and at the scene of multiple violent crimes in Mexico.

I also respectfully request that you investigate whether a Texas-based "gun-walking" program may have been responsible for the murder of US Immigration and Customs Enforcement agent Jaime Zapata on February 15, 2011 in Mexico. One of the weapons used to murder agent Zapata was purchased by Texas resident Otilio Osorio in October, 2010 and subsequently trafficked to Mexico through Laredo, Texas. Osorio and two co-conspirators were arrested by the Department of Justice on unrelated weapons charges in March 2011, and evidence uncovered by Senator Grassley suggests that the ATF was aware of Osorio's weapons trafficking activities long before that date. The delay in his arrest raises concerns that the ATF knowingly allowed Osorio to continue trafficking weapons through Texas as part of a broader "gun-walking" program.

I wrote to Attorney General Holder in August asking him to promptly disclose the details of any past or present Texas-based ATF "gun-walking" programs similar to Operation Fast and Furious. I have not received any response from the Department of Justice. Though their failure to respond

is not direct evidence of malfeasance, the Department's reluctance to address allegations of additional "gun-walking" schemes in my state raises serious questions, and Texans deserve a full accounting of the Department's role in this matter.

I support your efforts to hold the Department of Justice accountable for their involvement in the Operation Fast and Furious tragedy. American tax dollars should never again be spent to arm Mexican drug cartels.

Sincerely,

JOHN CORNYN
United State Senator

Cc: The Honorable Elijah Cummings
Ranking Member
House Committee on Oversight and Government Reform

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee

Congress of the United States
Washington, DC 20515

October 25, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

On October 11, your Department (DOJ) sent Senator Grassley a letter regarding murdered Immigration and Customs Enforcement (ICE) Agent Jaime Zapata. Not only was the response more than *six months* late, it completely failed to answer the key questions.[1]

In a March 1, 2011, press release, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) stated it was unaware of Otilio Osorio's purchase on October 10, 2010, of the weapon used to murder Agent Zapata.[2] According to ATF documents, however, the agency had reason to believe as early as September 17, 2010, that Otilio's brother and co-habitant Ranferi Osorio and their next-door neighbor Kelvin Morrison were straw purchasers.[3] Yet the ATF apparently made no effort to contact Ranferi Osorio or Kelvin Morrison and inquire about how their weapons came to be trafficked to Mexico within 2 weeks of their purchase.

Moreover, it appears that the ATF had an opportunity to arrest the Osorio brothers and Kelvin Morrison during a staged operation on November 9, 2010. According to a DOJ press release, "a Dallas ATF confidential informant (CI) arranged a meeting" at which the Osorio brothers, arriving at the meeting with Morrison as a passenger in their vehicle, "unloaded several large bags containing firearms into the CI's vehicle, which was kept under surveillance..."[4] The DOJ press release says all 40 firearms had obliterated serial numbers, which made simple possession of them a prosecutable offense.[5] Local law enforcement officials stopped the vehicle later in the day—presumably in concert with ATF and for the purpose of identifying the vehicle's inhabitants.[6] Inexplicably, none of the suspects were arrested.

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[1] Letter from Senator Charles Grassley to Acting Director Kenneth Melson (Mar. 4, 2011) (Attachment 1); Letter from Senator Charles Grassley to Acting Director Kenneth Melson (Mar. 28, 2011) (Attachment 2).

[2] Department of Justice Press Release (Mar. 1, 2011), available at http://www.fbi.gov/dallas/press-releases/2011/dl030111.htm.

[3] Attachments 2.2 and 2.3, attached to Letter from Senator Charles Grassley to Acting Director Kenneth Melson (Mar. 28, 2011).

[4] Department of Justice Press Release (Mar. 1, 2011).

[5] *Id.*

[6] *Id.*

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Finally, documents in our possession indicate that the ATF did not create a Report of Investigation (ROI) on the November 9 transfer of firearms until over *three months* later, on February 25, 2011—the same day ATF received the report tracing the Zapata murder weapon back to the purchase by Otilio Osorio.[7] Documenting investigative steps three months after the fact and only after a trace returned to the murder of a federal agent raises red flags about the nature of ATF's investigation.

Yesterday, another member of the Senate Judiciary Committee, Senator John Cornyn, also raised questions about issues surrounding the Osorio brothers and Morrison and urged us to look into the matter.[8] Accordingly, please provide detailed responses to the following questions:

(1) Did ATF make any effort to question Ranferi Osorio or Kelvin Morrison after trafficked firearms were traced back to them on September 17? If not, why not?

(2) Why weren't any of these individuals arrested in November in connection with the undercover drop-off of weapons on November 9?

(3) Was any surveillance maintained on the Osorio brothers or Morrison by any DOJ component, including ATF and DEA, after the November 9 operation?

(4) If not, did personnel from any DOJ component raise concerns about the wisdom of allowing individuals like the Osorio brothers or Morrison to continue their activities after the November weapons transfer? If so, how were those concerns addressed?

(5) Given that the likely recipients of any trafficked guns were so close to the border, did personnel from any DOJ component raise concerns about the possibility of those guns being used against U.S. border agents? If so, how were those concerns addressed?

(6) Does any component of DOJ know when or how the firearm used in the deadly assault on Agent Zapata was trafficked to Mexico?

(7) Does the ATF have policies about creating ROIs at the time that events take place?

(8) Why was the ROI regarding events in November 2010 not created until immediately after the ATF received the trace results on the Zapata murder weapon?

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[7] Delivery of Firearms to ATF Confidential informant (created Feb. 25, 2011, 14:53).
[8] Letter from Senator John Cornyn to Senator Charles Grassley and Chairman Darryl Issa (Oct. 24, 2011).

In addition to answering those questions, please provide all records relating to the following:

(9) When any component of the DOJ first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison;

(10) Surveillance that may have been conducted on the Osorio brothers or Morrison prior to the November 9 transfer of weapons;

(11) The November 9 transfer; and

(12) Any surveillance that any component of the DOJ continued to conduct on the Osorio brothers or Morrison between the November 9, 2010, transfer and their arrest on February 28, 2011.

We look forward to receiving your response as soon as possible, but by no later than noon on November 8, 2011. Should you have any questions regarding any of these letters, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074.

Sincerely,

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

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

cc: Mr. B. Todd Jones, Acting Director
U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives

The Honorable Michele M. Leonhart, Administrator
U.S. Drug Enforcement Administration

The Honorable Elijah E. Cummings, Ranking Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

Congress of the United States
Washington, DC 20515

October 31, 2011

Mr. Robert Halliday
Director
Arizona Department of Public Safety
PO Box 6638
Phoenix, Arizona 85005-6638

Dear Mr. Halliday:

Pursuant to the Arizona Public Records Law,[1] we write to request records related to our investigation into Operation Fast and Furious, conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In Fast and Furious, the ATF allowed straw purchasers of firearms to continue to operate without interdicting the weapons or arresting the buyers. As you may be aware, two weapons which were part of Operation Fast and Furious were found at the scene of U.S. Border Patrol Agent Brian Terry's murder near Rio Rico, Arizona.

Specifically, we seek the following records:

1) Records relating to Operation Fast and Furious.
2) Serial numbers related to firearms recovered attendant to investigations into homicide, aggravated assault, kidnapping, home invasion, or other violent crimes that occurred from September 2009 to the present.

Furthermore, we have a particular interest in records relating to a firearm seized when Angel Hernandez-Diaz allegedly committed an aggravated assault against Officer Mike Ruiz on March 4, 2010, as reported by various news sources.[2]

If you have any questions regarding this request, please contact Henry Kerner in Chairman Issa's Committee office at (202) 226-5049 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. The Committees prefer to receive documents and records in electronic format. As such, please e-mail copies of the records in PDF format to both [redacted] and

[1] Arizona Public Records Law, A.R.S. § 39-101-161 (2011).
[2] *E.g.*, Robert Anglen, *2nd crime scene yields guns from ATF sting*, ARIZ. REPUBLIC, Sep. 20, 2011, *available at* http://www.azcentral.com/arizonarepublic/news/articles/2011/09/10/20110910guns0910.html.

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Mr. Robert Halliday
October 31, 2011
Page 2

[redacted] They may also be faxed to both [redacted] and [redacted]. Thank you for your assistance in this matter.

Sincerely,

Darrell Issa, Chairman
Committee on Oversight and
Government Reform
United States House of Representatives

Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 31, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to the Attorney General, dated June 23, 2011, requesting that the Senate Judiciary Committee receive the same access to documents that the Department provides to the House Committee on Oversight and Government Reform related to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Project Gunrunner.

Enclosed on CD please find 652 pages of documents that we produced to the House Oversight and Government Reform Committee on October 31, 2011. In response to Chairman Smith's request, we also will provide these documents to the House Judiciary Committee. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques or disclose prosecutorial deliberations, plus limited information relating to line employees, such as their cellular phone numbers. We also have withheld text that implicates individual privacy interests, including information about individuals who have been investigated but not prosecuted. In addition, we have redacted text from multi-subject documents that is not responsive to your requests. In some substantial multi-subject documents, such as weekly reports, we have not included pages that contained text that was either not responsive or contained details of particular investigations other than Fast and Furious. The nature of specific redactions is indicated by a redaction code ("RC") set forth in the enclosed list.

We have also located an additional 47 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by Committee staff. There are limited redactions of text that would identify law-enforcement sensitive details and techniques as well as information implicating individual privacy interests. In response to Chairman Smith's request, the documents will also be made available for review at the Department by staff of the House Committee on the Judiciary.

To assist the Committee in its oversight duties, we also appreciate the opportunity to provide you with relevant and necessary context for several of the documents in today's production.

Documents from the U.S. Attorney's Office for the District of Arizona

The documents stamped HOGR USAO 002960-61 reflect communications in January 2010 among then U.S. Attorney Dennis Burke and his staff regarding the Fast and Furious investigation. The communications to Mr. Burke recount a division between ATF's Phoenix Field Division and ATF Headquarters over how to proceed in the investigation. They also demonstrate that the U.S. Attorney's Office's view at that time was that there was insufficient evidence to charge any of the suspects, and thus the office adopted the approach preferred by ATF's Phoenix Field Division to pursue a longer-term investigation.

In assessing the January exchange, you may wish to refer to HOGR USAO 003026-27 and 003046-47. These are memoranda regarding the Fast and Furious matter that were prepared by the U.S. Attorney's Office in August 2010, which state that "[t]hus far the investigation has interdicted approximately 200 firearms, including two .50 caliber rifles. Investigating agents have pursued interdiction of the firearms transferred to the conspirators where possible. Agents have not purposely let guns 'walk.' Interdiction in some cases has been hampered by counter-surveillance used by the targets." An OCDETF-related memorandum written in October 2010 used the same language and added that "ATF has undertaken a very aggressive approach to seizing firearms tied to this conspiracy whenever a legal theory for seizure can be developed."

We are also producing documents relating to a March 2010 visit by the Attorney General to Arizona. The Attorney General's schedule during the brief trip was extremely busy. Among other meetings and events there, he attended a conference of U.S. Attorneys, a session with tribal leaders, and a mortgage fraud press conference. He also met with the Mexican Attorney General and visited the U.S. Attorney's Office for the District of Arizona and with a broad range of U.S. law enforcement personnel. In addition, he was scheduled for a ten-minute meeting with then U.S. Attorney Burke. In anticipation of that visit, officials in the Arizona U.S. Attorney's Office solicited and collected "[s]ignificant case summaries" regarding matters being handled in the office. One of the initial summaries prepared by the office in anticipation of the Attorney General's visit related to Operation Fast and Furious. However, a review of the Attorney General's briefing materials for that trip (HOGR HRNDZ 003245-48) demonstrates that the "significant case list" actually transmitted by prosecutors in Arizona to the Attorney General's Office did not include any reference to Fast and Furious. Indeed, the criminal cases that were listed had already been formally charged by the office. The Fast and Furious investigation had not yet resulted in charges.

Nor have we located any evidence suggesting that then U.S. Attorney Burke briefed the Attorney General on Fast and Furious either during their ten-minute meeting or at another time during the visit. According to Mr. Burke's private counsel, with whom we have conferred, Mr. Burke does not recall having briefed the Attorney General about Fast and Furious at any time. The Attorney General similarly has no recollection of having been briefed on the investigation.

His staff member's notes from other meetings during the trip reflect general discussions about challenges on the Southwest border and the demand for firearms in Mexico but no mention of Fast and Furious, much less of any of the inappropriate operational tactics employed in that investigation.

Today's production also contains e-mail communications (HOGR USAO 003070, 3073-74, 3085-86, 3087) reflecting an interest on the part of the Arizona U.S. Attorney's Office in late December 2010 and early January 2011 in having first the Attorney General and then the Deputy Attorney General participate in the late-January press conference announcing the Fast and Furious indictments. As you know, neither the Attorney General nor the Deputy Attorney General attended that press conference. The staff member in the Attorney General's office with whom Mr. Burke raised the possibility has no recollection of speaking to the Attorney General about it, and we note that Mr. Burke's email to the staff member does not refer to Fast and Furious by name, let alone discuss any operational tactics. Moreover, according to Mr. Burke's counsel, Mr. Burke does not recall ever having discussed this matter with either the Attorney General or Deputy Attorney General.

Documents from Main Justice

With this letter, we are also producing additional weekly reports to the Office of the Attorney General that either relate to gun trafficking issues generally, or to Fast and Furious in language already included in reports made available to you in a prior production, or relate generally to developments in a separate investigation, Operation Wide Receiver. Many of those entries do not refer specifically to Fast and Furious by name and none of them contain references to any inappropriate investigative tactics. The Attorney General provided important context for weekly reports like those produced today in his October 7, 2011 letter to you and other members of Congress.

Documents from ATF

We are producing as well a January 2011 e-mail (HOGR ATF 003600-03) showing that, in response to an Office of the Attorney General request on January 7, 2011 for anticipated policy announcements and initiatives from each Department component, ATF submitted information about three items, including a short summary of the expected Fast and Furious indictments and press event to occur less than two weeks later. The information was requested so that the Office of the Attorney General could decide what items to include in a periodic report to the White House's Office of Cabinet Affairs. Although ATF submitted information about Fast and Furious, that information was not provided to the Office of Cabinet Affairs as part of the Department's policy update, because the information provided by ATF related to a specific case and not a policy initiative, as requested.

Documents Related to the Wide Receiver Matter

In addition, we are producing documents that reflect the involvement of the Gang Unit of the Justice Department's Criminal Division in a pair of gun trafficking cases referred to

separately as "Wide Receiver 1" and "Wide Receiver 2." These cases originated in the Arizona U.S. Attorney's Office and were investigated by ATF in 2006 and 2007, prior to Operation Fast and Furious. These documents also reflect the Gang Unit's involvement in a third gun trafficking case that also originated out of the Arizona U.S. Attorney's Office, *United States v. Raul Flores Lopez, et al.* ("*Flores*"). The documents further reflect a Gang Unit prosecutor's attempts to become involved in several additional gun trafficking cases in Arizona, including the Fast and Furious case.

According to these documents, in the summer of 2009 the Gang Unit offered to assist several U.S. Attorneys' Offices along the Southwest Border in their efforts to combat gun trafficking to Mexico. Shortly thereafter, in response to the Gang Unit's offer, the Arizona U.S. Attorney's Office sought assistance on the Wide Receiver cases, which had been languishing in that Office's Tucson branch at least since ATF had completed its investigation and presented the case for prosecution close to two years earlier. The Arizona U.S. Attorney's Office had been involved in the underlying ATF investigation.

As of the fall of 2009, when the Gang Unit was asked to prosecute the Wide Receiver cases (HOGR WR 003371), none of the Wide Receiver defendants had been indicted notwithstanding that the case had long since been presented for prosecution. A prosecutor in the Gang Unit began to analyze the results of ATF's completed investigation and reached the conclusion that the Wide Receiver cases would likely need to involve two indictments against multiple defendants. In an early review of the case, the prosecutor wrote that "it appears that the biggest problem with the case is its [sic] old [and] should have been taken down last year AND a lot of guns seem to have gone to Mexico." HOGR WR 003383. Despite this, the prosecutor recommended to her supervisors that "we get our feet wet and take the case." Id. In the fall of 2009, she wrote a draft memorandum setting forth her preliminary analysis. HOGR WR 003391-93. She addressed this memorandum to Deputy Assistant Attorney General ("DAAG") Jason Weinstein but emailed it only to her immediate supervisors (HOGR WR 003390); we have found no indication that the draft memorandum was subsequently finalized or that it was sent to DAAG Weinstein. At the same time that the prosecutor assigned to the Wide Receiver cases was analyzing the completed Wide Receiver investigation, she was also preparing to try a death penalty case in Maryland against a member of the MS-13 gang who had ordered the murder of a juvenile. That trial began in January 2010 and concluded in March 2010.

While she was trying the MS-13 case, ATF headquarters asked the Gang Unit to assist with the Fast and Furious matter. In response to that request, on March 5, 2010, a different Gang Unit prosecutor attended a briefing on the case. Within two weeks, however, the Gang Unit prosecutor learned that the U.S. Attorney's Office in Arizona would be handling Fast and Furious by itself, and, consequently, he had no substantive involvement with the matter.

Following the conclusion of the MS-13 trial in Maryland, the Gang Unit prosecutor handling the Wide Receiver cases completed a prosecution memorandum for Wide Receiver 1. Upon reading that memorandum in April 2010, DAAG Weinstein became aware that in 2006 and 2007, as part of the Wide Receiver investigation, ATF had failed to interdict guns despite having the ability and legal authority to do so and that, as a result, guns had crossed the border into Mexico. HOGR WR 003442. According to an e-mail he sent in April 2010, DAAG

Weinstein was "stunned" to learn these facts. Mr. Weinstein and others in the Gang Unit quickly alerted Assistant Attorney General Lanny Breuer, who directed Weinstein to meet with ATF senior leadership. HOGR WR 003442, 003451. On April 28, 2010, DAAG Weinstein met with two senior ATF officials to alert them that the Criminal Division was planning soon to indict the Wide Receiver cases, but that ATF's 2006 and 2007 investigation had been problematic, both because ATF had failed to interdict a significant number of guns despite having the ability and legal authority to do so and some of those guns had crossed the border into Mexico, and because of certain allegations involving the ATF agent who had conducted the investigation. HOGR WR 003442, 003485. According to contemporaneous notes taken by a participant in the meeting, the fact that guns had "walk[ed]" in Wide Receiver was explicitly discussed with the ATF officials. HOGRWR 003478a.

The documents produced today reflect that the Gang Unit prosecutor was ready to indict the Wide Receiver cases and unseal them beginning in the spring of 2010, but that the Assistant U.S. Attorney in the U.S. Attorney's Office in Arizona handling Fast and Furious believed that if the Wide Receiver indictments became public at that time they would negatively impact his case. The Assistant U.S. Attorney therefore requested that the indictments and/or the unsealing of the indictments in Wide Receiver be delayed. HOGR WR 003480, 003489. As a result of that request, Wide Receiver 1 was indicted under seal in May 2010, Wide Receiver 2 was indicted under seal in October 2010, and both cases were unsealed in November 2010. HOGR DOJ 003260, 63.

Over the course of the next several months, the Gang Unit prosecutor handling the Wide Receiver cases sought to become involved in other gun trafficking cases in Arizona. Thus, in approximately July 2010, she was asked to assist with several additional cases, including Fast and Furious. She was informed at that time, however, that the Assistant U.S. Attorney handling Fast and Furious was unlikely to need much help on the case until it was indicted; and, ultimately, she did not become closely involved with any of the cases that she had been asked to help on that summer. HOGR WR 003517, 003518, 003534. In September 2010, she expressed to her immediate supervisors her increasing "frustrat[ion]" with her lack of involvement on Arizona gun trafficking cases, noting that despite having been "ostensibly assigned" to Fast and Furious she had had "little to no involvement" with the case, and did not think there would be enough work for her in Arizona to keep her busy. HOGR WR 003517-19.

In October 2010, however, the Gang Unit prosecutor handling the Wide Receiver cases was asked to handle a separate straw purchaser case involving the seizure of 49 guns. That case, referred to as *Flores*, appeared to be tangentially related to Fast and Furious insofar as several of the suspects in *Flores* appeared to have purchased guns for suspects in Fast and Furious. HOGR WR 003521. The Gang Unit prosecutor agreed to handle the case, and, in January 2011, the *Flores* indictment was announced together with the Fast and Furious indictment.

Today, the Gang Unit (now part of the Criminal Division's Organized Crime and Gang Section) continues to prosecute Wide Receiver 2 and *Flores*. To date, in both Wide Receiver cases, six defendants have pleaded guilty, and two remain fugitives. In *Flores*, seven defendants have pleaded guilty, and one is scheduled to go on trial next month.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Charles Grassley
Ranking Minority Member

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20503

October 31, 2011

The Honorable Darrell Issa
Chairman
House Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Member
Senate Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Issa and Ranking Member Grassley:

I am writing in further response to your letter to Director Gil Kerlikowske dated October 12, 2011 requesting from the Office of National Drug Control Policy (ONDCP): 1) documents regarding "Operation Fast and Furious," an Organized Crime Drug Enforcement Task Force (OCDETF) criminal investigation led by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) office in Phoenix, Arizona; 2) email communications between ONDCP and ATF agent William Newell; and 3) information about meetings or teleconferences between any ATF official and any member of the ONDCP staff.

Enclosed are documents responsive to your first two requests from October 2009 through the end of January 2011, when the indictment in *United States v. Avila* was unsealed and Senator Grassley began his inquiry into this matter. For identification purposes, these documents bear bates numbers ONDCP F&F 000001 to ONDCP F&F 000303. Email addresses and phone numbers have been redacted from these documents, along with certain sensitive law enforcement information identified for us by the Department of Justice.

By way of background, ONDCP was created during the Reagan Administration by the Anti-Drug Abuse Act of 1988. ONDCP advises the President on drug-control issues; coordinates drug-control policies and related funding across the Federal government; and produces the annual National Drug Control Strategy, which outlines Administration efforts to reduce illicit drug use and its consequences. In connection with its policy functions and grant programs, ONDCP frequently communicates with federal, state, and local law enforcement agencies. ONDCP has no authority to initiate, conduct, manage, or supervise law enforcement investigations, however.

Documents bearing bates numbers ONDCP F&F 000105 through ONDCP F&F 000303 are responsive to your request for documents regarding ATF's "Operation Fast and Furious." ONDCP receives copies of weekly reports from the National Drug Intelligence Center (NDIC) that summarize the Center's activities. Seven of these weekly reports, which we believe the Committee has already received from the Department of Justice, include a summary reference to "Operation Fast and Furious." In addition, in March 2010, in advance of the Director's participation in a U.S. Attorneys' Conference that took place in Phoenix, Arizona on March 24th and 25th, the U.S. Attorney's Office in Arizona provided ONDCP with an eight page summary overview of its significant law enforcement activities that included one paragraph on "Operation Fast and Furious." At the request of the Department of Justice, we have redacted from this document any references to investigations other than "Operation Fast and Furious" because the information is law enforcement sensitive and does not relate to the subject of your letter. The Department of Justice has also requested that we redact limited information from the paragraph regarding "Operation Fast and Furious," in order to comply with certain statutory provisions related to law enforcement. The brief references in those documents to "Operation Fast and Furious" contain no information indicating that ATF was not closely monitoring firearms or that ATF was letting guns "walk."

Documents bearing bates numbers ONDCP F&F 000001 through ONDCP F&F 000106 are responsive to your request for emails between William Newell and any member of the ONDCP staff. There is no reference to "Operation Fast and Furious" in any of these emails, with the exception of the last two that allude to the public disclosure of the indictment in late January 2011. Most of the enclosed emails relate to arrangements for a single briefing Mr. Newell provided to the Director and relevant staff. This overview briefing occurred on May 13, 2010 in ONDCP's Washington, D.C. offices and generally covered ATF's efforts to combat gun trafficking on the Southwest border. Included in the emails is a power point presentation Mr. Newell intended to use at the meeting. There was no mention of "Operation Fast and Furious" at the briefing.

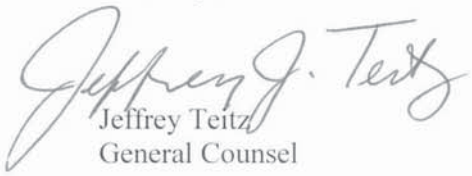
Please note that we have not included with today's production certain broadly distributed emails from the time frame noted above that both Mr. Newell and various members of the ONDCP staff received relating to the national High Intensity Drug Trafficking Areas (HIDTA) program and certain broad policy working groups. These emails involved a large number of recipients, including federal, state, local, and tribal officials.

You also requested a list of ONDCP meetings or teleconferences with William Newell or any ATF official. This is an extremely broad request. With respect to Mr. Newell, it appears that he conducted just one briefing for the Director and relevant staff – the May 13, 2010 briefing discussed above. Otherwise, the Director and other ONDCP staff members encountered Mr. Newell and other ATF officials periodically at meetings and conferences of law enforcement and policy officials in the course of ONDCP's work on national drug control policy, including, for example, the U.S. Attorneys' Conference in Arizona on March 24-25, 2010 and a trip to Arizona in September 1-2, 2010 to consult with federal, state, local, and tribal law enforcement officials. It is not possible to determine with any certainty, however, every occasion where any member of the ONDCP staff attended a meeting or teleconference where Mr. Newell or any other ATF official was also present.

As you can see from the documents produced today, none of the limited information provided to ONDCP about "Operation Fast and Furious" informed ONDCP about any decision by ATF to let guns "walk." Furthermore, Director Kerlikowske was never briefed about "Operation Fast and Furious" by William Newell or any other ATF official. Of course, ONDCP is not a law enforcement agency and has no supervisory authority over ATF.

The Director looks forward to a continued constructive relationship with your Committees, and I trust that the information provided today satisfies the instant oversight interests.

Sincerely,



Jeffrey Teitz
General Counsel

Cc: The Honorable Elijah E. Cummings
Ranking Member
House Committee on Oversight and Government Reform

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 31, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your subpoena dated October 11, 2011, which requested documents regarding the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) investigation known as Operation Fast and Furious and related matters. It also responds to both your letter dated July 11, 2011, requesting communications of twelve named Department employees, and your letter dated September 1, 2011, requesting documents and communications of six current or former employees in the United States Attorney's Office for the District of Arizona.

We are delivering today to your office 652 pages of material responsive to your subpoena and letters. These documents bear limited redactions to protect specific details about pending investigations, including text that would identify targets and sensitive techniques or disclose prosecutorial deliberations, plus limited information relating to line employees, such as their cellular phone numbers. We also have withheld text that implicates individual privacy interests, including information about individuals who have been investigated but not prosecuted. In addition, we have redacted text from multi-subject documents that is not responsive to your requests. In some substantial multi-subject documents, such as weekly reports, we have not included pages that contained text that was either not responsive or contained details of particular investigations other than Fast and Furious. The nature of specific redactions is indicated by a redaction code ("RC") set forth in the enclosed list. In some instances, we have included text that is not responsive to your subpoena or letters because it provides context that may be helpful to your understanding of the enclosed documents. In response to requests from Chairman Smith and Chairman Leahy, we will deliver to the House and Senate Committees on the Judiciary the same documents that we deliver to you.

Further, we have identified an additional 47 pages of law-enforcement sensitive material that we are prepared to make available at the Department for review by staff of your Committee, as well as staff of the Senate and House Committees on the Judiciary. There are limited redactions of text that would identify law-enforcement sensitive details and techniques as well as information implicating individual privacy interests.

These records are responsive to items 1, 4, 5, 10, 14, and 21 of the Schedule attached to the Committee's subpoena. Our search for records responsive to the subpoena and your letters is continuing, and we will supplement this response when we have processed additional responsive records. In addition, and consistent with established third-agency practice, we are consulting with the Departments of Homeland Security and State regarding documents that implicate their equities. We will advise you when we have completed those consultations. We appreciate the opportunity to confer with Committee staff to obtain additional guidance about your particular priorities and other interests in connection with the subpoena.

To assist the Committee in its oversight duties, we also appreciate the opportunity to provide you with relevant and necessary context for several of the documents in today's production.

Documents from the U.S. Attorney's Office for the District of Arizona

The documents stamped HOGR USAO 002960-61 reflect communications in January 2010 among then U.S. Attorney Dennis Burke and his staff regarding the Fast and Furious investigation. The communications to Mr. Burke recount a division between ATF's Phoenix Field Division and ATF Headquarters over how to proceed in the investigation. They also demonstrate that the U.S. Attorney's Office's view at that time was that there was insufficient evidence to charge any of the suspects, and thus the office adopted the approach preferred by ATF's Phoenix Field Division to pursue a longer-term investigation.

In assessing the January exchange, you may wish to refer to HOGR USAO 003026-27 and 003046-47. These are memoranda regarding the Fast and Furious matter that were prepared by the U.S. Attorney's Office in August 2010, which state that "[t]hus far the investigation has interdicted approximately 200 firearms, including two .50 caliber rifles. Investigating agents have pursued interdiction of the firearms transferred to the conspirators where possible. Agents have not purposely let guns 'walk.' Interdiction in some cases has been hampered by counter-surveillance used by the targets." An OCDETF-related memorandum written in October 2010 used the same language and added that "ATF has undertaken a very aggressive approach to seizing firearms tied to this conspiracy whenever a legal theory for seizure can be developed."

We are also producing documents relating to a March 2010 visit by the Attorney General to Arizona. The Attorney General's schedule during the brief trip was extremely busy. Among other meetings and events there, he attended a conference of U.S. Attorneys, a session with tribal leaders, and a mortgage fraud press conference. He also met with the Mexican Attorney General and visited the U.S. Attorney's Office for the District of Arizona and with a broad range of U.S. law enforcement personnel. In addition, he was scheduled for a ten-minute meeting with then U.S. Attorney Burke. In anticipation of that visit, officials in the Arizona U.S. Attorney's Office solicited and collected "[s]ignificant case summaries" regarding matters being handled in the office. One of the initial summaries prepared by the office in anticipation of the Attorney General's visit related to Operation Fast and Furious. However, a review of the Attorney General's briefing materials for that trip (HOGR HRNDZ 003245-48) demonstrates that the

"significant case list" actually transmitted by prosecutors in Arizona to the Attorney General's Office did not include any reference to Fast and Furious. Indeed, the criminal cases that were listed had already been formally charged by the office. The Fast and Furious investigation had not yet resulted in charges.

Nor have we located any evidence suggesting that then U.S. Attorney Burke briefed the Attorney General on Fast and Furious either during their ten-minute meeting or at another time during the visit. According to Mr. Burke's private counsel, with whom we have conferred, Mr. Burke does not recall having briefed the Attorney General about Fast and Furious at any time. The Attorney General similarly has no recollection of having been briefed on the investigation. His staff member's notes from other meetings during the trip reflect general discussions about challenges on the Southwest border and the demand for firearms in Mexico but no mention of Fast and Furious, much less of any of the inappropriate operational tactics employed in that investigation.

Today's production also contains e-mail communications (HOGR USAO 003070, 3073-74, 3085-86, 3087) reflecting an interest on the part of the Arizona U.S. Attorney's Office in late December 2010 and early January 2011 in having first the Attorney General and then the Deputy Attorney General participate in the late-January press conference announcing the Fast and Furious indictments. As you know, neither the Attorney General nor the Deputy Attorney General attended that press conference. The staff member in the Attorney General's office with whom Mr. Burke raised the possibility has no recollection of speaking to the Attorney General about it, and we note that Mr. Burke's email to the staff member does not refer to Fast and Furious by name, let alone discuss any operational tactics. Moreover, according to Mr. Burke's counsel, Mr. Burke does not recall ever having discussed this matter with either the Attorney General or Deputy Attorney General.

Documents from Main Justice

With this letter, we are also producing additional weekly reports to the Office of the Attorney General that either relate to gun trafficking issues generally, or to Fast and Furious in language already included in reports made available to you in a prior production, or relate generally to developments in a separate investigation, Operation Wide Receiver. Many of those entries do not refer specifically to Fast and Furious by name and none of them contain references to any inappropriate investigative tactics. The Attorney General provided important context for weekly reports like those produced today in his October 7, 2011 letter to you and other members of Congress.

Documents from ATF

We are producing as well a January 2011 e-mail (HOGR ATF 003600-03) showing that, in response to an Office of the Attorney General request on January 7, 2011 for anticipated policy announcements and initiatives from each Department component, ATF submitted information about three items, including a short summary of the expected Fast and Furious indictments and press event to occur less than two weeks later. The information was requested

so that the Office of the Attorney General could decide what items to include in a periodic report to the White House's Office of Cabinet Affairs. Although ATF submitted information about Fast and Furious, that information was not provided to the Office of Cabinet Affairs as part of the Department's policy update, because the information provided by ATF related to a specific case and not a policy initiative, as requested.

Documents Related to the Wide Receiver Matter

In addition, we are producing documents that reflect the involvement of the Gang Unit of the Justice Department's Criminal Division in a pair of gun trafficking cases referred to separately as "Wide Receiver 1" and "Wide Receiver 2." These cases originated in the Arizona U.S. Attorney's Office and were investigated by ATF in 2006 and 2007, prior to Operation Fast and Furious. These documents also reflect the Gang Unit's involvement in a third gun trafficking case that also originated out of the Arizona U.S. Attorney's Office, *United States v. Raul Flores Lopez, et al.* ("*Flores*"). The documents further reflect a Gang Unit prosecutor's attempts to become involved in several additional gun trafficking cases in Arizona, including the Fast and Furious case.

According to these documents, in the summer of 2009 the Gang Unit offered to assist several U.S. Attorneys' Offices along the Southwest Border in their efforts to combat gun trafficking to Mexico. Shortly thereafter, in response to the Gang Unit's offer, the Arizona U.S. Attorney's Office sought assistance on the Wide Receiver cases, which had been languishing in that Office's Tucson branch at least since ATF had completed its investigation and presented the case for prosecution close to two years earlier. The Arizona U.S. Attorney's Office had been involved in the underlying ATF investigation.

As of the fall of 2009, when the Gang Unit was asked to prosecute the Wide Receiver cases (HOGR WR 003371), none of the Wide Receiver defendants had been indicted notwithstanding that the case had long since been presented for prosecution. A prosecutor in the Gang Unit began to analyze the results of ATF's completed investigation and reached the conclusion that the Wide Receiver cases would likely need to involve two indictments against multiple defendants. In an early review of the case, the prosecutor wrote that "it appears that the biggest problem with the case is its [sic] old [and] should have been taken down last year AND a lot of guns seem to have gone to Mexico." HOGR WR 003383. Despite this, the prosecutor recommended to her supervisors that "we get our feet wet and take the case." Id. In the fall of 2009, she wrote a draft memorandum setting forth her preliminary analysis. HOGR WR 003391-93. She addressed this memorandum to Deputy Assistant Attorney General ("DAAG") Jason Weinstein but emailed it only to her immediate supervisors (HOGR WR 003390); we have found no indication that the draft memorandum was subsequently finalized or that it was sent to DAAG Weinstein. At the same time that the prosecutor assigned to the Wide Receiver cases was analyzing the completed Wide Receiver investigation, she was also preparing to try a death penalty case in Maryland against a member of the MS-13 gang who had ordered the murder of a juvenile. That trial began in January 2010 and concluded in March 2010.

While she was trying the MS-13 case, ATF headquarters asked the Gang Unit to assist with the Fast and Furious matter. In response to that request, on March 5, 2010, a different Gang Unit prosecutor attended a briefing on the case. Within two weeks, however, the Gang Unit prosecutor learned that the U.S. Attorney's Office in Arizona would be handling Fast and Furious by itself, and, consequently, he had no substantive involvement with the matter.

Following the conclusion of the MS-13 trial in Maryland, the Gang Unit prosecutor handling the Wide Receiver cases completed a prosecution memorandum for Wide Receiver 1. Upon reading that memorandum in April 2010, DAAG Weinstein became aware that in 2006 and 2007, as part of the Wide Receiver investigation, ATF had failed to interdict guns despite having the ability and legal authority to do so and that, as a result, guns had crossed the border into Mexico. HOGR WR 003442. According to an e-mail he sent in April 2010, DAAG Weinstein was "stunned" to learn these facts. Mr. Weinstein and others in the Gang Unit quickly alerted Assistant Attorney General Lanny Breuer, who directed Weinstein to meet with ATF senior leadership. HOGR WR 003442, 003451. On April 28, 2010, DAAG Weinstein met with two senior ATF officials to alert them that the Criminal Division was planning soon to indict the Wide Receiver cases, but that ATF's 2006 and 2007 investigation had been problematic, both because ATF had failed to interdict a significant number of guns despite having the ability and legal authority to do so and some of those guns had crossed the border into Mexico, and because of certain allegations involving the ATF agent who had conducted the investigation. HOGR WR 003442, 003485. According to contemporaneous notes taken by a participant in the meeting, the fact that guns had "walk[ed]" in Wide Receiver was explicitly discussed with the ATF officials. HOGRWR 003478a.

The documents produced today reflect that the Gang Unit prosecutor was ready to indict the Wide Receiver cases and unseal them beginning in the spring of 2010, but that the Assistant U.S. Attorney in the U.S. Attorney's Office in Arizona handling Fast and Furious believed that if the Wide Receiver indictments became public at that time they would negatively impact his case. The Assistant U.S. Attorney therefore requested that the indictments and/or the unsealing of the indictments in Wide Receiver be delayed. HOGR WR 003480, 003489. As a result of that request, Wide Receiver 1 was indicted under seal in May 2010, Wide Receiver 2 was indicted under seal in October 2010, and both cases were unsealed in November 2010. HOGR DOJ 003260, 63.

Over the course of the next several months, the Gang Unit prosecutor handling the Wide Receiver cases sought to become involved in other gun trafficking cases in Arizona. Thus, in approximately July 2010, she was asked to assist with several additional cases, including Fast and Furious. She was informed at that time, however, that the Assistant U.S. Attorney handling Fast and Furious was unlikely to need much help on the case until it was indicted; and, ultimately, she did not become closely involved with any of the cases that she had been asked to help on that summer. HOGR WR 003517, 003518, 003534. In September 2010, she expressed to her immediate supervisors her increasing "frustrat[ion]" with her lack of involvement on Arizona gun trafficking cases, noting that despite having been "ostensibly assigned" to Fast and Furious she had had "little to no involvement" with the case, and did not think there would be enough work for her in Arizona to keep her busy. HOGR WR 003517-19.

In October 2010, however, the Gang Unit prosecutor handling the Wide Receiver cases was asked to handle a separate straw purchaser case involving the seizure of 49 guns. That case, referred to as *Flores*, appeared to be tangentially related to Fast and Furious insofar as several of the suspects in *Flores* appeared to have purchased guns for suspects in Fast and Furious. HOGR WR 003521. The Gang Unit prosecutor agreed to handle the case, and, in January 2011, the *Flores* indictment was announced together with the Fast and Furious indictment.

Today, the Gang Unit (now part of the Criminal Division's Organized Crime and Gang Section) continues to prosecute Wide Receiver 2 and *Flores*. To date, in both Wide Receiver cases, six defendants have pleaded guilty, and two remain fugitives. In *Flores*, seven defendants have pleaded guilty, and one is scheduled to go on trial next month.

We hope this information is helpful. Please do not hesitate to contact us if we may provide additional assistance regarding this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

Index to Redaction Codes

RC-1: Redaction of text for privacy purposes.

RC-2: Redaction of text that is non-responsive.

RC-3: Redaction of text that relates to law enforcement sensitive investigative techniques.

RC-4: Redaction of text that relates to investigative targets or subjects.

RC-5: Redaction of text that discloses law enforcement sensitive investigative details.

RC-6: Redaction of text that discloses prosecutorial or internal executive branch deliberative information.

RC-7: Redaction of text that implicates equities of another agency. Pursuant to established third agency practice, DOJ will consult the affected agency and respond further to the Committee.

November 2011

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November 1, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Mr. Attorney General:

Documents produced by the Department in response to our investigation into Operation Fast and Furious, conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), make clear that the ATF placed surveillance cameras within the premises of a cooperating gun dealer. These surveillance cameras recorded straw purchasers as they entered the gun store and illegally bought heavy duty weapons. According to the documents, any ATF agent or Department of Justice employee with the appropriate password was able to log on to a web site and witness these straw purchases – in real time – as they happened.

Senator John Cornyn wrote to us on October 24, 2011, urging us to investigate additional federal law enforcement operations in Texas which may have employed gun-walking as an investigational tactic. Senator Cornyn noted a particular instance in which ATF ordered a Texas gun dealer to go through with sales of firearms to likely straw purchasers that the gun dealer found suspicious. He also expressed concern that law enforcement was aware that the buyer of the gun that killed Immigration and Customs Enforcement Agent Jaime Zapata was a straw purchaser for the drug cartels and should have been arrested shortly after the purchase of the murder weapon.

The prospect that ATF conducted multiple operations – not all of them yet known – in which it maintained surveillance on straw purchasers only to let them walk guns into Mexico is disturbing. Therefore, we now request a comprehensive schedule of records of all government surveillances of suspected straw purchases in the United States. These records shall include all video and audio tapes, Reports of Investigation, handwritten notes, e-mails and memoranda. Furthermore, these records shall not be limited to transactions inside of gun stores, but also include gun shows and any other places where straw purchases may have been watched by ATF officials. Please provide a log of all these surveillances over the past four years by any Department component that are in the possession of the government.

Please provide the requested information by November 10, 2011, at noon. Should you have any questions regarding any of these letters, please contact Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074 or Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225. I look forward to receiving your response.

Sincerely,

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

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

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

The Honorable John Cornyn
U.S. Senate, Committee on the Judiciary

Congress of the United States
Washington, DC 20510

November 3, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

Thank you for the response to our letter of July 11, 2011, regarding the shared network drive developed to house documents from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

In its response, the Department acknowledged that twenty-four of its employees, including six ATF employees, had access to the entire contents of the shared network drive. The Department's letter of September 19, 2011 also stated that over fifty other employees and contractor staff had access to portions of the shared network drive at various times, though most of these individuals never had access to the folder containing records that were produced or made available to the Committees. The letter, however, failed to answer a number of the specific questions posed in our July 11 letter.

As you are aware, the Office of Inspector General (OIG) is investigating the unauthorized disclosure to the press of a document that may have been accessible from this shared drive. The leaked document contained information protected under the Privacy Act regarding ATF whistleblower John Dodson's participation in an undercover law enforcement operation. This document, given to the press, was not even produced to the Committees, instead being made available only for *in camera* review. This leaked document was also accompanied by a set of talking points designed to undermine Agent Dodson's credibility as a whistleblower. This egregious violation of the Privacy Act, and attempted retaliation for protected disclosures to Congress, is unacceptable.

Accordingly, please provide full and complete responses to the following requests for information:

1) Please identify, by name, all DOJ and ATF employees who had access to this shared drive. This should include, by name, all employees who had access to the entire contents of the shared network drive, including which individuals still had access after July 1, 2011.

2) Please identify, by name, the more than fifty individuals who had partial access to the folder containing records that were produced or made available to the Committees, and the dates on which these employees had access.

3) Please identify, by name, each employee who had access to the portion of the shared drive containing the leaked documents that were only made available to the Committee *in camera*, and the dates on which these employees had access.

4) For the eight individuals who had access to the shared drive after July 1, 2011, but were removed some time before September 6, 2011, please identify, by name, these employees, and the dates on which these employees had their access terminated.

5) Please identify, by name, the six employees who continued to have access to the shared network drive as of September 6, 2011.

6) If any of the six employees who continued to have access to the shared network drive as of September 6, 2011 have since had their access terminated, please identify, by name, these employees, and the dates on which these employees had their access terminated.

As a result of this shared drive, the number of individuals who had access to internal ATF and DOJ materials multiplied significantly. Many people were given access to sensitive information, thus increasing the likelihood that documents might be leaked. Not surprisingly, as mentioned above, documents in fact were leaked, with the intention of smearing one of the ATF whistleblowers.

During phone conversations last week with Senator Grassley's staff, the Justice Department indicated that someone had resigned, in part, due to actions related to the leaking of this document. Senator Grassley's staff discussed this with OIG staff, who reported knowing an individual had left the Department, but being unaware the departure was related to the leak of the document. When pressed for the name of the individual fired, the Department cited, ironically, privacy concerns related to personnel matters, despite the fact that disclosures to Congress are explicitly exempt from the Privacy Act. Moreover, the Congressional interest in inquiring into retaliation against a witness for his testimony before one of its committees outweighs the Department's interest in protecting the privacy of an official responsible for leaking a Privacy Act-protected document to the press.

With that in mind, please answer the following questions:

7) What is the name of the individual who resigned, or was asked to resign, as a result of the leaked documents?

8) On what date was this individual's employment terminated?

9) Was this matter self-reported to the OIG? If so, when was this matter self-reported to the OIG?

10) What evidence supports the conclusion that the employee was responsible for the leak?

11) According to the Department, its Office of Professional Responsibility (OPR) is investigating other leaks of information related to Fast and Furious. What evidence led to the opening of these additional leak investigations?

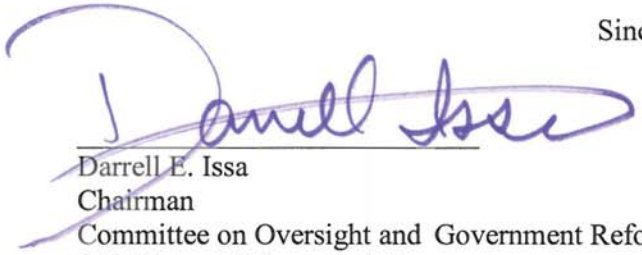
12) Why are these investigations being handled by OPR rather than by the OIG?

13) Who are the targets of the OPR's leak investigations?

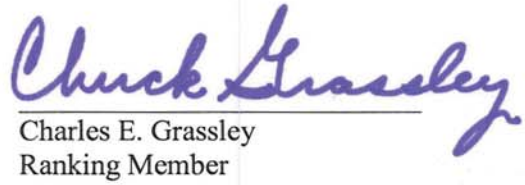
14) Are the targets of OPR's investigation any of the whistleblower known to the Department to have testified or communicated with Congress regarding Operation Fast and Furious?

Please provide responses to the foregoing no later than November 9, 2011, at noon. If you have any questions regarding these requests, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. Thank you for your attention to this important matter.

Sincerely,



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



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

cc: The Honorable Elijah E. Cummings, Ranking Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 4, 2011

The Honorable John Cornyn
United States Senate
Washington, DC 20510

Dear Senator Cornyn:

This responds to your letter to the Attorney General dated August 11, 2011, regarding press reports of an ATF "gun-walking" program that allegedly operated in the State of Texas. We apologize for our delay in responding to your letter.

We understand from your staff that the matter to which your letter refers was an investigation initiated by ATF's Houston Field Division in January 2007 that resulted in arrests in 2008. We are currently engaged in a review of the allegations you have brought to our attention and will provide you with additional information as soon as possible. As you know, in March 2011, at the direction of the Attorney General, the Deputy Attorney General issued a Department-wide directive making clear that the flawed tactics used in Operation Fast and Furious are impermissible.

While we are unable to provide more information at this time, we look forward to communicating with you about this matter in the near future. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510–6275

November 7, 2011

Cynthia A. Schnedar
Acting Inspector General
United States Department of Justice
950 Pennsylvania Ave, N.W.
Washington, DC 20001

Dear Acting Inspector General Schnedar:

On April 18, the Department of Justice informed me that your office is investigating allegations that have been raised about the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Operation Fast and Furious. I understand that your office initiated this review at the request of Attorney General Holder on February 28 and that it is ongoing.

Recent documents provided by the Department of Justice to Congress show that the ATF utilized similar investigative techniques years earlier. For instance, in connection with Operation Wide Receiver in 2006, hundreds of weapons apparently moved beyond the custody and control of the ATF and possibly into Mexico and Arizona. Recent documents also show that Attorney General Mukasey may have been briefed in 2007 on the ATF's operations on the southern border, including an indication that guns may have entered Mexico out of the control of law enforcement officials.

I am writing to ask whether your office's investigation includes a review of the tactics developed and used earlier in these prior ATF operations. I appreciate your efforts to conduct a thorough investigation in a manner that does not hamper the efforts of law enforcement agents to fight against violent drug cartels in Mexico. I hope that your investigation can also be concluded as quickly as possible.

Sincerely,

PATRICK LEAHY
Chairman

Perkins Coie

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November 8, 2011

VIA EMAIL (cynthia.schnedar@usdoj.gov)
AND U.S. MAIL

Cynthia A. Schnedar
Acting Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Suite 4706
Washington, D.C. 20530-0001

Re: Dennis Burke

Dear Ms. Schnedar:

Chuck Rosenberg of the Hogan Lovells law firm and I represent Dennis Burke in connection with issues that arise out of his service as the United States Attorney for the District of Arizona. We write to address questions relating to the disclosure of a memorandum written by ATF Special Agent John Dodson.

As Dennis told your office on August 16, 2011, he provided the memo to a reporter he had known for some time in response to the reporter's request. The reporter, who initiated the contact with Dennis, was working on several stories involving Operation Fast and Furious. It was clear to Dennis from their conversation that the reporter had either seen the memo or had it read to him.

Dennis's intention was to give context to information that the reporter already had to explain that investigations similar to Operation Fast and Furious had been previously proposed by ATF. The investigation proposed by Agent Dodson was closed, and the memo did not contain any Grand Jury or otherwise classified information. Congress had already released to the public other reports from this investigation. Considering the

contents of the memo and the closed nature of the investigation to which it referred, the memo was not subject to any limitations on disclosure under the Freedom of Information Act.

We trust that this puts an end to any speculation regarding the disclosure of the memo, which we understand was never even used by the reporter. Please let us know if you would like to discuss this further.

Sincerely,

Lee Stein

LS:lm

cc: Chuck Rosenberg
Hon. Charles Grassley
Hon. Darrell Issa
Hon. Patrick Leahy
Hon. Elijah Cummings
Steven Reich

09901-0735/LEGAL22088833.2

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November 9, 2011

The Honorable Ronald Weich
Assistant Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Mr. Weich:

On January 27, 2011, Senator Grassley wrote to request information related to allegations that the ATF sanctioned the sale of hundreds of assault weapons to suspected straw purchasers who transported the weapons into Mexico.[1] In a February 4, 2011, response to Senator Grassley, you stated "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."[2]

Documents obtained in the course of the congressional investigation of Operation Fast and Furious have shown this statement to be false. When pressed to explain the false statement, you have repeatedly claimed that the Department of Justice (DOJ) was responding to Senator Grassley with the best information that it had at the time. This, too, is false.

Last Tuesday, the head of the Criminal Division admitted in testimony before the Senate Judiciary Committee not only that the statement was false, but that *he knew* it was false, though he could not recall whether he had reviewed the letter:

Senator Grassley: That statement is absolutely false. And you admitted as much last night, that you knew by April, 2010, that ATF walked guns in Operation Wide Receiver. That is that correct, yes?

Lanny Breuer: Yes, senator. What I...

Senator Grassley: That's all I need to know, if that's correct. Did you review that letter before it was sent to me?

[1] Letter from Sen. Charles E. Grassley to ATF Acting Director Kenneth E. Melson, Jan. 27, 2011.
[2] Letter from Ass't AG Ronald Weich to Sen. Charles E. Grassley, Feb. 4, 2011 at 1.

Lanny Breuer: Senator, again, I just want to be clear that, as I told you a moment ago, I regret that in April of 2010 that I did not draw the connection between Wide Receiver and Fast and Furious. Moreover, I regret that -- that even in earlier this year that I didn't draw that connection. In direct answer to your question, senator, I can say -- I cannot say for sure whether I saw a draft of the letter that was sent to you. What I can tell you, senator, is at that time, I was in Mexico dealing with a very real issues that we are all so committed to.

But I also regret, as I've said, that I didn't draw that connection earlier.[3]

On June 15, 2011, you testified at a House Committee on Oversight and Government Reform hearing on Operation Fast and Furious. At that hearing, I inquired about the individuals who assisted in drafting your February 4, 2011, letter. Your responses were incomplete and unsatisfactory. You refused to provide names of the individuals responsible for the drafting and preparation of that letter, which you signed, and for which you accepted ultimate responsibility.

On October 31, 2011, you arranged a briefing through the Democratic staff of the Senate Judiciary Committee to describe documents being produced in response to a subpoena issued by this Committee. Despite that peculiar arrangement, my staff attended and again asked for information about the individuals who assisted in drafting your February 4, 2011, letter. You answered by reiterating your refusal to divulge those names. You were also given the opportunity to retract or amend the false statements contained therein. Rather than doing so, you restated the untenable position that those statements were based on the best information available to you at the time. That position is belied by documents and witness testimony and becomes less believable with every document that DOJ releases.

Documents released pursuant to a Freedom of Information Act request and other materials obtained by the Committee show that high-level ATF and DOJ officials were involved with the preparation and drafting of your February 4, 2011, letter. Multiple offices within DOJ were consulted during the drafting process, including offices known to have had reams of evidence that showed ATF did **not** make every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico. In fact, the evidence available to you – or to those who were supplying you with talking points – showed that in many cases, ATF encouraged illegal weapons purchases and made no effort to interdict those weapons as they were trafficked throughout the southwest border region. Still, the statement was included in your letter to Senator Grassley, and you have repeatedly refused to disavow it.

[3] Testimony of Ass't AG Lanny Breuer before the S. Comm. on the Judiciary, Nov. 1, 2011.

Mr. Weich, as you are well aware, it is a crime to knowingly make false statements to Congress.[4] As the Department's principal liaison to Congress, we rely on you to be straight with the facts. You have not been, and so your credibility on this issue has been seriously eroded. Whether it is the case that you were fed a lie and faithfully repeated it in a letter to Congress, or whether it is the case that you took the initiative to lie to Congress yourself, you are responsible for the contents of letters that bear your signature. The buck stops with you.

I ask once again that you provide a complete list of individuals who helped you prepare the February 4, 2011, letter to Senator Grassley. Produce all documents relating to the preparation of that letter, including draft versions. Also produce all communications, including e-mails, referring or relating to the development of DOJ's response to Senator Grassley's January 27, 2011, request for information.

Over the past six months, Senator Grassley and I have asked for this information on many occasions, and each time we have been told it would not be produced. This information is covered by the subpoena served on the Attorney General on October 12, 2011, and I expect it to be produced no later than Wednesday, November 16, at 5:00 p.m. Failure to comply with this request will leave me with no other alternative than the use of compulsory process to obtain your testimony under oath.

Your refusal to fully comply with the Committee's subpoena in this regard is unfortunately consistent with the Department's posture toward legitimate congressional oversight. Last week, lawyers for the Department reiterated that documents created on or after the day the Fast and Furious indictments were unsealed will not be produced, even if they are covered by the subpoena. That limitation is wholly inconsistent with the intent of the congressional investigation of Fast and Furious and represents a willful failure to comply with a lawfully issued subpoena. The Department's stance is clearly meant to prevent a full and transparent understanding of decision-making by senior DOJ officials during the pendency of Fast and Furious, which also encompasses the Department's ongoing response to congressional inquiries about the botched program.

Understanding the Department's actions after Congress started asking questions about Fast and Furious is crucial. As you know, substantial effort was expended to hide the actions of the Department from Congress. This is not some deep-sea fishing expedition, but rather a foray into the shallow and murky waters of deception and obstruction. I expect nothing less than full compliance with all aspects of the subpoena, including complete production of documents created after the indictments were unsealed on January 25, 2011.

---

[4] 18 U.S.C. § 1001. Statements or Entries Generally. (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) **makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry**; shall be fined under this title, imprisoned not more than 5 years … or both. (emphasis added)

Sincerely,

Darrell Issa
Chairman

cc: The Honorable Charles E. Grassley, Ranking Member
U.S. Senate Committee on the Judiciary

The Honorable Elijah E. Cummings, Ranking Member
U.S. House Committee on Oversight and Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate Committee on the Judiciary

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United States Senate

COMMITTEE ON ARMED SERVICES
WASHINGTON, DC 20510-6050

November 10, 2011

Mr. Kevin A. Ohlson
c/o Ms. Kathryn Ruemmler
Assistant to the President and Counsel
The White House
Washington, DC 20500

Dear Mr. Ohlson:

On September 15, 2011, you were nominated by the President to be a judge on the United States Court of Appeals for the Armed Forces. Your biographical information indicates that you served as Chief of Staff and Counselor to Attorney General Eric Holder from January 2009 to January 2011.

In evaluating your nomination, the Committee must be provided with comprehensive information about your involvement with respect to Operation Fast and Furious. Operation Fast and Furious was conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives as part of its investigation into illegal gun trafficking. The Operation started in the fall of 2009 and ended in late 2010 after the slayings of U.S. Border Patrol Agent Brian Terry, who was murdered in Rio Rico, Arizona, and U.S. Immigration and Customs Enforcement Special Agent Jaime Zapata who was killed in the Mexican state of San Luis Potosi on February 15, 2011. As Mr. Holder's Chief of Staff and Counselor from January 2009 until January 2011, you were in a position to be informed about the Operation, to make decisions regarding the operation, and to know what information about it was and was not provided to the Attorney General.

Please respond to the following questions and requests for documents with respect to Operation Fast and Furious ("the Operation"):

1. Describe in detail your actions, knowledge, advice, and involvement as Chief of Staff and Counselor to the Attorney General regarding the Operation.

2. Were you aware of the Operation at any time prior to your departure in January 2011 to become Chief of the Professional Misconduct Review Unit?

3. What recommendations or assistance, if any, regarding the Operation have you provided to Attorney General. Holder since first learning of its existence? Please provide the Committee with any written memoranda or other briefing materials you drafted or reviewed in connection with your duties as Chief of Staff and Counselor to the Attorney General regarding the Operation.

4. To your knowledge, what information about the Operation was provided to you or to Attorney General Holder about its concept, purpose, progress, and methods while you served as Chief of Staff and Counselor to the Attorney General?

5. Media reports have indicated that internal Department of Justice emails showed that Attorney General Holder was provided with information about the Operation as early as July 2010. As Attorney General Holder's Chief of Staff and Counselor, when did you personally learn of the existence of the Operation and what was the extent of your knowledge in December 2010? Do you believe your transfer in January 2011 was in any way related to the Operation or the slaying of Agent Brian Terry? If so, how?

6. Since moving to the Professional Misconduct Review Unit, what has been your involvement, if any, in responding to questions sent to Attorney General Holder or the Department of Justice about the Operation?

7. Have you been subpoenaed or interviewed in connection with ongoing investigations into the Operation? If so, please provide the Armed Services Committee with copies of the subpoena and any documents, copies of emails, or other responses you have provided to other congressional committees or any other investigative bodies.

8. The Administration's Office of National Drug Control Policy, the National Southwest Border Counternarcotics Strategy, the General Accountability Office in its report on combating firearms trafficking of June 2009, and the U.S. Department of Justice Inspector General Review on Project Gun Runner of November 2010, all cited inter-agency and Department of Justice information sharing and coordination as a priority in order to making Project Gun Runner, of which Operation Fast and Furious was a part, successful.

Following the release of these reports, what actions, if any, were taken by the Attorney General, and what role did you play in initiating action in the Department of Justice to increase coordination and information sharing between the Department of Justice, the Bureau of Alcohol, Tobacco, Firearms and Explosives, Immigration Customs Enforcement, and Customs and Border Protection? Please describe in detail what actions, if any, you took or directed be taken, to comply with the inter-agency information sharing priority of the Department.

Thank you for your cooperation in this matter.

Sincerely,

John McCain
Ranking Member

U.S. Department of Justice
Office of the Deputy Attorney General

Professional Misconduct Review Unit
Kevin A. Ohlson
Chief

November 14, 2011
Direct: 703-762-3607
kevin.ohlson@usdoj.gov

The Honorable Carl Levin
Chairman
Committee on Armed Services
United States Senate
Washington, D.C. 20510-6050

The Honorable John S. McCain III
Ranking Member
Committee on Armed Services
United States Senate
Washington, D.C. 20510-6050

Dear Chairman Levin and Senator McCain,

This correspondence is in response to the November 10, 2011, letter sent to Kathryn Ruemmler, Counsel to the President, by Senator McCain asking about my knowledge of, and involvement in, Operation Fast and Furious. I am pleased to provide you with the following responses.

1. Describe in detail your actions, knowledge, advice, and involvement as Chief of Staff and Counselor to the Attorney General regarding the Operation.

During my tenure as Chief of Staff and Counselor to the Attorney General, I took no actions in regard to, had no knowledge of, provided no advice about, and had no involvement in Operation Fast and Furious.

2. Were you aware of the Operation at any time prior to your departure in January 2011 to become Chief of the Professional Misconduct Review Unit?

No.

3. What recommendations or assistance, if any, regarding the Operation have you provided to Attorney General Holder since first learning of its existence? Please provide the Committee with any written memoranda or other briefing materials you drafted or reviewed in connection with your duties as Chief of Staff and Counselor to the Attorney General regarding the Operation.

On Sunday, November 5, 2011, I participated in a moot session in preparation for the Attorney General's appearance before the Senate Judiciary Committee hearing two days later, and approximately one month ago I made a recommendation to the Attorney General about press outreach in regard to this matter. During my tenure as Chief of Staff and Counselor to the Attorney General, I did not draft any material related to Operation Fast and Furious. I have been informed that routine courtesy copies of weekly reports were forwarded to me that referred to the operation by name, but that did not provide any operational details and did not refer to gun walking or anything similar. There was nothing on the cover sheets of these routine weekly reports indicating that important or sensitive material was included in them, and I did not review them.

4. To your knowledge, what information about the Operation was provided to you or to Attorney General Holder about its concept, purpose, progress, and methods while you served as Chief of Staff and Counselor to the Attorney General?

During my tenure as Chief of Staff and Counselor to the Attorney General, I did not review or hear about any information that pertained to the concept, purpose, progress, or methods of Operation Fast and Furious. I have been informed that routine courtesy copies of weekly reports were forwarded to me that referred to the operation by name, but that did not provide any operational details and did not refer to gun walking or anything similar. There was nothing on the cover sheets of these routine weekly reports indicating that important or sensitive material was included in them, and I did not review them.

5. Media reports have indicated that internal Department of Justice emails showed that Attorney General Holder was provided with information about the Operation as early as July 2010. As Attorney General Holder's Chief of Staff and Counselor, when did you personally learn of the existence of the Operation and what was the extent of your knowledge in December 2010? Do you believe your transfer in January 2011 was in any way related to the Operation or the slaying of Agent Brian Terry? If so, how?

I did not have any knowledge of Operation Fast and Furious in December 2010. I learned of the existence of the Operation in February 2011 from press reports. My assignment to serve as Chief of the Professional Misconduct Review Unit was in no way related to the Operation or to the slaying of Agent Brian Terry.

6. Since moving to the Professional Misconduct Review Unit, what has been your involvement, if any, in responding to questions sent to Attorney General Holder or the Department of Justice about the Operation?

I have not had any involvement in preparing written responses to questions posed by Members of Congress and sent to the Attorney General or the Department of Justice about the Operation. As noted above, on Sunday, November 5, 2011, I participated in a moot session in preparation for the Attorney General's appearance before the Senate Judiciary Committee.

7. Have you been subpoenaed or interviewed in connection with ongoing investigations into the Operation?

No.

8. What actions, if any, were taken by the Attorney General and what role did you play in initiating action in the Department of Justice to increase coordination and information sharing between the Department of Justice, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Immigration Customs Enforcement, and Customs and Border Protection?

I did not play any role in initiating action in the Department of Justice in regard to this issue.

I hope these responses are of assistance to you.

Very Respectfully,

Kevin A. Ohlson

Office of the Deputy Attorney General
Washington, D.C. 20530

November 16, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

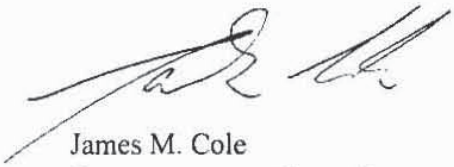
This responds to your letter dated November 9, 2011 which seeks documents and other information regarding the preparation of the Department's letter to Senator Grassley dated February 4, 2011.

We understand your concerns regarding the development of the letter and are attempting to accommodate your oversight interests. We are reviewing the matter in order to determine what materials can be provided to you on this topic and will communicate further with you on this subject soon.

In addition, because the Committee desires to hear from Assistant Attorney General Weich, I want to assure you that he is prepared to testify on a voluntary basis and without need for a subpoena. He is a dedicated public servant of unquestioned personal integrity, and he and his staff have worked diligently and in good faith with the Committee to provide information that has been requested and answer questions as they have arisen. Together with the rest of the Department, he and his staff remain fully committed to addressing the Committee's questions and concerns.

Please do not hesitate to contact the Office of Legislative Affairs if you would like additional assistance regarding this matter.

Sincerely,



James M. Cole
Deputy Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Member

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

ARIZONA DEPARTMENT OF PUBLIC SAFETY

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"Courteous Vigilance"

JANICE K. BREWER
Governor

ROBERT C. HALLIDAY
Director

November 17, 2011

Congress of the United States
Committee on the Judiciary
Attn: Darrell Issa, Chairman and Charles E. Grassley, Ranking Member
Washington, DC 20515
Emailed to:[redacted]

Re: Letter to Director Robert Halliday, Arizona Department of Public Safety

Dear Sirs:

I am the Documents Custodian for the Arizona Department of Public Safety ("AZDPS") and am responding on behalf of Director Robert Halliday to your correspondence dated October 31, 2011. In your letter you are requesting 1) Records relating to Operation Fast and Furious and 2) Serial numbers related to firearms recovered attendant to investigations into homicide, aggravated assault, kidnapping, home invasion, or other violent crimes that occurred from September 2009 to the present. Additionally, you request records pertaining to AZDPS Officer Mike Ruiz's shooting on March 4, 2010.

I would like to address each of your requests individually. Regarding request item number #1, AZDPS has no records relating to Operation Fast and Furious. Regarding request item number #2, AZDPS has no means with which to extract firearms data from crime reports without knowing the incident or report number and cannot extract data from narratives of reports. Finally, regarding records relating to a firearm seized in the March 4, 2010, shooting of Officer Mike Ruiz, the investigative report for this incident is quite lengthy and may require some redactions. However, there are still supplemental and laboratory reports pending in this case, which will give you more specific information regarding any weapons seized as a result of this incident. The supplemental reports should be available before the end of December 2011, after the case officer has completed his investigation and received information from the laboratory.

I am able to send you via CD the large portion of the report that is currently available within the next 2 weeks or I can wait and send you the report in its entirety. Since your request was received at the end of October, the Department did not want to wait any longer to respond although the entire investigative file is not yet available.

I have included my email address in this correspondence. Please let me know if you would like the portion of the report that is available at this time. Otherwise, I will send you the entirety of the requested documents once the case officer has completed his investigation and supplemental reports.

Please call me at [redacted] or email: [redacted]

Sincerely,

Teresa Fuentes, Documents Custodian
Arizona Department of Public Safety

U.S. Department of Justice

Office of the Inspector General

November 21, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy:

I write in response to your letter dated November 7, 2011, concerning the Department of Justice Office of the Inspector General's (OIG) ongoing review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) investigation known as Operation Fast and Furious. In your letter you asked whether the OIG's review would include an examination of ATF operations that preceded Operation Fast and Furious.

We have previously described the scope of our review as examining Operation Fast and Furious, and other investigations with similar objectives, methods, and strategies. Operation Wide Receiver, which you refer to in your November 7 letter, will be included within the scope of our review.

If you have any further questions, please feel free to contact me or Senior Counsel Jay Lerner a[redacted]

Sincerely,

Cynthia A. Schnedar

Cynthia A. Schnedar
Acting Inspector General

December 2011

December 2, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman and Ranking Member Grassley:

This supplements the Department's November 16, 2011 response to Chairman Issa's November 9, 2011 letter to Assistant Attorney General Ronald Weich seeking highly deliberative internal communications relating to the drafting of our February 4, 2011 letter to Ranking Member Grassley regarding Operation Fast and Furious.

The Department has a long-held view, shared by Administrations of both political parties, that congressional requests seeking information about the Executive Branch's deliberations in responding to congressional requests implicate significant confidentiality interests grounded in the separation of powers under the U.S. Constitution. As indicated in congressional testimony by senior Department officials on several occasions, however, facts have come to light during the course of this investigation that indicate that the February 4 letter contains inaccuracies. Because of this, the Department now formally withdraws the February 4 letter.

Under these unique circumstances, we have concluded that we will make a rare exception to the Department's recognized protocols and provide you with information related to how the inaccurate information came to be included in the letter. As a result, we are delivering today to your respective offices 1364 pages of material related to that topic.[1] We want to emphasize that our decision in this instance to provide highly deliberative materials is *sui generis*.

The Attorney General has made clear, both in testimony before the Senate Judiciary Committee last month and in a letter dated October 7, 2011, that Operation Fast and Furious was

[1] These documents bear limited redactions, typically information relating to Department employees, such as their cell phone numbers. In addition, we have redacted text from documents that does not relate to how the inaccurate information came to be included in the February 4 letter. The nature of specific redactions is indicated by a redaction code ("RC") set forth in the enclosed list. In response to requests from Chairman Smith and Chairman Leahy, the documents we deliver to you will also be delivered to the House and Senate Committees on the Judiciary.

fundamentally flawed and that its tactics must never be repeated. We have already provided Congress with extensive information about the strategy and tactics underlying that investigation.

We believe that the documents provided today highlight two points regarding the drafting of the February 4 response. First, to respond to the allegations contained in Ranking Member Grassley's letters, Department personnel, primarily in the Office of Legislative Affairs, the Criminal Division and the Office of the Deputy Attorney General, relied on information provided by supervisors from the components in the best position to know the relevant facts: ATF and the U.S. Attorney's Office in Arizona, both of which had responsibility for Operation Fast and Furious. Information provided by those supervisors was inaccurate. We understand that, in transcribed interviews with congressional investigators, the supervisors have said that they did not know at the time the letter was drafted that information they provided was inaccurate. Second, there was significant concern about how much information properly should be shared with Congress regarding the open Fast and Furious investigation and open investigation of the murder of Customs and Border Protection Agent Brian Terry. The documents reflect this concern in the drafting of the February 4 letter.

Ranking Member Grassley's January 27, 2011 letter said, in its first paragraph, that "I am specifically writing you concerning an ATF operation called 'Project Gunrunner." His January 31, 2011 letter also cited "serious allegations associated with Project Gunrunner and the death of Customs and Border Protection Agent Brian Terry." While these letters referred to Project Gunrunner – the name of the broad, overall ATF effort to stem the illegal cross-border flow of weapons – the allegations actually related to Operation Fast and Furious, which was a particular ATF operation in Arizona. Following the receipt of the incoming letters, the Department convened a series of calls in an effort to learn the facts about Operation Fast and Furious. Participants in these calls included the then-Acting Director of ATF and the Agency's then-Deputy Director. Notes of these conversations reflect that then-ATF leadership indicated to the staff of the Department that:

- "we didn't let [] guns walk[;]"
- "we . . . didn't know they were straw purchasers at the time[;]"
- "ATF had no probable cause to arrest the purchaser or prevent action[;]"
- "ATF doesn't let guns walk[;]
- "we always try to interdict weapons purchased illegally[;] and
- "we try to interdict all that we being [sic] transported to Mexico[.]"

HOGR DOJ 003744; HOGR DOJ 003745; HOGR DOJ 003935. In particular, the portion of the notes that indicate that "we always try to interdict weapons purchased illegally" and "we try to interdict all that we being [sic] transported to Mexico" track almost verbatim the inaccurate information included in the letter that the Department sent to Ranking Member Grassley. Our final letter read as follows:

> ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.

[Letter from Assistant Attorney General Ronald Weich to The Honorable Charles E. Grassley dated February 4, 2011, at 1.] That language was in an early draft of the response prepared by the Department and remained virtually unchanged throughout the drafting process. HOGR DOJ 004049-004050.

The leadership of the U.S. Attorney's Office in Arizona communicated that the allegations in Ranking Member Grassley's letters regarding the Arizona investigation and the guns recovered at the scene of Agent Terry's murder were untrue. One of the central allegations in the January 27 incoming letter was that ATF had "sanctioned" the sale of two weapons that were recovered at the Terry murder scene. In response, on January 31, 2011, the then-U.S. Attorney wrote to others in the Department that:

> Grassley's assertions regarding the Arizona investigation and the weapons recovered at the BP Agent Terry murder scene are based on categorical falsehoods.

HOGR DOJ 003938-003939. He asked that the following language be included in the response to Ranking Member Grassley:

> 'Regarding the allegations repeated in your letter that ATF in any way "sanctioned", had knowledge of, or permitted weapons purchased on January 16, 2010 in Arizona to reach the Republic of Mexico is categorically false.'

HOGR DOJ 004166-004167.

The documents produced today also reflect that the drafters of the February 4 letter were focused on how much should be said about the open Fast and Furious investigation and the investigation into the murder of Agent Terry. One view was that the "[g]oal would [be] to put on the record whatever we can say about the pending matter, without opening the door re info we're not prepared to publicly disclose; . . ." HOGR DOJ 004100. The other view was ". . . I fully appreciate the concerns about commenting on ongoing cases – both present and future – but I think the Department should consider making a more forceful rebuttal to the allegations here, which are terribly damaging to ATF." *Id.* Over a period of days, drafts of the letter were sent to the leadership of ATF and the U.S. Attorney's Office in Arizona for review and comment, and thereafter circulated within those offices for review and comment by others. *See, e.g.*, HOGR DOJ 004100-004102; HOGR DOJ 004122-004124; HOGR DOJ 004132-004134; HOGR DOJ 004144-004146. After a series of edits on February 4 and the re-circulation of drafts to the leadership of ATF and the U.S. Attorney's Office, the final letter provided, in part, that:

At the outset, the allegation described in your January 27 letter—that ATF 'sanctioned' or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico—is false. ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.

HOGR DOJ 004868-004870

We trust that you will find this information useful and we look forward to continuing to work with you on this matter.

Sincerely,

James M. Cole
Deputy Attorney General

cc: The Honorable Patrick Leahy, Chairman
U.S. Senate Committee on the Judiciary

The Honorable Elijah E. Cummings, Ranking Member
U.S. House Committee on Oversight and Government Reform

The Honorable Lamar Smith, Chairman
U.S. House Committee on the Judiciary

The Honorable John Conyers, Ranking Member
U.S. House Committee on the Judiciary

Congress of the United States
Washington, DC 20515

December 6, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
301 7th Street, NW
Washington, D.C. 20528

Dear Madam Secretary:

In your testimony before the Senate Judiciary Committee on October 19, 2011, you told Senator Grassley that you had asked U.S. Immigration and Customs Enforcement (ICE) to look into its involvement with Operation Fast and Furious, an Organized Crime Drug Enforcement Task Force (OCDETF) case. You also referenced the fact that your Department had provided information the day before the Judiciary Committee hearing with respect to its involvement.

The information provided by your Department is very important to us. Specifically, your Department told us on two separate occasions that near the end of 2009, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) requested that ICE cease investigations into weapons cases in deference to a pending ATF investigation. Your Department also informed us that the ATF investigation in question was Operation Fast and Furious. Apparently this request culminated in a meeting among ICE, an ATF Assistant Special Agent in Charge (ASAC), and the Assistant U.S. Attorney (AUSA) responsible for prosecution of gun trafficking cases in Phoenix, Emory Hurley.

At that meeting, Mr. Hurley reportedly requested that ICE coordinate with ATF before taking any enforcement actions against targets that might be associated with Fast and Furious. Presumably, this was part of the reason that in early 2010, an ICE agent was added to ATF's Phoenix Group VII and became a co-case agent for Operation Fast and Furious. Nevertheless, this meeting and the events leading up to it raise a number of questions. Therefore, we request that you make arrangements to brief our respective staffs on these issues by no later than Tuesday, December 13, 2011. We also request a copy of the ICE case file on Operation Fast and Furious.

PRINTED ON RECYCLED PAPER

Should you have any questions regarding the issues we have raised, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. We look forward to your response.

Sincerely,

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

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

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable Patrick Leahy, Chairman
U.S. Senate, Committee on the Judiciary

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 6, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Grassley:

This responds to the requests set forth in your letter dated September 1, 2011, for transcribed interviews of three prosecutors in the United States Attorney's Office for the District of Arizona (the "USAO") and the requests communicated to us by Committee staff for transcribed interviews of eight additional Department of Justice attorneys concerning ongoing firearms trafficking investigations and related pending prosecutions. Although we are prepared to make several attorneys available for interviews, your request for interviews of some line and lower level supervisory prosecutors raises grave concerns for the Department. In addition, the Committee's need for interviews of several others is unclear because of their limited connection with the firearms trafficking investigations.

The Committee's request for interviews of Department prosecutors is part of a review in which the Committee has already had extraordinary access to Department personnel and documents. As you know, the Department has voluntarily made six ATF employees available for transcribed interviews, and the Committee has conducted interviews of additional ATF personnel, including then-Acting Director Melson. We likewise have made senior Department officials available for public testimony. The Department has cooperated in the scheduling and conduct of those interviews notwithstanding the fact that the Committee sought to inquire about matters related to open investigations and pending prosecutions. The Department has sought to accommodate the Committee's interests regarding the strategy adopted in this law enforcement effort because it recognizes the legitimate questions about whether illegally purchased firearms were knowingly permitted to cross the border to Mexico.

For these same reasons, the Department has made more than 5,000 pages of documents available to the Committee, and it continues to search for and review documents responsive to the Committee's requests, including but not limited to its subpoenas. Indeed, as you are well aware, the Department has dedicated substantial resources to accommodating the Committee's information requests related to the strategy adopted in connection with Operation Fast and Furious. At the same time, however, we have attempted to accommodate the Committee's requests without harming pending investigations and prosecutions, and without impairing other values that are central to the Department's mission.

As we have advised your staff, we are prepared to make Patrick Cunningham, Chief of the Criminal Division in the United States Attorney's Office for the District of Arizona, available for an interview. However, the Department expects to be present to protect its law enforcement interests during the interview. We understand that Mr. Cunningham has retained private counsel and we will defer to him with regard to scheduling, as long as we can attend. We also will make available Gary Grindler, formerly the Acting Deputy Attorney General and now Chief of Staff to the Attorney General, in accordance with our conversations with Committee staff, on December 14, 2011. In addition, we are prepared to make available Jason Weinstein, Deputy Assistant Attorney General in the Department's Criminal Division, but we need to be present to protect the Department's interests, regardless of whether Mr. Weinstein also chooses to be accompanied by any private counsel. We understand that you would like to continue the interview of now former United States Attorney Dennis K. Burke, whom we understand has retained private counsel. The Department has no objection to this further interview so long as we are permitted to attend. We are currently preparing to provide documents to Mr. Burke and his attorney to assist his preparation for this resumed interview.

It is particularly important that the Department attend the interviews of these current and former employees in order to protect its own interests, especially those pertaining to the ongoing criminal investigations and prosecutions. It is standard Executive Branch practice for agency counsel or other agency representatives to attend congressional staff interviews of agency personnel, and a witness's personal counsel does not represent the agency. Indeed, we understand that the Committee has informed another agency that both private counsel and agency counsel may be present at a Committee staff interview. We expect that Messrs. Cunningham, Burke, Grindler and Weinstein may answer questions at their interviews about their knowledge of the strategy adopted in Operation Fast and Furious. For the reasons discussed below, however, and consistent with limitations applicable in prior interviews, they will not discuss the details of pending investigations or prosecutions, including prosecutorial decisions about particular individuals. These limitations are essential to protect the integrity and independence of the criminal justice process as well as the public's confidence that such decisions are made without regard to political considerations. It is the responsibility of the Department's counsel to identify these limitations as needed and any other Department equities that may be implicated during the course of the interviews.

We expect that Messrs. Burke and Cunningham will be in a position to address the topics that Assistant Attorney General Weich identified on page 3 of his prepared statement for the

Committee hearing on June 15 as being at the "core of the Committee's oversight interests" and which the Department has been and is willing to accommodate: "the decisionmaking and responsibility for strategic decisions, if any, regarding the timing of arrests in connection with the alleged sale of firearms to individuals suspected of being straw purchasers, the legal basis to seize such firearms, and any efforts to track the firearms to those higher up the chain of command in firearms and drug trafficking interests." We are concerned about your request for interviews of Kenneth Blanco, also a Deputy Assistant Attorney General in the Criminal Division, because his only connection with Operation Fast and Furious arose from his role in reviewing applications for Title III surveillance, a technique that the Department has acknowledged was used in this investigation. That acknowledgement will not, however, relieve Mr. Blanco of his obligation to protect the confidentiality of information pertaining to particular applications. Moreover, to the extent that you are interested in eliciting from Mr. Blanco any information about the general process for reviewing Title III applications, Mr. Weinstein could provide that information during his interview. Additionally, we have previously agreed to provide a briefing on the Title III procedures in response to a request from Committee staff. Under these circumstances, we would seek to defer the interview of Mr. Blanco and, following Mr. Weinstein's interview, proceed with a briefing if you feel you still need additional information about the general procedures for reviewing Title III applications.

We are also unclear about the Committee's interest in interviewing Bruce Swartz, another Deputy Assistant Attorney General in the Criminal Division, whom the Committee has not indicated had any connection with Operation Fast and Furious. As noted above, we are in the process of searching for documents responsive to the Committee's subpoena, including categories that mention Mr. Swartz. We would like to defer any final decisions about the Committee's request for Mr. Swartz's interview until we have identified any responsive documents, some of which may implicate equities of another agency. We will supplement this response when that process is completed.

The remaining employees you have asked to interview are all career employees who are either line prosecutors or first- or second-level supervisors. James Trusty and Michael Morrissey were first-level supervisors during the time period covered by the Fast and Furious investigation, and Kevin Carwile was a second-level supervisor. The remaining three employees you have asked to interview – Emory Hurley, Serra Tsethlikai, and Joseph Cooley – are line prosecutors. We are not prepared to make any of these attorneys available for interviews. We believe that, in addition to the staff interviews of Department employees that have already occurred and the documents we have and will provide, the transcribed interviews offered above should provide sufficient information to satisfy the Committee's legitimate oversight interests. Committee staff questioning of lower level supervisors and line prosecutors poses significant risks, however unintended, to the Department's discharge of its law enforcement responsibilities and in particular would have a substantial chilling and intimidating effect on Department prosecutors across the country, as we discuss more fully below.

I. Respected Governmental Officials on a Bipartisan Basis Have Opposed Subjecting Line Prosecutors to Congressional Inquiry

Subjecting line prosecutors to congressional scrutiny concerning decisions they have made in particular cases raises very grave concerns for the Department and similarly has troubled an array of respected Congressional leaders and Department officials across the ideological spectrum. In the enclosed September 21, 1993 letter to Attorney General Janet Reno, Senator Orrin Hatch wrote:

> I have been troubled to learn recently that consideration is apparently being given to having career line attorneys of the Department of Justice interrogated by, and appear before, Congressional committees for the purpose of defending or otherwise explaining their conduct of particular cases. My initial impression is that this is a very disturbing idea. It could chill career Department of Justice lawyers in the exercise of their daily duties. . . .
>
> Beyond practical concerns of case management, constitutional concerns are, of course, also raised by the contemplated plan.

Similarly, in the enclosed September 7, 1993 letter to Attorney General Reno on the same topic, Representative Henry J. Hyde criticized the notion that line prosecutors might appear before Congress, calling the idea "misguided" and urging the Attorney General to "thwart this outrageous politicizing of law enforcement" because "[w]e should not open the door to congressional micromanagement of prosecutions." Such a result, Representative Hyde wrote, "would threaten the integrity of the Justice Department and undermine public respect for our entire judicial system."

The views expressed by Senator Hatch and Representative Hyde were shared by the Department during the Administration of George W. Bush. In the enclosed letter dated March 23, 2005, William E. Moschella, Assistant Attorney General for Legislative Affairs, wrote to Senator Susan Collins that:

> [t]he Department has a strong institutional interest in ensuring that appropriate supervisory personnel, rather than line attorneys and agents, answer Congressional inquiries about Department actions. This is based in part upon our view that supervisory personnel, not line employees, make the decisions that are the subjects of Congressional review, and therefore they should be the ones to explain their decisions. More fundamentally, however, the Department needs to ensure that our line attorneys and agents can exercise the independent judgment essential to the integrity of our law enforcement activities and to public confidence in those activities.

Stuart M. Gerson, an Assistant Attorney General during the Administration of George H.W. Bush, has observed that congressional efforts to subpoena line prosecutors "pose a long-term constitutional threat by impinging upon the core, judicially-unreviewable, Executive Branch function of rendering independent decisions concerning the undertaking or forebearance of criminal prosecutions." Stuart Gerson, "The Legislative Politicization of the U.S. Department of Justice," Legal Backgrounder for the Washington Legal Foundation, at 1 (Nov. 18, 1994) (copy enclosed).

In the enclosed January 5, 1994 response to the letter from Senator Hatch, Attorney General Reno wrote that:

> A prosecutor's discretion to investigate or indict a particular individual is an awesome power, with irreparable impact on the life of that individual and on the integrity of our system of justice. It must be exercised with the greatest of care and in a manner guaranteed to ensure that only objective, non-political considerations bear on its determination. Permitting Congressional examination of line prosecutors carries substantial danger of chilling the objective exercise of that discretion and of generating the appearance of political influence on prosecutorial decisions.

And, for similar reasons, the American Bar Association in 1996 adopted recommendations that "[c]ongressional committees should not seek . . . compelled testimony of . . . line attorneys regarding discretionary decisions being made in pending cases" and that, as a general matter, "congressional committees should not seek the compelled testimony of line attorneys about adjudicated cases." ABA Resolution 104A (AM 96-104A) *available at* http://www.americanbar.org/groups/criminal_justice/policy/index_aba_criminal_justice_policies_by_meeting.html#am96104a.

II. Requiring These Prosecutors in the Instant Matter to Provide Information to the Committee Would Imperil Pending and Future Prosecutions Arising Out of the Criminal Investigations Under Review

We take as a given that the Committee seeks to give no aid to those who either have been or will be charged with serious crimes arising out of the Fast and Furious matter. However, requiring an appearance by these prosecutors about the prosecution of already-charged defendants, and the oversight of investigations that may lead to charges against others is certain to lead to significant legal attacks in court by counsel for these individuals. Requiring these prosecutors to explain why certain facts did or did not give rise to legal rights on behalf of the government, or requiring them to explain in exacting detail the government's investigative actions, can give rise to motions by counsel for criminal defendants that may, at the least, complicate the government's ability to bring dangerous individuals to justice. Such results are not in the interests of the criminal justice system or the public generally.

Similarly, requiring these prosecutors to provide information to Congress can trigger additional discovery obligations in favor of criminal defendants that can undermine the government's case. We recognize that such outcomes are not intended consequences of the Committee's request for information, but they may well be unavoidable consequences.

We hope this information is helpful and appreciate your consideration of our views in this matter. Please do not hesitate to contact this office if we may provide additional assistance.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives

Office of Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

December 7, 2011

The Honorable Darrell Issa
Chairman, Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles E. Grassley
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Issa and Senator Grassley:

Thank you for your letter of December 6, 2011 to Secretary Napolitano.

I am attaching an email previously sent to Senator Grassley's staff on October 18, 2011 responding to the questions posed in your letter. The Department has asked ICE to provide the Committee with additional information about these events and gather any documents responsive to your request. The Department's Office of Legislative Affairs will contact your office to set a date and time when appropriate ICE personnel can provide a briefing to your staffs. In addition, our Office of General Counsel will coordinate with Committee staff regarding your document request.

Thank you for your attention to this correspondence.

Respectfully,

Nelson Peacock
Assistant Secretary for Legislative Affairs

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

www.dhs.gov

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 13, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letter dated July 12, 2011, and supplements our previous responses to the October 11, 2011 subpoena.

Enclosed are 19 pages of responsive documents. Consistent with Department practice, we have redacted non-responsive text from multi-subject documents and limited law enforcement sensitive information. Specifically, we are enclosing with this letter additional notes taken by staff of the Office of the Deputy Attorney General (ODAG) at a regular meeting between the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and ODAG on March 12, 2010 that mention both Operation Fast and Furious and the demand letter for multiple sales of certain rifles. We have previously provided to you other notes from this meeting. We are also enclosing (1) a memorandum received by the Department on March 26, 2010, proposing a pilot project to issue demand letters to all FFLs in twelve selected states, and (2) a memorandum, dated December 6, 2010, which narrowed the scope of the proposal to four states. Both the March and December memoranda include brief descriptions of seven unnamed cases that ATF believed illustrated the potential benefit of such a requirement. Operation Fast and Furious is one of the unnamed cases in each memorandum.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
Page Two

We hope that this information is helpful. We will supplement this response with additional information responsive to your July 12, 2011 letter. In the meantime, please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc:

The Honorable Elijah E. Cummings
Ranking Minority Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

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STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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JACKIE SPEIER, CALIFORNIA

December 15, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

The Committee on Oversight and Government Reform hereby requests your testimony on January 24, 2012, at a hearing in room 2154 of the Rayburn House Office Building in Washington, DC. The Committee staff has also provided six alternate dates in January and February for this hearing. We have not yet received a response from the Department confirming your attendance.

The hearing will examine flaws in the management structure of the Justice Department as demonstrated in the genesis and implementation of ATF's Operation Fast and Furious. Specifically, the hearing will focus on what senior Department officials could and should have done to put a stop to this reckless program, as well as the specific areas where failures in communication and management occurred. The Department's February 4, 2011, letter to Congress will be but one example of these failures in management.

We ask that you contact the Committee by January 3, 2012, to confirm your attendance. If you have any questions, please contact Henry Kerner of the Committee staff at (202) 225-5074.

Sincerely,

Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 21, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Issa:

This responds to your letter of December 15, 2011, requesting that the Attorney General testify in the House Committee on Oversight and Government Reform. The Attorney General is available to testify before your committee on the morning of February 2, 2012, which is one of the dates proposed by your staff. The Attorney General is prepared to appear until 1:00 pm, at which point he must depart to attend to other Department business.

While the Attorney General has agreed to appear voluntarily before your Committee, we must, with all due respect, note the redundancy of your request. This will be the sixth occasion on which the Attorney General will answer questions about Operation Fast and Furious before a congressional committee. In addition to appearances earlier this year before the Senate Appropriations Committee, the House Judiciary Committee and the Senate Judiciary Committee at which questions on this subject were raised, the Attorney General has twice in the last seven weeks participated in oversight hearings in the Senate and House Judiciary Committees featuring comprehensive reviews of this single law enforcement operation. Most recently, on December 8, the Attorney General spent virtually the entire day at a hearing in the House Judiciary Committee at which almost 40 House members, including you and several other members of the House Oversight Committee who are also members of the Judiciary Committee, had ample opportunity to ask the Attorney General about every aspect of the matter.

In addition to his live testimony before Congress, the Attorney General has answered and will answer voluminous written questions submitted for the record of the congressional hearings at which he has testified. Furthermore, the Department has answered at least three dozen letters from members of Congress about Operation Fast and Furious. At the same time, in the course of cooperating with congressional oversight of this matter, the Department has produced or made available for review over 5,000 pages of documents and facilitated numerous transcribed interviews of Department personnel by congressional investigators. Meanwhile, the Department's Acting Inspector General is conducting a comprehensive review of these same matters – a review that was initiated by the Attorney General less than a month after concerns about Operation Fast and Furious were brought to his attention. In light of this extensive public record and ongoing investigative activity, it is difficult to see how the American people will be well served by yet another congressional hearing on this subject held less than two months after

the last hearing on this subject and only weeks before the annual cycle of oversight hearings before the House and Senate Appropriations and Judiciary Committees commences.

Your December 15 letter suggests that this hearing will examine "flaws in the management structure of the Justice Department." Yet, you have not accepted our offer for you to meet with Todd Jones, Acting Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives, who could describe to you the significant management reforms he has instituted at ATF in the months since the Attorney General asked him to lead that agency in the absence of a Senate-confirmed Director. Indeed, Mr. Jones would be pleased to meet with you or to testify before your committee, which would afford the committee an opportunity to examine the future of the agency and efforts to strengthen its important law enforcement functions. It seems to us that a serious examination of the topic set forth in your letter would begin with the important changes that Acting Director Jones has made at ATF.

It is our sincere hope that the questioning during this hearing before your committee be conducted in a professional manner. The Attorney General has demonstrated great restraint in responding to some questioning in other committees that has, at times, been disrespectful and unproductive. The American people are entitled to a more thoughtful and reasoned dialogue on these critical issues and we ask that you, as Chairman, encourage such a dialogue during the February 2 hearing.

Please do not hesitate to contact this office if we may of assistance with respect to this or other matters.

Sincerely,

Ronald Weich
Assistant Attorney General

cc:

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 21, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Issa and Senator Grassley:

This responds to your letter to the Attorney General dated November 1, 2011, which requested a comprehensive schedule of records of all government surveillance of suspected straw purchases of firearms in the United States.

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) advises that it does not maintain a searchable database of cases involving surveillance of suspected straw purchases. ATF advises that creating the schedule you have requested would require a manual review of thousands of firearms trafficking case files in order to determine whether surveillance of suspected straw purchases occurred. This would entail an extraordinary commitment of time and resources that ATF is not equipped to undertake at this time. Further, the Federal Bureau of Investigation and Drug Enforcement Administration advise that they do not conduct surveillance of straw purchases in the ordinary course of their law enforcement activities. We are not aware of any other Department components that would be likely to conduct surveillance of straw purchases. We also note that any surveillance records would likely implicate significant law enforcement and individual privacy interests.

The Honorable Darrell E. Issa
The Honorable Charles E. Grassley
Page Two

We regret that we have been unable to assist you with your request. Please do not hesitate to contact this office if we may provide further information on this, or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc:

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable John Cornyn
Committee on the Judiciary
United States Senate