

Department of Homeland Security **Office of Inspector General**

DHS Involvement in OCDETF
Operation Fast and Furious





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Department of Homeland Security

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March 22, 2013

MEMORANDUM FOR: The Honorable John Morton
Director
U.S. Immigration and Customs Enforcement

The Honorable David V. Aguilar
Deputy Commissioner
U.S. Customs and Border Protection

FROM: Charles K. Edwards 
Deputy Inspector General

SUBJECT: *DHS Involvement in OCDETF Operation Fast and Furious
(Revised), OIG-13-49*

Attached for your action is our revised final report, *DHS Involvement in OCDETF Operation Fast and Furious (Revised), OIG-13-49*. The original report contained several typographic errors, which we have corrected in this revision. Please see the attached errata for details.

We incorporated the formal comments from U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection in the final report. We also incorporated comments from the Department of Justice, to which we provided a courtesy copy of our draft report because our report mentions DHS employee perceptions of Department of Justice activities.

The report contains three recommendations aimed at improving U.S. Immigration and Customs Enforcement. Your office concurred with all recommendations. As prescribed by the Department of Homeland Security Directive 077-01, Follow-Up and Resolutions for Office of Inspector General Report Recommendations, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) corrective action plan, and (2) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered resolved but open.

Consistent with our responsibility under the Inspector General Act, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security.

Please call me with any questions, or your staff may contact Deborah Outten-Mills, Acting Assistant Inspector General for Inspections, at (202) 254-4015.

Attachment



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Abbreviations

AECA	<i>Arms Export Control Act</i>
ASAC	Assistant Special Agent in Charge
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
AUSA	Assistant United States Attorney
CBP	U.S. Customs and Border Protection
DEA	Drug Enforcement Administration
DHS	Department of Homeland Security
DOJ	Department of Justice
DSAC	Deputy Special Agent in Charge
FBI	Federal Bureau of Investigation
FFL	Federal Firearms Licensee
HSI	Homeland Security Investigations
ICE	U.S. Immigration and Customs Enforcement
ITAR	International Trafficking in Arms Regulations
MOU	Memorandum of Understanding
OBP	Office of Border Patrol
OCDETF	Organized Crime Drug Enforcement Task Force
OFO	Office of Field Operations
OIG	Office of Inspector General
RAC	Resident Special Agent in Charge
ROI	Report of Investigation
SAC	Special Agent in Charge
USAO	U.S. Attorney's Office



Executive Summary

The Department of Homeland Security (DHS) had minimal involvement in the Organized Crime and Drug Enforcement Task Force Operation Fast and Furious. Our review of DHS involvement in the operation determined that senior DHS officials in Washington, DC had no awareness of the methodology used by the task force to investigate Operation Fast and Furious until media reports were published in March 2011. These reports asserted that while investigating an international weapons smuggling ring, task force members used a dangerous methodology in which they observed suspicious weapons purchases, but took no effective action to seize the weapons. As a result, weapons were smuggled to Mexican drug trafficking organizations. Similarly, U.S. Immigration and Customs Enforcement (ICE) headquarters officials did not learn about the methodology until December 2010, when the operation was almost over. A Homeland Security Investigations Arizona official informed Homeland Security Investigations headquarters officials that two of these weapons were found at the scene of the murder of a U.S. Border Patrol Agent. However, the officials did not inform ICE headquarters staff that a Homeland Security Investigations special agent participated in the operation.

In December 2009, Homeland Security Investigations Arizona personnel first obtained information about the Bureau of Alcohol, Tobacco, Firearms and Explosives investigation that later became Operation Fast and Furious. They learned that the Bureau of Alcohol, Tobacco, Firearms, and Explosives was investigating a suspected international weapons smuggling ring. However, Homeland Security Investigations Arizona personnel did not inform ICE headquarters about the Bureau of Alcohol, Tobacco, Firearms, and Explosives' investigative methodology while the operation was underway. Most Homeland Security Investigations personnel in Arizona who received information about the investigation recognized that the task force was using a flawed methodology, which was contrary to ICE policy and practices for weapons smuggling investigations. However, the Homeland Security Investigations Special Agent in Charge did not draw the same conclusions about the operation from that information.

When the investigation was certified as Organized Crime Drug Enforcement Task Force Operation Fast and Furious, the Homeland Security Investigations Special Agent in Charge agreed to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' request that he dedicate a Homeland Security Investigations special agent to the operation. He did so to ensure that smuggling statutes were enforced. Also, the Homeland Security Investigations Special Agent in Charge knew that the U.S. Attorney's Office strongly supported the operation, and ICE headquarters had directed its staff to cooperate with the Bureau of Alcohol, Tobacco, Firearms, and Explosives. The task force was primarily staffed by personnel from the Bureau of Alcohol, Tobacco, Firearms, and Explosives, but



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other law enforcement officers from state, local, and Federal agencies participated, as well.

During Operation Fast and Furious and the Bureau of Alcohol, Tobacco, Firearms, and Explosives investigation that preceded it, the Bureau of Alcohol, Tobacco, Firearms, and Explosives requested that Homeland Security Investigations not pursue investigative leads to identify and stop weapons smugglers. Senior Homeland Security Investigations Arizona staff complied, and the leads were not investigated.

The Homeland Security Investigations special agent assigned was involved in some of the investigative activities that allowed weapons to be lost and ultimately smuggled into Mexico even though he was aware that those activities might violate ICE policy. However, he believed that his role was to cooperate with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and to coordinate enforcement activities with U.S. Customs and Border Protection (CBP) and Homeland Security Investigations. His activities were documented in reports of investigation and approved by Homeland Security Investigations group supervisors. However, the Homeland Security Investigations Special Agent in Charge and other senior leaders did not read the reports and did not direct the special agent to change the methodology or his activities supporting the methodology.

We have concerns that the Homeland Security Investigations Special Agent in Charge did not understand the flawed investigative methodology, and that Homeland Security Investigations Arizona did not pursue viable investigative leads, which we describe more fully in the report. We made three recommendations for improvement in these areas.



Background

Organized Crime and Drug Enforcement Task Force's Operation Fast and Furious

This report examines the DHS role in planning and executing the Organized Crime and Drug Enforcement Task Force (OCDETF) Operation known as Fast and Furious, and whether the Department's activities complied with DHS policy and practices. Operation Fast and Furious has been subject to intense congressional, Federal, and public scrutiny due to the investigative methodology that allowed weapons to be illegally smuggled to criminal organizations in Mexico. The Operation Fast and Furious task force included staff from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); Homeland Security Investigations (HSI); the Drug Enforcement Administration (DEA); the Internal Revenue Service; and state and local law enforcement agencies. Of these, ATF contributed the most resources.

Operation Fast and Furious arose from an ATF investigation that focused on suspected "straw purchasers" in Phoenix, Arizona, whose newly acquired weapons were being smuggled to Mexico. A straw purchaser of a weapon is someone who buys a weapon on behalf of someone else, but not as a gift. Straw purchases of weapons are unlawful. When seeking to purchase weapons from a Federal Firearms Licensee (FFL), individuals and businesses that are licensed to sell firearms, a prospective buyer must complete a form 4473. That form requires the buyers to confirm that they are purchasing weapons on behalf of themselves, not someone else. Providing false information that the weapon[s] is for the purchaser, and not someone else, is a crime under 18 U.S.C. § 922(a)(6).

Under the methodology used in the investigation and later OCDETF Operation Fast and Furious, investigators conducted surveillance of FFLs to observe sales to suspected straw purchasers; investigators then followed the purchasers and weapons to a residence or business, and ended surveillance. As a result, the investigators lost the ability to track or seize the weapons. Once surveillance stopped, the weapons could be, and were, transferred to others and transported elsewhere.

The straw purchasers observed during the initial ATF investigation and later during OCDETF Operation Fast and Furious made multiple purchases of weapons favored by Mexican drug trafficking organizations. ATF believed that the weapons were being purchased on behalf of a smuggling ring that was transferring the firearms to a violent Mexican drug trafficking organization. By



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the end of the operation, the U.S. Attorney's Office (USAO) indicted 20 straw purchasers who had acquired more than 1900 weapons.

Approximately 567 of the weapons bought by the suspected straw purchasers were later recovered by law enforcement agents in Mexico and the United States, leaving approximately 1,430 missing. Of the 567 seized, only 105 were seized as a result of the operation's initiative. The remaining 462 were seized by law enforcement officers who happened upon them in the course of their normal duties. In December 2010, two of the weapons were found at the site where Office of Border Patrol (OBP) Agent Brian Terry was murdered.

The Department of Justice (DOJ) Office of Inspector General (OIG) assessed the role of DOJ agencies in Operation Fast and Furious, including ATF and the USAO. DOJ organizations maintain much of the historical information about Operation Fast and Furious. The DOJ OIG had authority to review DOJ documentation and data, as well as interview DOJ employees with knowledge about the operation. The results of their review were included in the September 2012 report, *A Review of ATF's Operation Fast and Furious and Related Matters*, that provides an in-depth account of the facts related to DOJ involvement and lead role in the operation.

Our review does not assess the propriety of ATF or DOJ activities related to Operation Fast and Furious. To assess whether DHS activities that supported Operation Fast and Furious complied with DHS policy, we obtained related email messages and conducted interviews with DHS staff members about their knowledge and understanding of Operation Fast and Furious. However, as part of our fieldwork, we did not solicit opinions from DOJ staff regarding their reaction to statements made by DHS staff since our intent was only to determine DHS officials' interpretation of information, regardless of its accuracy, that led to decisions related to Operation Fast and Furious.

DHS Mission to Protect the Borders by Detecting, Preventing, and Investigating Illegal Smuggling

A primary mission of the Department is to protect U.S. borders and prevent illegal goods and merchandise from crossing them. CBP interdicts smuggled goods at the ports of entry and between them. HSI investigates smuggling violations, including weapons smuggling.



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CBP Mission and Organization

CBP has three components responsible for stopping contraband from crossing U.S. borders. The CBP Office of Field Operations (OFO) is responsible for securing the ports of entry, and the OBP secures the borders between the ports of entry. The CBP Office of Air and Marine supports border aerial and marine border security.

An integral aspect of securing the ports of entry is to enforce the immigration and customs laws. OFO officers inspect the people, vehicles, and merchandise destined to enter or exit the United States through the ports of entry. OFO has a Memorandum of Understanding (MOU) with ICE that delineates roles and responsibilities for both agencies. When OFO officers encounter contraband, they notify HSI special agents to investigate the circumstances. When any Federal law enforcement agency seeks enforcement action at the ports of entry, it must request the support through ICE. OFO monitors ten ports of entry in Arizona. Port Directors are responsible for the operations at each port.

OBP patrols the international borders between the ports of entry to detect and prevent goods and people from crossing the border illegally. OBP also assists OFO at ports of entry when additional personnel are required. OBP has an MOU with ICE that governs their interaction. ICE must notify OBP to coordinate any investigative activities between the ports of entry. OBP splits Arizona into two sectors, Yuma and Tucson, which together are responsible for the operations of ten OBP stations in Arizona. OBP Sector Chiefs are responsible for the activities of their agents.

HSI Mission and Organization

HSI is the ICE directorate responsible for investigations, international affairs, and intelligence gathering related to the ICE mission. ICE maintains a headquarters staff that provides support to the 26 HSI field offices throughout the United States. A Special Agent in Charge (SAC) leads each HSI field office.

An HSI SAC is responsible for the HSI staff working in the Phoenix offices, as well as staff in eight other offices in Arizona. Those offices have leaders that report to the SAC. A Deputy Special Agent in Charge (DSAC) leads the HSI Tucson office; Assistant Special Agents in Charge (ASAC) lead the Douglas, Nogales, Sells, and Yuma offices; and Resident Special Agents in Charge (RAC) lead the field offices in Flagstaff and Casa Grande, Arizona. HSI criminal investigators are called special agents. Lower-ranking special agents report to supervisory special



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agents, who are called group supervisors. Group supervisors in turn report to ASACs or RACs. We refer to the SAC throughout the Report as the HSI SAC and to his staff as HSI Arizona staff.

Figure 1: HSI Phoenix SAC Field Offices

SAC	DSAC	ASAC	RAC/GS
Phoenix (1)	Phoenix (1)	Phoenix	Phoenix (14)
-	Tucson (1)	Tucson (3)	Tucson (8)
-	-	Douglas (1)	Douglas (5)
-	-	Nogales (1)	Nogales (5)
-	-	Sells (1)	Sells (4)
-	-	Yuma (1)	Yuma (4)
-	-	-	Flagstaff (1)
-	-	-	Ajo (1)
-	-	-	Casa Grande (1)

Source: ICE

SACs are accountable for the actions of their offices. They have responsibility for overall internal resource allocation within their offices and management of their offices’ relationships with other agencies and departments. A SAC informs the Director and Assistant Director of Operations to serious issues the SAC believes require headquarters attention. The DSACs are responsible for daily oversight of their office’s investigations. To transmit operational issues to headquarters, DSACs and ASACs report to the desk officer who works within the Operations Directorate. ICE headquarters officials expect SACs to resolve issues that arise within their field offices, but will provide assistance when necessary.

HSI Legal Authorities for Weapons Smuggling Cases

HSI has enforcement authority for a broad range of statutes including those that define and criminalize the illegal exportation of weapons. Section 38 of the *Arms Export Control Act*, as amended (AECA) and the International Trafficking in Arms Regulations (ITAR) govern the importation and exportation of defense-related articles and services, including the types of weapons purchased by the suspects



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in Operation Fast and Furious.¹ AECA and ITAR require that exporters obtain a license to transport the weapons across the U.S. borders. Some of the weapons that were the subject of Operation Fast and Furious were transported to Mexico without appropriate licenses in violation of AECA's provisions. The ITAR explicitly grants ICE and CBP the authority to inspect, investigate, detain, and seize weapons that violate AECA, including the weapons that were the focus of Operation Fast and Furious.

In 2006, Congress passed the *USA PATRIOT Improvement and Reauthorization Act of 2005*, which established a new customs statute, 18 U.S.C. § 554, *Smuggling Goods from the United States*. ICE staff members said that ICE has exclusive jurisdiction to investigate this customs violation. The statute makes it a crime to fraudulently or knowingly export or facilitate the exportation of goods in a manner that violates U.S. statutes and regulations. The statute carries a maximum sentence of ten years incarceration.² 18 U.S.C. § 922(g) prohibits certain individuals, including illegal aliens, from transporting or shipping firearms and ammunition in interstate and foreign commerce, or receiving any such items which have been so shipped or transported.

HSI special agents, CBP OFO officers, and OBP agents possess more authorities than ATF and local police to protect the U.S. borders. Under the "border search" exception to the Fourth Amendment, customs and border officials may conduct routine searches of individuals and vehicles at or near the border for merchandise or evidence related to the importation or exportation of merchandise, including firearms, without probable cause or reasonable suspicion. In addition to the border search exception, Federal statutes grant HSI special agents, CBP OFO officers, and OBP agents the authority to search individuals without probable cause at the border.³

OCDETF Operations

The OCDETF program was established in 1982 to identify, disrupt, and dismantle major drug trafficking and money laundering organizations. Federal, state, and local law enforcement agencies, including ICE and ATF, work together on OCDETF operations, and the USAO provides oversight. OCDETF committees across the country can certify investigations for OCDETF funding. To obtain certification, an agency must propose to the committee an investigation or operation that has one or more drug trafficking organizations as its target. Weapons smuggling

¹ 22 U.S.C. § 2778; 22 CFR §§ 120-130.

² 18 U.S.C. § 554 Smuggling of Goods from the United States.

³ 19 U.S.C. §§ 482, 1467, 1496, 1581, 1582.



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investigations may also receive OCDETF certification if the proposal links the weapons smuggling ring to one or more significant drug trafficking organizations. To be certified as an OCDETF operation and receive OCDETF funding, an investigation must be pursued as a task force that includes several agencies.

Title III Electronic Surveillance Wiretaps

The OCDETF Operation Fast and Furious used Title III electronic wiretaps, which allow Federal, state, and other investigative and law enforcement agencies to intercept wire, oral, or electronic communications to further a criminal investigation. An investigating or law enforcement official seeking a Title III wiretap must receive judicial authorization. Such officials submit an application, including an affidavit, to DOJ's Office of Enforcement Operations, which reviews all wiretap applications to ensure that each application meets statutory requirements and DOJ guidelines. If the application meets the requirements, and the Attorney General or his designee authorizes it, an Assistant United States Attorney (AUSA) will forward it to a Federal judge for approval.⁴

Results of Inspection

The results of our review are presented in two parts. Part One provides an overview of the extent to which senior ICE and DHS officials became knowledgeable of the planning and implementation of Operation Fast and Furious. Part Two includes specific details of related events that occurred between DHS staff in field locations and ATF staff members, and the extent to which the Department complied with DHS policies and procedures for weapons smuggling investigations.

Part One: ICE Headquarters Did Not Learn about Operation Fast and Furious Methodology Until December 2010, and Senior DHS Officials Did Not Learn of It Until March 2011

ICE headquarters officials received their first indication of the OCDETF operation and its flawed methodology after OBP Agent Terry was murdered and two weapons recovered at the scene had been purchased by Operation Fast and Furious suspected straw purchasers during the course of the investigation. The HSI SAC informed ICE headquarters officials that the weapons recovered at the

⁴ The *Omnibus Crime Control and Safe Streets Act of 1968*, as amended, Pub. L. 90-351, Title III, governs the procedures and requirements for obtaining wiretap orders in the United States. The law was codified in 18 U.S.C. §§ 2510-2522. 18 U.S.C. § 2516(1) states that the Attorney General or his designee, such as the Deputy Attorney General, may authorize the submission of wiretap application.



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crime scene were linked to the OCDETF operation, and he characterized HSI Arizona involvement as “tangential.” An ICE headquarters official appropriately advised the HSI SAC to provide all of the information he had to the Federal Bureau of Investigation (FBI), which was investigating the murder.

In March 2011, after several media reports criticized Operation Fast and Furious, the DHS Secretary began to seek information about it and any involvement by DHS components. She worked with ICE headquarters to learn the facts of Operation Fast and Furious and details about ICE policy and practices related to weapons smuggling investigations along the Southwest Border.

The DHS Secretary did not learn about Operation Fast and Furious, its flawed methodology, or that ICE had assigned an HSI special agent to the task force until mid-March 2011. The ICE Director did not learn of the operation until January 2011 when ATF scheduled a press conference, and he did not learn of the flawed methodology until March 2011. Likewise, the HSI headquarters officials did not know about the operation’s methodology until that time, though they were aware that HSI Arizona had a special agent assisting the task force in December 2010.

By the time the DHS Secretary received information about ICE participation in the task force, the DOJ OIG had already begun its review of Operation Fast and Furious. Neither ICE headquarters officials nor the Secretary spoke with anyone from DOJ OIG about the operation. The Secretary’s and ICE officials’ actions were appropriate.

Murder of OBP Agent Terry Provided ICE Headquarters Officials With the First Information About the Operation’s Flawed Methodology

On the morning of December 15, 2010, HSI Arizona learned that OBP Agent Terry had been murdered by suspects that he and others with him were attempting to apprehend. That afternoon, the HSI special agent assigned to the Operation Fast and Furious task force informed his group supervisor that “the firearm used to kill [Border Patrol Agent] Terry” had been purchased by one of the operation’s suspected straw purchasers in January 2010. At 5:29 p.m. that evening, the group supervisor sent an email message to his ASAC and DSAC explaining what he had learned from the HSI special agent about the firearm. The DSAC forwarded the email message to the HSI SAC and stated, “[t]his is why you don’t let that many guns walk.”



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In another string of messages that night between the group supervisor and his ASAC, two DSACs, and the HSI SAC, the group supervisor wrote that three weapons had been recovered at the scene of the murder. Two were traced to a straw purchaser who was a suspect in the operation, but the results on the third weapon were unknown. Later, ICE management was informed correctly that only two weapons were found at the scene and forensic tests could not determine if either was the murder weapon. The group supervisor also wrote that the AUSA had been made aware of the situation. In another email message, he wrote “[a]nd this is exactly what I said would happened [sic] when you let that many guns walk.” His ASAC also wrote in an email message, “[t]hat is why we shouldn’t let guns walk!”

At 7:05 p.m., the HSI SAC informed his supervisor, the Assistant Director of Operations, in ICE headquarters that weapons at the murder were linked to OCDETF Operation Fast and Furious. In the email, he characterized HSI involvement with the operation as “tangential”:

ICE has been tangentially involved in the case since many weapons that have been seized in HSI cases have been traced to sales at [a Phoenix, Arizona, FFL] and straw purchasers that ATF has already investigated. Our efforts to work these targets have been thwarted because of the ATF OCDETF case.

The Assistant Director of Operations informed her supervisor, the Executive Associate Director of Operations. The Executive Associate Director of Operations instructed the HSI SAC to provide all the information he had to the FBI, which would be responsible for the investigation.

The Secretary visited OBP Arizona offices on December 17, 2010 to support the OBP staff and to assert to the USAO and to the FBI that DHS wanted an aggressive investigation and prosecution. The Secretary did not visit with ICE personnel in Arizona. U.S. Attorney Dennis Burke traveled with her from Phoenix to the offices she visited and attended the meetings with OBP personnel. However, Burke and others did not inform her about the connection between the weapons recovered at the scene of the murder and the OCDETF operation. They did not mention Operation Fast and Furious.

The HSI special agent on the operation acted appropriately when he informed his chain of command about the connection between the firearms found at the site of OBP Agent Terry’s murder and the operation.



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We question the HSI SAC's use of the word "tangential" to describe HSI's involvement in the operation. Just a few weeks earlier, as we describe later in our report, the group supervisor of the HSI special agent on the operation had described the special agent's role in the indictment phase of the operation as "fully involved." Additionally, the HSI special agent had worked full time on the operation since its inception. He had conducted surveillance, interviews, and monitored wiretaps with the rest of the operation's staff. The proposal that established the operation named him and an ATF agent as co-leads. The HSI SAC should have provided ICE headquarters officials with a more thorough and clear account of the role his office had in the operation.

The ICE headquarters officials acted appropriately, especially when the HSI Executive Associate Director of Operations directed the HSI SAC to provide all information available to the FBI special agents who were investigating the murder.

HSI Arizona Special Agents Assisted with the Arrest of 20 Operation Fast and Furious Suspects; Subsequently the HSI Special Agent on the Operation Stopped Work on Operation

The grand jury indicted 20 Operation Fast and Furious suspects on January 19, 2011. The indictment did not include any substantive charges of the AECA or 18 U.S.C. § 554 smuggling statutes for the actual transportation of weapons across the border to Mexico. However, the indictment included one charge of conspiracy to smuggle weapons. The HSI special agent on the task force assisted with the first string of arrests on January 25, 2011, as did other HSI special agents and CBP personnel who previously had no knowledge of the case.

The HSI special agent assigned to the operation documented the arrests on January 31, 2011. He resumed his work with HSI Arizona and left the OCDETF.

DHS Headquarters and ICE Headquarters Assess DHS Involvement After Press Articles Criticize Operation Fast and Furious

The DHS Secretary, the ICE Director, and other senior ICE headquarters officials said that they learned about the flawed methodology in Operation Fast and Furious when news articles about the operation began to appear. We found no evidence that the DHS Secretary, ICE Director, or other senior officials were aware of the Operation Fast and Furious methodology prior to publication of the news articles. The DHS



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Secretary began to seek information from ICE in early March 2011. The ICE Director's office assisted with asking questions and determining the ICE role in Operation Fast and Furious. They worked together to understand the facts of the case.

After making initial inquiries, the ICE Director instructed staff members to review ICE emails in response to congressional requests for information. A team of ICE staff interviewed HSI Arizona staff who had knowledge of Operation Fast and Furious. The team concluded that HSI Arizona had not knowingly allowed weapons to cross the border into Mexico during Operation Fast and Furious, and that HSI policy and practice was never to allow known and uncontrolled loads of weapons to be transported across the southern border. The team concluded that HSI Arizona staff had been misled by ATF with regard to the operation's methodology. Our findings differ in that we believe HSI Arizona senior staff had the information available to conclude that ATF had opportunities to seize weapons that were destined for Mexico. Despite that, the DHS Secretary and ICE Director acted appropriately to the initial indications that ICE may have been involved in the flawed operation.

The DHS Secretary Initially Did Not Receive Complete Information About ICE Involvement in the Operation

After articles about Operation Fast and Furious began to appear in the press, the DHS Secretary began to inquire about ATF's methodology and its relation to the straw purchasers who bought the weapons recovered at OBP Agent Terry's murder site. Beginning on March 5, 2011, she asked ICE to answer questions about Operation Fast and Furious. HSI Arizona and ICE headquarters both drafted answers. The answers did not inform the Secretary that ICE had placed an HSI special agent on Operation Fast and Furious. The Secretary's office was not satisfied with the initial answers and required more information. This exchange continued for several weeks.

During her morning briefing on March 5, 2011, the Secretary asked that the Southwest Border HSI SACs answer some questions to prepare her for a meeting with the U.S. Attorney General, which was scheduled for March 8, 2011. The questions were sent to ICE headquarters staff, which forwarded them to the HSI Phoenix SAC and other SAC offices. The email message stated, "[i]n preparation for a meeting with the AG, S1 is asking HSI to reach out to the SWB [Southwest Border] SACs to see if we can weigh in on the matter involving ATF guns smuggling investigations." S1 is a term commonly used in DHS to refer to the



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Department's Secretary. "AG" is a reference to the U.S. Attorney General. The Secretary and two key staff members said that the meeting between the U.S. Attorney General and the Secretary was cancelled. Her schedule confirms that she did not attend; instead, lower level staff attended the meeting. They did not discuss Operation Fast and Furious. Instead, they discussed protocols for communications between DHS and DOJ. DOJ had concerns that the Secretary and her staff were contacting DOJ staff for information inappropriately.

The Secretary's March 5, 2011 questions included the following:

- Had ATF allowed any weapons to be taken into Mexico as part of ongoing or previous investigations, and if so were they controlled deliveries coordinated with CBP?
- Had ATF been conducting investigations into the purchasers of the weapons linked to the murders of OBP Agent Terry and ICE Special Agent Zapata prior to the murders? [ICE Special Agent Zapata was murdered in Mexico in February 2011.] If so, did ATF ever knowingly allow the suspects to transport weapons into Mexico?
- What were ATF's standard practices when it suspected an investigation's subjects were smuggling weapons out of the country? How did ATF prevent the weapons from being illegally exported?

The HSI Arizona SAC received these questions and responded to the HSI Arizona desk officer at headquarters late in the evening of March 7, 2011. Before they returned their response, the ICE Deputy Chief of Staff, Operations, prepared answers, which he transmitted to the ICE Deputy Director, who forwarded the response to the ICE Chief of Staff. We did not locate an email that transmitted the responses to the Secretary's office. The answer to the first question discussed the requirements for Federal agencies to allow weapons to cross the border and stated that according to the ICE/ATF MOU, ATF would need to notify ICE before the weapons were moved across the border. The answer then stated that an informal polling of HSI Southwest Border offices:

... revealed no instances when ATF knowingly abrogated this MOU and/or violated current federal law by willingly allowing USML weapons to transit the international border, specifically, in the instance of the cases related to the homicide of DHS personnel, into Mexico.

The response to the second question stated that ICE was working with ATF to obtain more information related to the purchases of the weapons linked to the murders of ICE Special Agent Zapata and OBP Agent Terry.



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ICE headquarters' response to the third question was that ATF was compelled to advise ICE and CBP when it conducted investigations targeting international arms smuggling organizations. It continues, "[h]owever, this protocol does not preclude the unintentional release of weapons given to targets domestically who then, unbeknownst to ATF, carry them travel [sic] out of the U.S."

On March 8, 2011, the HSI SAC provided the ICE headquarters desk officer with answers to the questions. His email message stated the following:

- ATF knew or should have known that weapons that they had identified were being smuggled into Mexico;
- CBP probably was not notified of any loads of weapons passing through the ports of entry as "uncontrolled deliveries;"
- HSI had been aware that ATF allowed cold convoys of weapons to be transported to Mexico in 2007, and on at least two occasions the deliveries were compromised;
- HSI learned that the ATF investigation's subjects were responsible for smuggling hundreds of weapons to Mexico, and ATF was adamant that any enforcement action would jeopardize their attempt to get a Title III wiretap;
- ATF received contemporaneous intelligence of weapons sales during Operation Fast and Furious, and had identified the locations where weapons were stored pending transit to Mexico;
- ATF put into eTrace information from all weapons sold in four FFLs, which blocked HSI from conducting investigations of any weapons sold by those stores;⁵
- The purchaser of the weapon linked to the murder of OBP Agent Terry was the subject of Operation Fast and Furious; and
- HSI Arizona cannot comment on ATF standard practices, but it appears that ATF does not give priority to preventing weapons from being exported illegally to Mexico.

⁵ In comments to our report, DOJ said that ATF put information from all weapons purchased by Operation Fast and Furious suspects into the Suspect Gun Database. The ATF case agent did not authorize release of information on the guns in that database. As a result, when HSI special agents requested information on weapons purchased by Operation Fast and Furious suspects, they did not receive information in response. The HSI investigations were impeded as a result. As a general matter, entry of information about weapons into the eTrace system does not automatically trigger a mechanism to prevent the dissemination of the information.



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The answers did not mention that HSI Arizona assigned an HSI special agent to participate on the OCDEF.

The Secretary had additional questions transmitted through ICE Director Morton on March 8, 2011, as follows:

1. What licenses are required by law enforcement to ship export firearms from the United States to Mexico, and does ICE have a role in that process?
2. What language in the ICE/ATF MOU requires ATF to notify ICE of efforts "to export or let guns walk across the border;" and had ICE ever received such a notification?
3. Did ICE have any prior contact with ATF over the guns identified at the scene of OBP Agent Terry's death or ICE Special Agent Zapata's death?
4. Does ICE policy allow firearms "to walk" domestically or internationally?

In response to the Secretary's questions, the ICE Chief of Staff provided draft answers to one of the Secretary's advisors shortly after receiving the questions. The answers to questions 1, 2, and 4, were full paragraphs. The answers provided a full explanation of the weapons laws, the ICE/ATF MOU, and ICE's position that no firearms may be transported across the international border. However, the response to question 3, regarding any prior contact with ATF over guns identified at the scene of OBP Agent Terry and ICE Special Agent Zapata's death, was, "No."

The advisor told us that he informed ICE headquarters officials that they needed to provide more facts to explain what they thought happened in the ATF investigation, and "why we are convinced that we did not knowingly allow these guns into Mexico." Specifically, the Secretary's advisor sent the following email message to the ICE Director and the Chief of Staff on March 10, 2011:

S1 is exceptionally concerned about the ATF issues. She wants to make sure that, at any level, we had no knowledge of the specific purchase that may be related to Terry. She may also want a general briefing on how our agents interact with ATF in these type cases in the past. Do you guys mind taking a deep dive on this and making sure we had no advance knowledge on this one?

The ICE Chief of Staff responded that ICE was gathering more information and she would call the advisor when she had more complete answers. We were not able to interview the ICE Chief of Staff, who left DHS employment during the



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course of our review. We did not locate an email message with responses to this question.

On March 12, 2011, DHS headquarters requested additional information from HSI field offices to include summaries of how HSI received information and what actions it took on the cases. DHS headquarters also wanted to know about any leads that ATF provided to HSI and what actions HSI took on those leads. In addition, the HSI field offices needed to explain how they coordinated the cases with CBP. HSI Arizona senior leaders surmised that DHS headquarters wanted to review how HSI typically handled firearms cases. HSI Arizona compiled a detailed list of more than 50 cases. It also included summaries of email messages from 2008 and early 2009 that documented problems the HSI Arizona field offices had with ATF, including instances in which ATF's operational tactics allowed weapons to cross into Mexico without appropriate licenses, notifications, or coordination with the Government of Mexico. In those messages, ICE articulated that it would not allow weapons to be transported into Mexico without following the statutorily required processes and ensuring the weapons could be safeguarded.

To learn more about HSI involvement in Operation Fast and Furious, HSI headquarters officials read the reports of investigation (ROI) that the HSI special agent had drafted to document his work on Operation Fast and Furious. ICE headquarters sent the following questions about the reports to HSI Arizona on March 13, 2011:

- Provide details about the seizure of weapons that were actively being transported to the international border of Mexico?
- What investigative techniques were used on the suspect who had purchased the weapons found at the scene of OBP Agent Terry's murder?
- Was ICE aware that individuals within ATF disputed the Operation Fast and Furious methodology while the operation was underway?
- Was HSI involved in the surveillances that terminated when a vehicle with weapons parked at a residence? What happened to the surveillance?

The HSI ASAC that supervised the HSI special agent on the operation and his group supervisor provided a draft response to his chain of command:

We were aware that there was a dispute within ATF over the operational philosophy of the operation; we had the same concerns in the January 2010 meeting when we stated we would not let guns walk south. The issue seems to have been that ATF and the USAO did not want to do anything to jeopardize the wire



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they were writing and both ATF and the USAO insisted that we not interfere... yes, we were aware but were not directly involved.

The HSI ASAC provided ICE headquarters with answers to some of the questions a few hours later on March 13, 2011. In the email message the ASAC said that HSI Arizona “had no knowledge period of ATF walking guns, they were clear on our (HSI) and the SAC’s stance on this.” He provided the details related to seven domestic seizures the task force made that the HSI special agent on the operation had recorded in ROIs. His email message also stated:

- The sole HSI special agent assigned to Operation Fast and Furious did not believe that the task force surveilled the suspect who purchased the weapons found at the scene of OBP Agent Terry’s murder;
- The sole HSI special agent did not participate in many of the surveillances; he documented in TECS some, but not all of the surveillance work he conducted.
- Generally, once weapons went to a residence, surveillance terminated.

ICE Assembled a Team to Assess HSI Involvement in Operation Fast and Furious

In June 2011, ICE headquarters assigned a team to collect more information about Operation Fast and Furious in response to congressional requests for information. The team said that it reviewed 6,000 email messages. In January 2012, three ICE headquarters staff traveled to Arizona to interview HSI Arizona personnel who were knowledgeable about Operation Fast and Furious.

The team did not document its findings in reports or briefing papers. However, team members said that they concluded that ATF had misled ICE to believe that the investigation would be conducted competently. HSI assigned the HSI special agent to the task force in an attempt to cooperate with ATF and the USAO.

The ICE headquarters team did not review as many messages as we did. It did not have the important messages that assisted us in our interviews with HSI Arizona staff. As a result, the team’s findings differ from ours.



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However, it appears that the team made a good faith effort to collect the important facts.

Conclusion

Each DHS, ICE, and HSI headquarters official that we interviewed stated they did not learn about the operation's flawed methodology until the media reports started to raise concerns. The email messages we reviewed indicate the same. In March 2011, as the media reporting intensified, the DHS Secretary and ICE headquarters officials sent multiple requests for information that indicate they did not know HSI had a special agent participating on the operation and that the operation's methodology was flawed. They acted appropriately in response to the information being published.

Likewise, ICE headquarters acted appropriately when it established a team to review thoroughly the circumstances of HSI participation in the task force. Our findings differ, but it appears the team made a significant effort to discover the facts.

Part Two: HSI Arizona Staff Learned of ATF Weapons Smuggling Investigation That Became Operation Fast and Furious, but the HSI SAC Did Not Understand ATF's Methodology

The ATF Phoenix field office began an investigation of several suspected straw purchasers on October 31, 2009. HSI special agents in Arizona learned about ATF's investigation in November and December 2009 while conducting two investigations to determine the sources of weapons being smuggled into Mexico. ATF agents informed the HSI office that the weapons HSI was investigating were related to an ongoing ATF investigation of weapons purchased by suspected straw purchasers. ATF and, according to interviews with some HSI Arizona staff, the AUSA requested that HSI terminate their ongoing weapons smuggling investigations, and refrain from further efforts to identify the smuggling ring's transportation cell.⁶ The HSI SAC agreed to the request largely because of the AUSA's support of ATF's case.

As some HSI Arizona field office staff members learned more about the ATF investigation, they conveyed to other HSI Arizona staff their concerns about the

⁶ In its comments to our report, DOJ stated that USAO maintains that it did not request that ICE refrain from its investigations.



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investigation's methodology, in which ATF investigators would discontinue surveillance without seizing the weapons. HSI policies and procedures for contraband smuggling investigations prohibit losing contraband, especially when the contraband is firearms. HSI Arizona senior leaders and special agents tried to influence ATF's plan to further the investigation and stop weapons from being transported to Mexico. However, ATF did not revise its strategy, and it continued with its original plan for investigating the weapons smuggling operation.

HSI Arizona supervisory staff assigned a special agent to assist ATF in November 2009; however, the HSI special agent had minimal participation in the ATF investigation, and did not document any investigative activity until he became more actively involved in the investigation in mid-January 2010.

The HSI SAC said he did not understand the full extent of ATF's methodology until December 2010, a year after ATF began its investigation. The HSI SAC said that until then he did not know that ATF had the opportunity to stop weapons from being smuggled to Mexico.

HSI Policies and Practices Require Contraband to be Continuously Monitored Until Seized

HSI policy allows special agents to delay the immediate seizure of evidence in order to learn more about a criminal organization. The procedures for delaying seizure are stated in the *U.S. Customs Special Agent Handbook*, USCS-HB-98-01, Ch. 15, April 3, 1997. The handbook indicates that a special agent must follow extensive procedures anytime a special agent wants to delay immediate seizure of newly discovered contraband. The handbook identifies a delayed seizure as a controlled delivery. The handbook lists rules for conducting controlled deliveries. The handbook does not specifically state that special agents must continue surveillance of contraband until they seize it, although every HSI special agent that we asked understood that to be the policy. However, the handbook's extensive requirements for the conduct of controlled deliveries and the absence of any terms that would allow special agents to stop surveillance preclude stopping surveillance without seizing the contraband.

The handbook requires significant planning for controlled deliveries, including notification and approval from ICE headquarters as well as coordination with law enforcement agencies in areas through which the controlled delivery would pass. The handbook also notes that planning controlled deliveries requires "strict attention to resource allocation" because controlled deliveries "can



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require the dedication of substantial personnel and equipment” and “surveillance activities can be lengthy and geographically broad.” Special agents are directed to use aerial surveillance if it is needed. The handbook requires that a senior special agent “will direct the surveillance and ensure frequent communication with the originating, transited, and receiving offices.” It also states that the SAC at the destination point “is responsible for providing resources and ensuring the security of the contraband to its destination.” When a controlled delivery has reached its destination, the case agent should report the additional searches, arrests, and seizures that occurred.

The handbook allows for special types of controlled deliveries. It addresses cold convoys, which can be used when law enforcement agents discover contraband without being noticed by the suspect associated with the contraband. HSI special agents may delay seizure and allow the suspect to proceed to a destination within the United States “while under surveillance by special agents.” Additionally, special agents may allow contraband to be imported or exported under very tightly controlled circumstances.

Significantly, the handbook contains exacting notification procedures if contraband is lost, including immediate notification to the nearest Office of Internal Affairs and the Director of Investigative Operations (known as the Executive Associate Director or Operations), or the duty agent if the loss occurs after normal business hours. Within 24 hours, the SAC must send a memorandum to the Director of Investigative Operations that explains the circumstances of the loss and provides 17 other data points.

At the time of Operation Fast and Furious, HSI did not provide specific training for conducting investigations of smuggling rings that illegally transport weapons to Mexico. However, every HSI staff member we interviewed told us that HSI teaches its special agents not to conduct activities that would allow contraband to be lost from government control. That is true for all contraband, and especially for weapons.

HSI Arizona staff explained, and their email messages confirmed, that when enforcing the weapons smuggling statutes, they are extremely serious about adhering to the mandate not to lose weapons. They explained that they have been using the same case methodology for almost all investigations of weapons smuggling to Mexico for years. HSI Arizona special agents will surveil weapons suspected of being contraband until the special agents can either confirm that the weapons are not contraband, or seize the weapons.



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Discontinuing surveillance of suspected straw purchasers and losing high caliber weapons is abhorrent to every HSI special agent we spoke with about the issue. They will not drop surveillance of suspect weapons. When HSI has evidence to charge a person suspected of involvement in weapons smuggling, HSI will charge them and “flip” them, a law enforcement practice in which special agents persuade a suspect to assist the investigation. If HSI special agents have strong suspicions about a person suspected of weapons smuggling, but do not have evidence to charge them, HSI will talk with them to get more information.

ICE/ATF MOU Outlines Roles to Resolve Conflicts Between the Agencies

ICE and ATF maintain jurisdiction to investigate multiple weapons violations, which creates a potential for an investigation of the same subject to be initiated by both agencies. In these circumstances, either the agencies will agree to work together, or one agency must terminate its investigation.

To minimize the challenges that can arise in resolving these instances, in June 2009, HSI signed an MOU with ATF that established protocols for deconflicting and cooperating on weapons investigations. The MOU states that: (1) the agencies should exchange information and assist each other; (2) issues between HSI and ATF should be resolved at the lowest levels; and (3) SACs should be able to manage issues at the field level. The MOU also provides a mechanism for raising conflicts with ATF to ICE headquarters when resolution cannot be reached at the field office level.

ICE headquarters officials said that they specifically negotiated the notification terms so that ICE could ensure that violations of AECA and 18 U.S.C. § 554 would be investigated when appropriate, and ICE could prevent weapons from being smuggled into Mexico. ICE and ATF Directors hosted a conference in November 2009 to encourage adherence to the MOU and improve cooperative efforts.

ATF Directed HSI to Abandon a Weapons Smuggling Investigation

On November 21, 2009, the HSI Tucson DSAC office opened a weapons smuggling investigation after it received information about the seizure of 41 weapons in Naco, a Mexican town that borders Arizona. The Mexican Customs authority, Aduana, had seized an AR-15 and 40 AK-47 style firearms from a vehicle on the Mexican side of the Naco port of entry. The Mexican Government requested that the HSI Assistant Attaché staff assigned to the American Consulate General in Hermosillo, Mexico enter eTrace queries on the weapons.



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ATF maintains eTrace, which is an electronic system that accredited law enforcement agencies may use to request firearms information from ATF's National Tracing Center. An eTrace request prompts the center to compile information about a weapon's manufacturer, place of first sale, and initial purchaser. The information can be useful for investigations that involve a weapon. The MOU between ICE and ATF allows ICE to submit queries through the eTrace system to obtain information on specific weapons related to ICE investigations.

HSI never received the results of the eTrace queries on the weapons seized in Naco because, as it learned later, ATF had blocked the information. HSI special agents learned that ATF entered the weapons linked to the ATF investigation in a "Suspect Gun Database," which alerted the ATF case agent to eTrace queries made on the investigation's suspect weapons. The ATF case agent blocked eTrace responses.

On November 23, 2009, the HSI Hermosillo staff notified the HSI SAC of the seizure, and HSI's initial investigative activities, which identified leads to Tucson, Arizona. In response, the HSI SAC contacted ATF senior leaders in the ATF Tucson field office. HSI and ATF Tucson field office staff agreed to share information related to the seizure. HSI special agents in the Tucson field office began to investigate the leads.

On November 25, 2009, an ATF Phoenix senior leader wanted HSI to abandon its investigation of the 41 Naco weapons because ATF already was investigating the purchaser, who it believed was a straw purchaser. The ATF Phoenix office gave the message to an ATF Tucson staff member, who told an HSI Tucson special agent. The HSI Tucson special agent forwarded the ATF Tucson staff member's comments about the ATF Phoenix investigation in an email message to the HSI SAC, and other HSI Arizona senior leaders. The Tucson ATF agent said that he did not know how the Phoenix ATF office had identified the suspected straw purchasers and that ATF Phoenix agents were being "vague." However, the ATF ASAC for the case suggested that ATF brief HSI Arizona staff on the case and coordinate activities.

Two HSI Arizona staff members said that the AUSA also directed HSI Arizona staff to stop the investigation of weapons seized in Naco. They did not provide the date or the circumstances in which they learned of the instruction from the AUSA.



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The HSI SAC learned more about the case from a telephone call he received on November 25, 2009, from the ATF Phoenix ASAC. The ATF Phoenix ASAC said that the seized weapons were linked to a case that was approximately two weeks old. ATF thought that several straw purchasers were responsible for several hundred weapons going to Mexico. ATF wanted to schedule a meeting with HSI to talk about the seizure and determine roles for the investigative agencies. The HSI SAC summarized the conversation in an email message that he sent to senior HSI staff in Arizona and the HSI Assistant Attaché in Hermosillo.

Later that day, HSI special agents in Hermosillo interviewed the occupants of the car from which the 41 weapons were seized. ATF agents in Hermosillo did not attend the interview. However, the ATF Tucson field office agents assisted HSI Tucson special agents in additional investigative activities of the Tucson residence that was linked to the Naco seizure.

HSI Arizona Field Office Staff Develop Concerns About ATF's Investigation

HSI Arizona staff developed concerns when ATF briefed its investigation to them on November 30, 2009. HSI staff from Hermosillo, Mexico and the HSI Tucson DSAC office, ATF Tucson field office agents, and U.S. Marshal's Service agents attended in person. The ATF Phoenix agents who led the investigation of the straw purchasers joined the briefing by teleconference.

An HSI special agent summarized the meeting in an email message, which he sent to the HSI SAC and other senior leaders. The summary stated that ATF Phoenix agents initiated an investigation in late October 2009 upon receipt of information from an ATF source. The investigation focused on a group of straw purchasers who had purchased numerous high caliber rifles from FFLs in the Phoenix area. ATF had identified the suspects' telephone numbers and addresses, and a vehicle repair shop thought to be a storage location for the weapons before they were transported to Mexico. ATF said that it had been communicating with an HSI special agent in Phoenix for assistance with investigating the suspected transportation cell at the vehicle repair shop, although ICE subsequently learned that this information was incorrect. ATF asked HSI special agents to call ATF before contacting any individuals identified through eTrace queries.

During our interviews, some HSI staff members who attended the meeting provided more information. They said that during the meeting they learned that ATF was stopping surveillance without seizing the weapons. ATF had said that it followed straw purchasers from the FFL to a vehicle repair shop. Once there,



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ATF stopped surveillance. ATF did not care where the guns went after they arrived at the shop, according to one HSI staff member. The ATF methodology did not adhere to HSI policies and procedures for contraband smuggling investigations. Three HSI Arizona staff said that ATF's methodology violated HSI training. An HSI staff member commented about how obvious it was that ATF was allowing weapons to be smuggled to Mexico. Another HSI staff member said that he had an "overwhelming feeling of concern" because ATF's plan did not seem to include a strategy or activities to stop weapons from going to Mexico.

During the meeting, HSI staff tried to influence ATF to modify its investigative plan to reduce the likelihood that weapons would be lost. The HSI special agent's summary of the meeting stated that HSI special agents suggested that ATF initiate surveillance of the vehicle repair shop and take other investigative methods to establish probable cause that the business or its employees were involved in weapons smuggling. ATF staff said that the agency was attempting to obtain funds to install a surveillance device at the vehicle repair shop, but had not yet received the funds. HSI offered to provide a surveillance device of its own. HSI asked ATF to call HSI for assistance if surveillance indicated that weapons were leaving the vehicle repair shop. In response to HSI's suggestions, ATF agents said that they already were working with an HSI special agent in Phoenix to determine whether the suspects were using vehicles to transport the weapons to Mexico. During their interviews with us, HSI Arizona special agents and their chain of command said that ATF's claim that it had been working with HSI Arizona to investigate the transportation cell was false.

HSI special agents and senior staff who were aware of the conflicts with ATF regarding the Naco seizure were concerned that ATF did not respond to HSI's suggestions to improve its investigative plan and activities. An HSI Arizona ASAC who attended the meeting sent an email message to the HSI SAC, and other HSI Arizona senior leaders and agents. The ASAC's message stated, "I think the consensus of those of us on the call was that ATF is not working vigorously enough to track the weapons and ensure the guns aren't going south. They have 260 + guns still unaccounted." The HSI ASAC who wrote the message said that ATF did not seem to be tracking the weapons beyond the vehicle repair shop. The ASAC was especially concerned about the investigation because it had allowed 41 high-caliber weapons to be transported through his area of responsibility and smuggled across the border. He said that the volume of weapons being investigated was "scary" and only worsened over time.



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Three HSI Arizona staff said that the fact that ATF surveilled suspicious sales and followed straw purchasers from the FFLs to the vehicle repair shop clearly conveyed that ATF had opportunities to take enforcement action to stop the weapons from being sold and from being smuggled into Mexico. One said it was obvious that ATF was letting “guns walk.” However, the HSI SAC and another senior leader stated that they did not interpret the information received from ATF about the investigation the same way. Rather, they thought that ATF merely learned about the sales after the fact by reviewing the FFLs’ records of completed weapons transactions. The HSI SAC stated that he did not learn that ATF had advance notice of the suspect sales until a year later, in December 2010.

On December 1, 2009, the HSI senior special agent discussed the ATF case with the ATF lead case agent. She told him that ATF intended to conduct a long-term investigation using a Title III wiretap, and intended to obtain OCDEF certification.

Some HSI Arizona Staff Concluded That ATF Had Opportunities to Seize Weapons, but Did Not

As a result of the Mexican Aduana’s seizure of weapons in Naco, HSI learned the following facts about ATF’s investigative plan:

- Several suspected straw purchasers had purchased more than 260 weapons; those that had not been seized already were to be smuggled to Mexico;
- ATF intended this to be a long-term OCDEF investigation and it sought to obtain a Title III wiretap;
- ATF had conducted surveillance of at least some of the sales and followed the suspected straw purchaser and the weapons to a vehicle repair shop;
- ATF dropped surveillance at the vehicle repair shop, which would allow the weapons to be smuggled into Mexico without government knowledge;
- At least 41 weapons had been transported to Mexico, and ATF did not have a strategy to prevent more weapons from going to Mexico;
- ATF did not want HSI to work independently on the weapons seized in Naco; and
- ATF had not notified HSI of its investigation until after Aduana, the Mexican customs authority, requested HSI assistance and cooperation in investigating the weapons seized in Naco.

From these facts, some HSI Arizona staff concluded that ATF had the ability to stop the weapons from being transported to Mexico, yet, ATF’s methodology



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allowed the weapons to be lost and transferred to criminals. The methodology violated HSI policy and training. The HSI SAC said that he did not realize the extent of the problem, but he was concerned that weapons in an ATF investigation had been transported to Mexico. HSI Arizona senior leaders and special agents tried to influence ATF's plan to further the investigation and stop weapons from being transported to Mexico. They suggested alternative surveillance methods and offered assistance. However, ATF did not incorporate HSI's ideas.

In addition to being concerned about ATF's investigative methodology, HSI Arizona staff were concerned that ATF had not alerted them to the investigation earlier. The ICE/ATF MOU recognized ICE authority in weapons smuggling investigations and required ATF to notify HSI "timely" when it encountered investigative leads that would fall within HSI authority. Since October 31, 2009, ATF had suspected the straw purchasers were smuggling weapons to Mexico. However, ATF did not notify HSI about the investigation until November 25, 2009, more than three weeks after the investigation began. Additionally, HSI only learned about the ATF investigation when ATF became concerned about an HSI investigation of some of the suspect weapons. HSI Arizona staff said that ATF violated the ICE/ATF MOU. The HSI SAC said that he did not raise that concern to ATF because he cannot force ATF to work with HSI. Also, because the AUSA agreed to support ATF's investigation of crimes that are solely within HSI jurisdiction, there was nothing he could do about it.

HSI Special Agent Assigned to Assist ATF Initially Was Not Given Duties or Provided Information Related to the Investigation

In late November 2009, HSI Arizona assigned a new HSI special agent to assist ATF with its investigation of the weapons seized in Naco; initially, however, ATF did not give the HSI special agent work or provide him with information about the investigation. The HSI special agent had worked with ATF for eight years as a regulatory inspector before joining HSI in 2008. An HSI group supervisor directed the HSI special agent to open a case file on the Naco seizure, and communicate and coordinate with ATF on this aspect of its investigation. The HSI special agent said that he never had an opportunity to open a case file for the Naco seizure because he did not have any information or investigative activities to report.

Although the HSI special agent was assigned to the investigation, a more senior HSI special agent communicated with ATF about its investigation. The senior special agent had been an HSI liaison to ATF in the past, and had conducted



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successful HSI investigations of weapons smuggling to Mexico. HSI considered the more senior special agent to be a subject matter expert on investigations of weapons smuggling to Mexico. During the first week of December 2009, the HSI senior special agent was the primary point of contact with the ATF case agent. The senior HSI special agent was not able to obtain detailed information about the ATF investigation.

HSI Arizona senior leaders expected ATF to request assistance with surveilling the vehicle repair shop, but ATF never made a request. The HSI special agent and HSI did not conduct surveillance of the vehicle repair shop because it would have been improper to work on ATF's case without a request from ATF. Because of ATF's insistence that HSI not proceed with investigation of the Naco seizure, ATF's refusal to provide eTrace information, and ATF's reluctance to request HSI assistance, HSI Arizona abandoned its efforts to find the smugglers responsible for the 41 weapons discovered in Naco.

HSI Initiated a Second Smuggling Investigation, Which Was Related to the ATF Investigation

The circumstances of another seizure of weapons indicate that ATF did not involve HSI in planning the operation, or provide HSI with information about the investigation in a timely manner. Because of work that HSI and the Douglas police department had conducted with a confidential informant, on December 9, 2009, the Douglas police department seized nine AK-47 style rifles and nine 30-round magazines after stopping a vehicle that had been traveling at a high rate of speed toward a port of entry. HSI entered eTrace inquiries for the weapons, and intended to open an investigation of the weapons with assistance from ATF. However, later that day, HSI learned that the weapons had been claimed by ATF as a part of the same investigation that tracked the suspected straw purchasers who bought the weapons seized in Naco, and ATF had blocked the eTrace results again.

HSI Arizona dispatched its senior special agent and the special agent to discuss the Douglas seizure with ATF Arizona staff on December 10, 2009. While returning from the meeting with ATF, the two HSI Arizona special agents discussed concerns that ATF had not arrested any suspects yet. The HSI senior special agent also discussed different investigative strategies HSI would take if it were the lead agent on the case. Upon return to the office, the HSI senior special agent summarized in an email message what they had learned from the meeting with ATF:



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- The HSI and ATF agents had discussed conducting an interview with the source of information related to the Douglas seizure;
- ATF had identified the smuggling ring's organizational head and 24 suspected straw purchasers;
- The straw purchasers had purchased, from 4 different FFLs, approximately 300 weapons that had "presumably been smuggled to Mexico;"
- There had been a third seizure in Nogales of six of the weapons purchased by the suspected straw purchasers;
- ATF did not have much evidence to link the weapons to a specific drug trafficking organization;
- ATF did not have information about how the weapons were being transported into Mexico; however, ATF had identified a business at which the smuggling ring obtained vehicles; and
- ATF sought to certify the investigation for OCDETF funding and intended to establish a Title III wiretap.

The HSI senior special agent sent the email message to his group supervisor, who forwarded the message to another group supervisor involved in the Naco weapons seizure.

HSI Arizona staff members were concerned about the expansion of the ATF investigation. In response to the email message, an HSI senior official forwarded the email message to the HSI SAC and other HSI Arizona senior leaders. One of the HSI ASACs wrote "[o]n a sarcastic note – with the 42 in Naco, Son., and now the 9 here in Douglas, ATF is down to only 250 (give or take) unaccounted."

The HSI SAC said he remembered the basic contents of the message, and that at that time, he was frustrated. He said that at the time he thought, "[i]f ATF is conducting an investigation of all of these guns, how is it that they are showing up at Mexican ports of entry?"

Other HSI special agents were concerned by the email message as well. One HSI Arizona staff member said that from what he learned from this message and the Douglas seizure, this was "gun walking." Another HSI Arizona senior leader said that he knew then that ATF was identifying straw purchasers and not doing anything with them. He said that ATF should not have dropped surveillance of the straw purchasers after they obtained weapons.

An HSI Arizona staff member said after he read the email message, he was concerned that ATF was engaged in the same flawed methodology that they



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used in 2007 and 2008 when ATF allowed weapons to be smuggled into Mexico without adequate controls to ensure that the weapons were interdicted before reaching criminal organizations. HSI Arizona had stopped one load of weapons from crossing the border, and advised ATF not to allow other loads to cross.

On December 11, 2009, the HSI senior special agent who had communicated with ATF about the investigation learned more facts that concerned him when he spoke again with the ATF lead case agent. The HSI senior special agent summarized the conversation in an email message that he sent to his group supervisor, who forwarded it to the HSI SAC and other HSI Arizona senior leaders. The email message included the following information:

- ATF added almost 200 additional guns to its suspect gun database within the last day, which brought the total number of weapons purchased by suspected straw purchasers to approximately 500;
- On December 10, 2009, 50 weapons related to the investigation were seized in Mexicali, Mexico;
- The straw purchasers were making multiple purchases at the same FFLs; and
- The owner of one of the FFLs that sold the weapons to the straw purchasers was nervous about liability and planned to meet with ATF and the USAO staff.

One of the HSI senior leaders who received the email message replied to all of the original message's recipients, "I'm speechless. Even the owner knows this ain't right, and ATF apparently doesn't get it." The HSI SAC replied that HSI should enlist the confidential informant who assisted with the Douglas seizure (confidential informant). The confidential informant could assist ICE in conducting a cold convoy to identify the facility where the weapons were stored prior to being smuggled to Mexico. Another HSI senior leader responded that HSI special agents already had scheduled a meeting with the confidential informant the following week to discuss securing assistance with a cold convoy.

From the weapons seizure in Douglas and the ensuing conversations with ATF, HSI learned that:

- 24 suspected straw purchasers had acquired approximately 500 weapons, and 200 were added to the list in one day;
- Approximately 100 already had been seized by law enforcement either in Mexico or in transit to Mexico;
- The same straw purchasers were making multiple purchases;
- ATF did not know how the weapons were being transported to Mexico;



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- ATF did not have much information to link the weapons smuggling ring to a specific drug trafficking organization;
- One of the FFLs was nervous about its liability; and
- USAO must strongly support the investigation because an AUSA was going to talk with the FFL.

Those facts led several HSI Arizona staff members to conclude that ATF had the ability to stop some of the sales, but did not.

The HSI SAC said that ATF deceived him into thinking that its investigative technique relied entirely on post-sales information. He said that ATF Arizona senior leaders had told him that ATF was obtaining the list of straw purchases from review of firearms purchase documentation and from research of weapons seized in Mexico. Also, after Operation Fast and Furious was exposed in the media, he came to believe that ATF had stopped the vehicle with the weapons in Douglas earlier on the same day that the Douglas police department stopped it; he also believed that ATF did not inform HSI that it had stopped the vehicle.⁷ Doing so would have alerted the HSI SAC to the fact that ATF's investigation was more than a review of post-purchase weapons sales documents.

The HSI SAC said that he did not inform ICE headquarters of the issues with ATF because he did not know that ATF was able to stop the weapons from being smuggled to Mexico. He said that during December 2009 he was managing what he thought were simply deconfliction issues with ATF at the local level in accordance with the ICE/ATF MOU.

ATF and the AUSA Resisted HSI Plans To Assist by Investigating AECA Violations

HSI tried again to improve ATF's investigative plan by proposing to conduct a cold convoy in which HSI special agents would monitor the transport of suspect weapons. HSI had learned that the weapons smuggling organization wanted to transport two loads of weapons from a Phoenix storage location to the Douglas port of entry. HSI developed a plan to use the confidential informant to talk with the smuggling ring members and learn the details of their plan to transport the weapons. If HSI knew the timing and locations, HSI could observe the suspects

⁷ In comments to our report, DOJ said that HSI personnel's understanding of the facts was inaccurate. DOJ said, "ATF conducted surveillance of a weapons purchaser and alerted local Phoenix police to the car he was driving. The police stopped the vehicle, only to let the purchaser/driver go because he claimed the weapons as his own. Hours later, the Douglas police stopped a different vehicle driven by another driver but which contained nine of the firearms purchased by the individual stopped in Phoenix earlier that day."



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as they loaded weapons into the vehicles and follow the vehicles to the Douglas port of entry, where CBP would know to stop the cars and seize the weapons. HSI special agents would charge the drivers with AECA violations, which carry a maximum ten-year sentence. They would use the charge as leverage to pressure the vehicles' occupants to provide information about the smuggling ring.

During the week of December 14, 2009, the HSI Arizona senior special agent and the HSI special agent met the confidential informant. They did not invite the ATF lead case agent to the meeting. The HSI senior special agent said that it would have been inappropriate to bring an outside agency to the initial meeting with the confidential informant. Two other HSI Arizona staff told us that they agreed with his assessment, and two others disagreed. During the meeting, the HSI special agents determined that the confidential informant was suitable and willing to work with them.

According to HSI Arizona staff, ATF became more concerned about HSI involvement in the investigation when it learned that HSI interviewed the confidential informant and that HSI wanted to identify the transportation cell by conducting a cold convoy. Four HSI Arizona staff members familiar with the situation said that when the ATF lead case agent learned that HSI had interviewed the confidential informant without her, she became angry. She informed her chain of command. On December 17, 2009, the ATF ASAC for the investigation called the HSI senior special agent's ASAC and said that ATF had concerns about the cold convoy plan and concerns that the ATF lead case agent had not been invited to the interview with the confidential informant. The HSI ASAC responded that HSI would tell ATF of any HSI plans that were related to the ATF investigation.

Later in the afternoon of December 17, 2009, an HSI ASAC sent an email message to the ATF ASAC to suggest that they meet with their case agents to "work this thing out." The HSI ASAC said, "[h]ave your agent bring her case file and we will bring ours so that we can deconflict and talk about agency interests etc..." The HSI ASAC sent an email message to the HSI SAC and other senior leaders to inform them of the proposed meeting, which would be scheduled in January 2010. In an email message dated December 18, 2009, the HSI SAC said that he would not attend the meeting, but wanted to coordinate HSI's message before the meeting with the HSI staff who would attend. The understanding that issues should be resolved at the lowest level was reflected in the message, which said that the ASACs should attempt to resolve the problem "without having to raise it to a higher level."



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In the message exchange, one HSI Arizona senior leader expressed his desire to have an open exchange of information with ATF and to include HSI in future, coordinated plans:

My intent is to go to the meeting with my GS [group supervisor] and case agents, with case file in hand...Hopefully, we can compel reciprocity. I think it comes down to whether they are willing to bring Phoenix HSI on board with what they have so we can pursue a coordinated effort.

With regard to ATF hesitance to use the confidential informant, three HSI Arizona staff said that ATF wanted to obtain a Title III wiretap, but having a confidential informant would undermine ATF ability to obtain one. Using an informant would have taken time and not allowed ATF to exhaust other normal investigative procedures quickly, they said. Title III wiretaps generally are not granted unless normal investigative procedures reasonably appear to be unlikely to succeed or to be too dangerous.

In addition to ATF resistance to the HSI plans, four HSI Arizona staff members said that the AUSA directed HSI not to use the confidential informant to pursue the transportation cell.

HSI suspended work on the controlled delivery until it met with ATF to devise a plan that each agency and the AUSA supported. The meeting to resolve the controlled delivery issues occurred on January 15, 2010. Six HSI staff members attended the meeting. The highest ranking was an ASAC who served as the HSI spokesperson at the meeting. Several senior leaders in ATF attended, but the ATF case agents did not. The AUSA who had been working with ATF on the investigation attended, as did a representative from DEA.

During the meeting, the HSI ASAC did not urge that HSI use the confidential informant to assist with a controlled delivery. Instead, he offered to facilitate ATF's use of the confidential informant and agreed that HSI would not continue to pursue a controlled delivery unilaterally or otherwise seek assistance from the confidential informant. His remarks surprised some HSI colleagues who thought that his statements reversed HSI goals to pursue the smuggling organization's transportation cell. With this offer, HSI effectively gave up a strong investigative lead for identifying the individuals who smuggled weapons into Mexico.

The HSI ASAC proposed that HSI pursue another lead for identifying the transportation cell. DEA provided HSI the lead after initially providing it to ATF.



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The AUSA and ATF agreed to this proposal. We discuss the HSI investigation of the DEA lead later in our report.

The HSI Special Agent Began to Participate in the ATF Investigation and Obtained More Information That Confirmed the Flawed Methodology

In mid-January 2010, ATF began to engage the assistance of the HSI special agent who HSI Arizona senior leaders had tasked with helping ATF with its investigation. The HSI special agent eventually moved to the OCDETF office space that the ATF investigation's case agents and management used. During January 2010, the HSI special agent learned that ATF sometimes received information about prospective sales from FFLs in advance of the sales. He also received information that showed that ATF had surveilled suspected straw purchasers' weapons purchases, but seemingly had not taken enforcement actions. He opened a case file in TECS, the electronic information system HSI uses to document and track investigations. Using information received from ATF, he drafted his first ROI, which he completed on January 22, 2010.

Before he submitted the initial ROI, the HSI special agent prepared a draft version that contained more details about what he had learned about the ATF investigation. On January 12, 2010, he sent this version to an HSI colleague. It stated that the investigation began with the ATF case agent's review of FFL's sales documents, which revealed multiple purchases of high-caliber firearms by four individuals and indicated possible straw purchases. In November 2009, according to the draft report, ATF agents observed 2 separate weapons purchases of 10 AK-47 style rifles by 2 of the suspected straw purchasers. The draft report also states that in November and December 2009, the Mexican government seized 85 weapons that had been purchased by the investigation's suspected straw purchasers. That draft version does not mention any efforts by ATF to stop the suspects or seize the weapons.

The HSI special agent did not include the information about surveillances and seizures in the final version of the ROI that he entered into TECS on January 22, 2010. The HSI special agent said he does not remember why the report does not contain the more specific information, but it is possible that ATF requested that he not include it in the official report.

In reviewing the draft version with us, the HSI SAC agreed that the draft's description of surveillance indicated that ATF's investigation involved more than post-purchase reviews of FFL sales documentation. He said he was concerned by the document and would have liked to have known what happened to the AK-47



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style rifles. However, he had not received the draft ROI when it was written, and the information about the surveillance was new to him.

The HSI SAC said that if he had been provided the full details that were present in the draft version, it might have corrected his misperception about ATF's investigation. However, the information he received was that the ATF methodology consisted simply of a review of FFL sales records and that ATF did not have the opportunity to take enforcement action. The draft version confirms that the investigation started with a review of the forms, but also states that by at least January 12, 2010, the date of the draft report, ATF observed suspected straw purchasers make additional purchases without taking any enforcement actions.

The HSI special agent's group supervisor and the HSI senior special agent also had not seen the draft version until we reviewed it with them. The group supervisor and senior special agent said that they had already known that ATF had advance knowledge of suspicious sales and that it dropped surveillance prematurely. Therefore, they were not surprised by the information contained in the draft version. ATF had told them in December 2009 that it had surveilled purchases and stopped surveillance without seizing the weapons. ATF had also said that some of the weapons were recovered in Mexico. The HSI special agents knew that ATF had opportunities to stop the weapons from being smuggled, but did not take action.

ATF Proposal to Obtain OCDETF Certification for Its Investigation Supplied Additional Information About ATF's Methodology

On January 25, 2010, the HSI SAC and two subordinates received the proposal to certify the ATF investigation as an OCDETF operation. The proposal named the HSI special agent and an ATF agent as co-case agents for the operation. Case agents are the leaders for an investigation, and make day-to-day operational decisions for the case. The committee meeting to vote on the proposal was scheduled for January 26, 2010. The HSI SAC said that he did not read the proposal and did not attend the committee meeting. The OCDETF representative read it but did not attend the committee meeting; his colleague, who also received the proposal, attended instead.

The OCDETF proposal stated that the operation's goal was to identify and arrest members of a specified weapons trafficking organization cell based in the United States and to gather information on the Mexican drug trafficking organization that directs it. Investigative tools mentioned in the proposal include tracking



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devices, Title III wiretaps, and other surveillance. The proposal also stated that the investigation had already identified 17 straw purchasers, “who have purchased a large amount of AK-47 style rifles and pistols... since September 2009.” They were identified through a source of information, FFL record checks, and surveillance operations. Surveillance had revealed two storage locations for the purchased weapons. The proposal stated that ATF agents believe that the weapons were being hidden in vehicle compartments and transported through the ports of entry. Without providing the total number of suspected weapons seized, the proposal noted that there had already been six seizures in the United States and five seizures in Mexico.

A number of staff noted problems with the proposal and several said that HSI should not have signed it, given those problems. Four HSI Arizona staff members said that the proposal was flawed because it linked the weapons smuggling ring to a single Mexican drug cartel, which could not be accurate. The proposal noted seizures of weapons in various locations in Mexico, Texas, and Arizona. The recovery locations were in territories of various drug cartels, not just the one mentioned in the proposal. HSI staff also stated that in their experience, weapons smuggling rings do not work for just one cartel; instead, they will sell to anyone interested in buying the weapons. One staff member said that he thought that by linking the weapons to a single drug trafficking cartel, ATF had falsified its proposal to receive OCDETF certification and funding.⁸

The HSI SAC had assigned staff to read OCDETF proposals and contact HSI staff who should be aware of them. Although he had not read the proposal, the HSI SAC agreed that the widespread seizure locations indicated that the weapons smuggling ring was not working for a specific cartel. The HSI SAC said that the January 15, 2010 messages he received informing him of seizures in El Paso (which we discuss in the next section of this report) undercut the ATF theory that the cartel members named in the proposal were linked to the smuggling ring.

Before the proposal arrived, the HSI SAC had already decided to participate on the OCDETF operation and to dedicate a special agent to the investigation on a full time basis. However, if the HSI SAC had read the proposal, he might not have maintained the belief that ATF had identified the straw purchasers after weapons sales by reviewing FFL purchase records and obtaining information about weapons that were seized. The proposal stated that ATF used three methods for identifying straw purchasers: FFL purchase records, sources of information, and surveillance. If ATF received information from surveillance and

⁸ In its report, *A Review of ATF's Operation Fast and Furious and Related Matters*, DOJ OIG did not conclude that there was any fraudulent conduct related to the preparation of the OCDETF proposal.



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sources of information other than purchase records, it had the opportunity to seize weapons. The seizures mentioned in the proposal might have indicated that ATF had engaged in proactive enforcement; however, HSI Arizona staff already knew that the seizures were not orchestrated in advance by ATF. Instead, Mexican and state and local law enforcement agencies had made the seizures without advance information from ATF. However, because the HSI SAC had not read the proposal, his understanding of the ATF methodology remained unchanged.

HSI Received Additional Information Related to the ATF Methodology

In January 2010, the HSI SAC and other senior leaders learned that some of the weapons purchased by the ATF investigation's suspected straw purchasers had been recovered in Texas. The HSI SAC and senior leaders received an email message on January 15, 2010, that said that on January 13, 2010, HSI had seized 2 AK-47 style rifles and 4,000 rounds of ammunition at the Ysleta port of entry in Texas. The next day, an ATF intelligence officer contacted an HSI intelligence officer to request information about the seizure. The ATF intelligence officer said that the seized weapons had been purchased in Phoenix on the same day that they had been seized. Additionally, the weapons were related to an ongoing investigation conducted by HSI and ATF in Phoenix.

Later on January 15, 2010, the HSI SAC received another email message related to the seizure at the Ysleta port of entry. That message mentioned that seizure and another at a house in El Paso, Texas, where officers seized 42 weapons. The message said that on January 12, 2010, DEA had provided information to ATF that weapons purchased in Phoenix would be transported to El Paso. ATF had been closely monitoring El Paso weapons seizures since then, and 42 weapons were seized on January 14, 2010. One of the operation's suspected straw purchasers had purchased all of the weapons.

These email messages indicate that a person who ATF had already identified as a straw purchaser had recently purchased again. The straw purchaser obtained 42 weapons and transported them to another state within the same day. After identifying straw purchasers, ATF did not stop them from continuing to purchase large numbers of weapons and transporting them to other states, and ultimately to the Mexican border. The messages also indicate that ATF was not communicating with HSI about the case. ATF had known for days that weapons might be transported to El Paso, but did not inform HSI.



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HSI SAC Discovered the Operation's Flawed Methodology When He Received a Briefing Paper from the ATF SAC

The HSI SAC said that he first learned that the Operation Fast and Furious investigative methodology was flawed on December 3, 2010, as the task force prepared for grand jury indictments and a press conference. The ATF SAC sent an Operation Fast and Furious briefing paper to the HSI SAC to assist the HSI SAC, who needed a summary to send to senior ICE leadership. The briefing paper stated:

Agents believe that from October 2009 to October 2010, agents have documented that this organization spent approximately 1.25 million dollars in cash at various Phoenix area [FFLs] to acquire in excess of 1,900 firearms. The firearms are then being trafficked to Mexico using false compartments in various vehicles through various international Ports of Entry in Arizona and Texas... To date over three hundred firearms and over fifty pounds of marijuana have been recovered by agents in addition to the numerous firearms and narcotic seizures in Mexico related to this investigation.

The HSI SAC said that this was his first indication that ATF was not taking every precaution to stop weapons from crossing the border to Mexico. He said that the statement that weapons were trafficked through ports of entry by means of compartments in cars indicated that ATF must have had specific knowledge that weapons were being smuggled to Mexico. He said that he had not been aware of that during the course of the operation.

The HSI SAC forwarded the briefing paper to others but did not mention his concerns. Instead, he provided it to an HSI DSAC and asked that HSI Arizona staff deconflict names of subjects listed on the briefing paper to ensure that their indictment and arrest would not affect any HSI cases. The DSAC forwarded the briefing paper to an HSI ASAC and stated that in addition to the deconfliction, "...we also need to make sure we are staying well represented in all of this. Given the scrutiny on HSI/ATF relations, and in particular the relationship here, I anticipate lots of eyes on this from HQ."

The HSI special agent's group supervisor replied, "[the HSI special agent] has been working on this with ATF. He is fully involved in this and all of the suspects and info are in TECS." The HSI staff members did not express any concern or surprise in their response to the briefing paper. Instead, HSI Arizona senior



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officials continued to coordinate with ICE headquarters to schedule ICE officials' attendance at an upcoming press conference to announce the indictments.

Some of the phrases in the briefing paper were almost identical to wording in the OCDETF proposal, which stated, "[a]gents believe that... The firearms are then being trafficked to Mexico using non-factory compartments in various vehicles through various Ports of Entry (POEs) in Arizona and Texas."

The HSI SAC had not read the OCDETF proposal, and so he would not have seen the wording. Had he read the proposal before approving the assignment of the HSI special agent to the operation, or if someone had alerted him to the language, he might have realized that the investigative methodology violated HSI policy, training, and practices.

In a case summary that the HSI special agent sent to his group supervisor on December 7, 2010, he wrote that, "[a]s of August 2010, this organization has purchased an estimated 1,916 firearms... Of these purchases, 316 firearms have been recovered domestically and 188 have been recovered in the Republic of Mexico." According to the summary, 1,412 firearms still had not been recovered.

HSI SAC and Two Others Did Not Understand that ATF Had Ability to Stop Weapons Smuggled into Mexico

The HSI SAC and two other HSI Arizona senior leaders said that prior to receiving the December 3, 2010 briefing paper, they thought that ATF was conducting a historical investigation, one in which ATF received purchase documentation after the sales had been completed. One said that he was not fully aware of the methodology, but that HSI had an "inkling" of it. The three said that they did not learn about the faulty methodology until December 2010, a year after they first learned of ATF's investigation.

Upon review of the email messages from December 2009 that we discussed earlier in the report, the three HSI senior leaders said that when read together, the messages provided information showing that ATF had opportunities to stop the weapons, but did not take action. The messages indicated that:

- Suspected straw purchasers made multiple purchases of unusually large numbers of weapons sought by Mexican criminal organizations, AK-47 style rifles and pistols;
- ATF had advance notice of at least some of the sales and conducted surveillance of the purchases;



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- ATF terminated surveillance prematurely in a manner that was contrary to HSI policies and training, and the weapons were lost to government scrutiny; and
- ATF had been tracking at least 500 weapons, and in December 2009, approximately 100 had already been seized by government authorities in Mexico and the United States.

However, the HSI senior leaders said, given the high volume of email messages about a wide range of investigations that they received in December 2009, they had not pieced the information together and had not understood the problems with ATF's methodology.

HSI Arizona Staff Recall Discussing ATF's Methodology with the HSI SAC

During interviews in Arizona, 14 HSI staff members said that in December 2009 they knew that ATF was compiling a list of straw purchasers and not doing enough to track the weapons and stop them from crossing the border. They all said that the facts caused them concern. One described the investigative methodology as "gun walking" and another described it as a "train wreck." Four HSI Arizona staff members said that they had discussed these concerns with the HSI SAC. Three HSI Arizona staff members said that they had told the HSI SAC that HSI should not place a special agent on the OCDETF investigation. However, they said, the HSI SAC was not persuaded.

Some speculated that the HSI SAC did not take some arguments seriously because two staff members had not been able to foster good relationships with ATF in the past. However, three senior leaders, including the HSI SAC, said that they did not remember the conversations about problems with ATF's methodology or with assigning an HSI special agent to Operation Fast and Furious.

Similar concerns about ATF's methodology in prior weapons smuggling investigations gave some HSI Arizona staff insight into ATF's methodology in Operation Fast and Furious. Five HSI special agents said that the methodology ATF was employing in the case that became Operation Fast and Furious was similar to the methodology ATF used in its investigations in 2007 and 2008. The HSI SAC and other senior leaders were aware that in those years ATF conducted weapons smuggling investigations that allowed or attempted to allow weapons to be transported through the ports of entry and into Mexico. Weapons had been lost, presumably to



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Mexican criminal organizations. The HSI SAC had informed HSI headquarters of ATF's activities in August 2009, and a DSAC provided more information to HSI headquarters in January 2009. Yet, the two senior HSI Arizona leaders said that the prior problems with ATF investigations did not affect their consideration of the facts in this investigation.

Conclusion

The substantial amount of information about ATF's methodology, which was distributed among a number of HSI Arizona staff and officials, clearly indicated that the ATF methodology was dangerous and did not adhere to ICE policy. Numerous HSI Arizona staff who had received the information came to that conclusion. We have concerns that the HSI SAC, who also had the information, did not determine that procedures used during the task force operation were contrary to ICE policies.

The ICE organizational structure and reporting requirements accord each field office SAC with significant responsibilities. The SACs must possess excellent judgment to direct their staff, even in dangerous, contentious, and rapidly changing circumstances. However, the HSI SAC did not fulfill the requirements of his position with regard to Operation Fast and Furious.

Several Factors Influenced the Decision to Dedicate an HSI Special Agent to OCADETF Operation Fast and Furious

In late December 2009 or early January 2010, ATF asked HSI to dedicate a special agent to the investigation once it was certified as an OCADETF operation. ATF said it needed an HSI special agent on the operation to contact an appropriate HSI field office for coordination with CBP if ATF identified attempts to transport weapons across the border. The ICE/ATF MOU requires ATF to notify HSI when it needs interdiction assistance at the ports of entry.

As discussed earlier in the report, the HSI SAC said that he did not realize that ATF had advance notice of sales and opportunities to interdict the weapons and had no reason to avoid working on the OCADETF operation. He decided to cooperate with ATF's request before he received the OCADETF proposal for the following reasons:

- ATF said it needed a single point of contact for coordination and deconfliction;



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- HSI has sole authority for illegal export of weapons and accordingly HSI needed to be involved to learn more about the investigation and to develop plans to stop the weapons from being smuggled to Mexico;
- The USAO was firmly in support of the investigation; and
- The ICE Director instructed the HSI field offices in strong terms to cooperate with ATF, and the ICE/ATF MOU stated that issues with ATF should be resolved at the field level.

We discussed the reasons for dedicating an HSI special agent to Operation Fast and Furious with the other HSI staff in Arizona and ICE headquarters. Everyone we spoke with agreed that participating in or assisting with the operation was advisable in order to enforce the AECA statute. As law enforcement agents who believe that their agency has sole authority to enforce AECA and 18 U.S.C. § 554, all of the HSI special agents strongly supported the obligation to enforce those laws. Some said that dedicating a special agent to the operation might provide them with more information, and therefore a greater likelihood that HSI would be in position to enforce AECA and the new statute. However, others said that HSI should have worked the smuggling violations separately by using the confidential informant and other smuggling leads that could be identified from ATF's investigation of straw purchasers. Conducting the smuggling investigation was especially important because they believed that ATF had allowed weapons to cross into Mexico in the past, and the special agents did not want to allow that to happen again. Most agreed that the USAO's support for the operation was a strong incentive to participate in the operation. They feared that the USAO might be less supportive of future HSI investigations if HSI did not agree to join the ODCETF Operation Fast and Furious. Also, the USAO is typically the arbiter in disputes between agencies. They said that HSI needed to abide by the arbiter's decisions.

Despite these reasons, some HSI staff members understood that ATF was engaged in a dangerous operation that was allowing weapons to be smuggled to Mexico. They did not think HSI should have cooperated with ATF by supporting the operation. However, the HSI SAC said he did not understand the operation's methodology, and did not question cooperating with ATF.

Conclusion

By January 2010, the HSI SAC had received enough information to understand the investigative methodology ATF employed in the investigation that became ODCETF Operation Fast and Furious. Yet, he said he did not "put the pieces together" until almost a year later in December 2010. Without understanding the methodology and in light of the desire to enforce the smuggling statutes and



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the USAO's support of ATF's investigation, the HSI SAC's decision to place a special agent on Operation Fast and Furious was reasonable.

HSI Arizona Attempted to Investigate One Aspect of Weapons Smuggling Ring's Transportation Cell, but Abandoned Another

At the meeting on January 15, 2010, with ATF, USAO, and DEA, the USAO and ATF agreed to allow HSI Arizona to pursue a DEA lead that was connected to a part of the smuggling ring that transported the suspect weapons to Mexico. The investigation terminated quickly when the suspect stopped using his telephone. Later, HSI learned that the suspect died.

The HSI special agent's group supervisor also tried to revive ICE efforts to use the confidential informant to obtain information necessary to conduct a cold convoy and identify other members of the smuggling ring's transportation cell. His supervisor, the ASAC who has since retired, refused the group supervisor's proposal. The HSI SAC and an ASAC said that they thought the confidential informant could not be used by law enforcement. Documents reveal, and other HSI staff said, that HSI agreed to provide the confidential informant to ATF during the January 15, 2010 meeting. HSI never pursued that opportunity and does not believe that ATF pursued it either. As a result, the transportation cell was not hindered by investigative efforts, and presumably continued to ship weapons to Mexico illegally. AECA and 18 U.S.C. § 554 smuggling statutes were not enforced.

HSI Began Investigating the Transportation Cell, but Stopped When the Subject Disappeared

In the January 15, 2010 meeting, ATF and the AUSA had agreed that HSI would open an investigation based on information from a DEA wiretap. The information indicated that two individuals were obtaining weapons from the Operation Fast and Furious subjects and transporting the weapons to Mexico. Shortly after the January 15, 2010 meeting, an HSI Arizona special agent submitted the wiretap application and conducted other investigative activities. As HSI waited for the application to be approved, the telephones in use went silent. HSI later learned that one of the suspects was killed before the Title III affidavit was approved by DOJ. The HSI case agent said that the other suspect and his family became scared and stopped all involvement with weapons smuggling. As a result, HSI was not able to investigate the transportation cell with that suspect.



HSI Arizona Senior Leaders Refused to Reconsider Using the Confidential Informant to Pursue the Domestic Transportation Cell

After the January 15, 2010, meeting, the HSI special agent's group supervisor attempted to reinvigorate the HSI effort to work with the confidential informant to conduct a cold convoy or to gain intelligence. The confidential informant could assist HSI Arizona to obtain detailed and valuable information about the transportation cell associated with the weapons smuggling ring. HSI Arizona also had planned to use information to conduct a cold convoy. HSI Arizona special agents would observe smuggling ring members load weapons into vehicles. HSI would follow the vehicle to the border and coordinate with CBP to seize the guns at the ports of entry. HSI would charge the vehicles' occupants with a violation of AECA, and use the possible ten-year maximum penalty as leverage to get them to provide information and to cooperate with the investigation.

After the January 15, 2010, meeting with ATF, the AUSA, and DEA, the HSI group supervisor asked his ASAC to reconsider the decision not to work with the confidential informant. According to the group supervisor, the ASAC refused his request. We were unable to interview the ASAC, who has since retired and declined a voluntary interview with us.

When we asked other HSI Arizona senior leaders to explain why HSI did not attempt to obtain more information on the transportation cell or conduct the cold convoy, three HSI Arizona staff members said that the AUSA supported ATF's direction that HSI not pursue the confidential informant. Two leaders said the confidential informant was not viable. They could not remember much about why the confidential informant was unviable or when the decision was made. They said that it likely was a decision by the group supervisor made in coordination with his ASAC. However, two others said that HSI could have used the confidential informant to get information about the transportation cell, regardless of the confidential informant's viability.

The former HSI ASAC declined our request for a voluntary interview, but we interviewed the group supervisor. He and the HSI senior special agent, who had interviewed the confidential informant, said the confidential informant had some issues but none that would render the confidential informant unviable. They were not aware of any decision that the confidential informant was found unviable. Some suggested that the HSI Arizona senior leaders had given up the investigation in another attempt to "get along with ATF."



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Two email messages indicate that the source had issues, but was still a viable source of information as of January 22, 2010. A message between HSI Arizona senior leaders dated December 11, 2009, states that the confidential informant “has issues,” but they are “not insurmountable.” A message dated January 22, 2010, confirms that in the January 15, 2010 meeting with ATF, HSI agreed to coordinate a meeting between the confidential informant and ATF. That message seems to indicate that the confidential informant was viable.

As we mentioned earlier in this report, HSI special agents believe that their agency has sole authority to enforce two statutes that prohibit weapons smuggling, AECA and 18 U.S.C. § 554. As law enforcement officers responsible for investigating violations of those statutes, HSI staff members told us that they feel obligated to conduct those investigations and enforce the law. Additionally, HSI staff members realized that the ATF investigation’s suspected straw purchasers had acquired an extraordinary number of weapons and it appeared that they would continue to make weapons purchases. At least two members of HSI felt it was incumbent upon them to use the confidential informant to help them identify and arrest the members of the transportation cell.

HSI Arizona staff said that after the January 15, 2010 meeting, ATF did not ask HSI for assistance with scheduling a meeting with the confidential informant. As far as HSI staff members know, ATF never pursued the lead to identify the transportation cell. Had HSI wanted to ensure that the smuggling statutes were enforced it would have directed the HSI special agent assigned to the task force to influence ATF to pursue that transportation angle through Operation Fast and Furious. However, the HSI special agent’s chain of command did not direct him to pursue the lead.

Conclusion

The HSI special agent’s chain of command should have taken a more active role to ensure that the lead was pursued. Instead, they complied with ATF’s request, supported by the AUSA, that HSI not use the confidential informant to identify the transportation cell. The special agent’s chain of command did not direct the HSI special agent to pursue the lead on the task force. As a result, HSI was not able to ensure that AECA and 18 U.S.C. § 554 were enforced, and the weapons continued to flow to Mexico as the task force observed suspected straw purchasers acquire more.



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Recommendation # 1:

We recommend that the Director of ICE assess whether HSI Arizona senior leaders fulfilled their duty to enforce the weapons smuggling statutes for which DHS maintains jurisdiction.

HSI Arizona Placed a Special Agent on Operation Fast and Furious, Did Not Provide Oversight Necessary to Prevent His Participation in Activities That Violate ICE Policy, and Did Not Attempt to Improve the Investigative Methodology

After HSI Arizona senior officials decided to participate in the OCADETF that would conduct Operation Fast and Furious, they determined to assign the HSI special agent to the operation. HSI senior officials said that ATF had requested him, and they knew he would cooperate with ATF better than some other HSI special agents who had more experience working jointly with ATF. However, due to several factors, including the HSI special agent's lack of familiarity with HSI weapons smuggling investigation procedures, and absence of HSI oversight and direction, he was not able to fulfill some HSI objectives.

The HSI special agent did not receive much oversight or guidance from his HSI chain of command. His group supervisors were aware that he was involved in activities prohibited by ICE policy. However, they did not report the problem to more senior management because they believed that HSI Arizona senior leaders were aware of the problems and chose to do nothing about them. The HSI SAC and other senior leaders did not inquire about the HSI special agent's activities.

Without much guidance from HSI, the HSI special agent conducted investigative activities with other task force members and followed the direction of the ATF lead case agent. Some of the activities would not have been permissible under ICE policies, training, and practice.

HSI Assigned the Special Agent Who Had Been Assisting ATF's Investigation to Participate on Operation Fast and Furious

HSI Arizona senior leaders decided to appoint the HSI special agent who had been assisting ATF with its investigation on Operation Fast and Furious. Before joining HSI, the HSI special agent worked as an ATF inspector where he specialized in firearms regulations. HSI hired him as a special agent in May 2008. At the time of his placement on Operation Fast and Furious, the HSI special agent



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was not familiar with ICE procedures for conducting weapons smuggling investigations. Additionally, he had never worked in a task force environment before. Despite his limited tenure and experience, his group supervisor was instructed to direct the special agent to open a case and assist ATF on its investigation in November 2009. Once the investigation was certified as an OCDETF operation, HSI Arizona placed the special agent full time on the OCDETF Operation Fast and Furious.

We heard several competing ideas about who made the decision to assign the HSI special agent to the operation. Moreover, HSI personnel disagreed about whether this decision was made independently. HSI personnel said that the HSI SAC, a former HSI DSAC, a former HSI ASAC, group supervisor, or some combination thereof made the decision. It appears that the former HSI ASAC made the decision to assign the HSI special agent to the operation. The ASAC has since retired and declined our request to interview. We also understand that two other special agents were considered for the position initially. The HSI special agent's group supervisor said he advised against placing the HSI special agent on the operation, but the ASAC rejected his argument.

HSI Arizona staff provided several reasons for dedicating the HSI special agent to the operation. ATF had requested the HSI special agent specifically and already had a good working relationship with him. In addition, he had worked as an ATF inspector for eight years prior to becoming an HSI special agent. He was knowledgeable about weapons laws and regulations, and he knew the ATF culture. It would be easier for him to work with ATF because he was someone ATF already knew and trusted.

However, some HSI Arizona staff members said that the reasons for placing the HSI special agent on the operation were also reasons not to assign him. HSI knew that ATF policies and practices deviated significantly from their own, and had knowingly allowed weapons to cross into Mexico in the past. If HSI wanted to ensure that the operation enforced the smuggling statutes and weapons did not cross into Mexico, HSI needed to assign a special agent who could argue persuasively that the ICE policies and practices for weapons cases should be adopted. However, given his background, it was unlikely that the HSI special agent would be able to do that.



The HSI Special Agent Was the Only HSI Special Agent Significantly Involved in Operation Fast and Furious

The HSI special agent was the only HSI staff member to support Operation Fast and Furious on a full time basis. After 20 suspects were indicted in January 2011, other DHS employees assisted with arrests. They were not involved in the flawed surveillance methodology or other activities that contravened HSI policies and practices.

The HSI special agent worked full time on the operation from its inception. He documented his involvement in 33 ROIs. However, he was involved in additional investigative activities that he did not document in ROIs. ATF special agents wrote the majority of the ROIs, which the HSI special agent could not access. Not producing two different reports of the same investigative activity is a typical law enforcement practice. Producing differing reports of the same activity could cause problems with the pretrial discovery process. Accordingly, some of the special agent's activities were documented in ATF ROIs. We do not have access to those ATF ROIs and can only review the special agent's 33 ROIs to understand his activities on the operation. The 33 ROIs and our interviews with the HSI special agent indicate involvement in:

- Deconflicting cases;
- Coordinating with CBP to stop weapons from crossing the border;
- Monitoring Title III wiretaps;
- Conducting physical surveillance;
- Questioning suspects;
- Obtaining border crossing records;
- Arresting suspects once the indictment was issued; and
- Attending some team meetings.

These activities provided him with awareness of the case methodology, as well as the volume and types of suspect weapon purchases.

The HSI Special Agent Deconflicted HSI Cases with the Operation Although Deconfliction Needs Were Minimal

The HSI special agent received requests to deconflict HSI investigations with the operation. He would have more opportunities to deconflict had the parallel HSI investigation of a transportation cell member in Mexico been successful. However, as we discuss elsewhere in this report, the investigation terminated when the telephone of the suspect stopped transmitting calls and the ability to receive information about his activity stopped. Had the investigation continued,



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the HSI special agent would have served as the deconfliction point for overlap between this case and Operation Fast and Furious. Due to the termination of that investigation, there were few intersecting cases to deconflict. The majority of his deconfliction efforts were to coordinate ATF and CBP activities.

The HSI Special Agent Coordinated with CBP to Stop Weapons from Crossing the Border, but Followed ATF Direction, Which Ignored Investigative Leads

One of the key duties HSI senior leaders assigned to the HSI special agent was to prevent weapons from being smuggled to Mexico when specific information was available that the weapons were being transported to the border. The interdiction of a known weapons smuggling attempt occurred only once during the operation. The HSI special agent coordinated with CBP, which interdicted the weapons in the vehicle.

In February 2010, the HSI special agent helped coordinate the seizure of weapons that he believed were being transported to Mexico. He learned that a weapon acquired by a straw purchaser was being transported from Tucson toward the Mexican border. The HSI special agent contacted nearby ports of entry to request an outbound inspection of the suspect vehicle, and he and a CBP OFO officer followed the weapon to interdict it. The HSI special agent later received information that the weapon was being transported through the Tohono O’odham nation, which maintains special gates that allow tribal members to cross the border into and out of Mexico. OBP monitors the gates. Accordingly, he coordinated with OBP to stop the vehicle.

OBP stopped the vehicle in the Tohono O’odham nation and searched it. OBP seized 40 AK-47 style firearms, 1 A/R style firearm, and 43 magazines from the vehicle. Tucson ATF agents were interviewing the suspects already when the HSI special agent and the CBP OFO officer arrived at the scene. One of the suspects admitted to having transported weapons across the border five or six times previously. The HSI special agent did not question the suspects. He was not comfortable speaking up or attempting to flip these suspects because ATF was already at the scene conducting interviews.

ATF and the HSI special agent did not arrest the suspects because they were deemed too far from the gate to charge them with a weapons smuggling violation. ATF did not try to flip the suspects or get them to cooperate, which was a mistake, according to three HSI staff members. It also would have been possible to place a recording device on the suspects to obtain incriminating information from co-conspirators within the transportation cell.



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The decision not to pursue available investigative leads resulting from this seizure resulted in missed opportunities to identify co-conspirators and the transportation cell that was smuggling weapons to Mexico.

The HSI Special Agent Monitored Title III Wiretaps and Was Required to Vet Actionable Information through ATF

The HSI special agent was aware that the same straw purchasers were making, or at least intending, to make repeated purchases of weapons.

In March 2010, a consensually monitored recorded call captured a conversation between a cooperating FFL staff member and one of the suspected straw purchasers. The two discussed a prospective sale of firearms. During the conversation, the FFL staff member said to the suspect that he had been a good customer given that he already had purchased so many weapons. The suspect said that he wanted to purchase multiple AK-47 style firearms, and he inquired about the cost of two additional firearms that were available for purchase. Further, he said that a friend was also interested in purchasing weapons.

ATF did not authorize the HSI special agent to make independent decisions on follow-up investigative activities for wiretap intelligence. Instead, ATF required that he listen for actionable intelligence to vet with his ATF counterparts. As a result, he could not take unilateral action to pursue identification of the suspect's "friend," a likely co-conspirator.

The HSI Special Agent Participated in Physical Surveillance that Was Terminated Prematurely

The HSI special agent participated in visual surveillance of suspected straw purchases that ATF terminated prematurely, according to ICE policies and practices. He also said that he might have been involved in additional, similar surveillance activities. He told us that he could not recall each surveillance activity with specificity.

The HSI special agent said that generally, when the task force surveillance teams received advance notice of a suspicious firearms sale, they would establish surveillance at the FFL. After the transaction, the team would follow the vehicle transporting the suspected straw purchaser and firearms to a residence. The surveillance team would lose visual contact when the suspect would park in a



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garage and close the garage doors. The surveillance team would continue to observe the residence until ATF's lead case agent terminated the surveillance.

In other specific instances, the task force terminated surveillance without seizing weapons or arresting suspects. In May 2010, an ATF agent on the task force monitored a series of conversations on a suspected straw purchaser's telephone. She immediately provided the content of the calls to mobile surveillance units that were observing that suspect. The HSI special agent participated in one of the mobile surveillance units and was privy to the content of the suspect's calls. The first conversation confirmed that an unidentified male wanted to purchase 15 Draco firearms and 7 AK-47 style firearms from the suspect immediately. The suspect then called an FFL and requested to purchase 8 Draco firearms and 7 AK-47 style firearms. In a third call, the FFL staff member confirmed the suspect's plans to make additional weapons purchases for the following week.

After the mobile surveillance unit observed the suspect leave the FFL with what appeared to be long gun boxes, there was a fourth intercepted call in which the unidentified male and the suspect agreed to meet. The mobile teams discontinued surveillance following another call in which the suspect and the unidentified male expressed concern that they were being followed. Surveillance was discontinued despite knowing that other records indicated that the suspect had already made multiple suspicious purchases of weapons in 2010, 4 of which had already been recovered in Mexico.

In June 2010, task force members, including the HSI special agent, conducted mobile surveillance of a suspected straw purchaser, after receiving advance notice about his intent to purchase a .50 caliber firearm from an FFL in Arizona. The team established a perimeter around the FFL and observed two men load boxes into a truck bed. The team followed the truck once it left the FFL. While following, the team lost visual contact of the truck for approximately ten minutes. Upon regaining visual contact, the truck bed was empty and surveillance was discontinued. The HSI special agent performed a license plate query and determined the truck's owner. The truck owner was indicted in January 2011; however, we did not find any evidence of additional attempts by the task force to talk with the vehicle's owner or locate the .50 caliber weapon.

All of the HSI employees with whom we discussed the issue agreed that under ICE policy and practice, ATF should not have terminated surveillance in these cases and that ATF was not doing enough to prevent the weapons from being smuggled to Mexico. They said that ICE policy was to continue surveillance until special agents could seize the contraband. HSI would continue surveillance long



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enough to prove that there was intent to move the weapons across the border at which point HSI would interdict them and arrest the suspects. HSI might attempt to flip the suspects to get information about other members and leaders of the criminal organization. However, despite the fact that the OCDEF proposal named the HSI special agent as a co-case agent, the ATF manager and the ATF co-case agent directed the operation's investigative activities.

In Operation Fast and Furious, the HSI special agent learned that indefinite surveillance was considered too labor intensive and required too many resources given such a large pool of suspected straw purchasers. He never heard of a triggering event or threshold at which ATF would start to make seizures. Additionally, ATF continued surveillance of the same straw purchasers without making any arrests, because ATF intended to issue an indictment of all suspects at the same time when the operation concluded.

Ending the surveillance before seizing the weapons eliminated the task force's ability to prevent criminal organizations from receiving the firearms. In addition, it eliminated the ability to identify the transportation cell because the task force members were unable to watch the transport of the weapons. This resulted in missed opportunities to enforce the weapons smuggling statutes and allowed the individuals transporting the weapons to Mexico to avoid criminal charges.

The HSI Special Agent Participated in Surveillance That Resulted in a Seizure

In August 2010, the ATF lead case agent received information from an FFL about an impending sale of 9 AK-47 style firearms by a suspected straw purchaser. The HSI special agent, ATF lead case agent, and other task force members established mobile surveillance at the FFL where the sale was expected to occur. The team observed the suspect's vehicle exit the FFL parking lot approximately 30 minutes after the surveillance team had arrived. They also observed two additional suspects enter the vehicle while it was parked at the FFL. The task force members following the vehicle lost sight of it momentarily, but located it abandoned at a nearby park. They initiated contact with two male subjects, who they located near the abandoned vehicle. Approximately an hour later, the HSI special agent and the ATF lead case agent arrived at the scene and interviewed the suspects. One admitted that he purchased the firearms that were in the abandoned vehicle and he planned to sell them on an online retail website. He said that he planned to sell the weapons only to Arizona residents who "are not bad people." He also admitted that he had previously purchased and sold 29 firearms. ATF seized the firearms from the vehicle, but did not make any arrests. The HSI case file did not contain evidence that the task force attempted to flip



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the suspects or use other investigative techniques to obtain information from them later. The subjects were indicted in January 2011.

The decision not to pursue investigative leads from this seizure resulted in missed opportunities to identify co-conspirators and intelligence that could have identified the transportation cell that was smuggling weapons to Mexico.

The HSI Special Agent Was Not Allowed to Participate in All Internal Meetings Thereby Reducing Opportunity for HSI Input on Operational Strategy

The OCDETF proposal named the HSI special agent as a co-lead for the operation. However, he did not lead the case. The ATF co-lead case agent and her chain of command would not allow him to make operational decisions. The HSI special agent said that the ATF lead case agent would entertain ideas he suggested but she often did not solicit his opinion or invite him to strategy meetings.

Some HSI special agents said that although task forces may name co-leads, in practice one of the co-leads actually leads the investigations while the other takes orders. They said that, realistically, investigations cannot be led by two special agents. Two HSI Arizona employees said the HSI special agent might not have been invited to these meetings because the ATF agents may have also planned to discuss unrelated ATF cases in which the HSI special agent was not involved. Other HSI employees speculated that he was not invited because it allowed ATF to maintain control and influence over the investigation.

The HSI special agent's ability to modify the ATF methodology and make decisions was restricted. Eliminating the HSI special agent's presence at some of these internal meetings reduced or eliminated the possibility of devising case strategy that incorporated HSI opinions and methodology. HSI did not achieve its objective to place the HSI special agent on the operation to influence the course of the investigation.

The HSI Special Agent Conducted Interviews to Further the Investigation

The HSI special agent participated in at least three interviews of suspected straw purchasers during the course of the investigation. Although the interviews did not produce significant actionable information, they indicate efforts to obtain substantive intelligence on suspected straw purchasers and co-conspirators, and attempts to flip suspects to further the investigation.



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In May 2010, the HSI special agent assisted in an interview of one of the suspected leaders of the smuggling ring at the Lukeville port of entry. The interview followed CBP's seizure of an AK-47-type, high-capacity drum magazine loaded with ammunition, 9 cellular telephones, and miscellaneous documents from a vehicle that the suspect attempted to drive through the port of entry and into Mexico. During the interview, the suspect provided information about the activities of an alleged cartel member that he had planned to meet in Mexico. The suspect agreed to cooperate with the investigators. The ATF lead case agent provided her with contact information, and the suspect agreed to call her when he returned from Mexico.

The ATF lead case agent made the decision to let the suspect go; she did not consult the HSI special agent. The suspect did not initiate contact with the ATF lead case agent. Records indicate that the team continued surveillance of the suspect in July 2010 because he had also become involved in criminal activity related to narcotics. Additional criminal charges related to narcotics smuggling would have enhanced the potential penalties against the suspected straw purchaser.

In October 2010, the HSI special agent and other members of the task force interviewed a suspected straw purchaser regarding his recent weapons purchases. The suspected straw purchaser admitted to purchasing 20 AK-47 style firearms previously. He also said that he typically sold them to another male, which yielded profits. Despite these admissions, the suspected straw purchaser also said he never bought firearms for re-sale. The ATF lead case agent told the suspected straw purchaser that the interview would be forwarded to the USAO for consideration for prosecution.

The HSI Special Agent Obtained Border Crossing Records of Suspects, but They Were Not Used to Further the Investigation

As early as January 24, 2010, the HSI special agent began querying the border crossing records of suspected straw purchasers. He obtained border crossing records of suspects on at least six occasions throughout the course of the investigation. He received assistance from a CBP officer to conduct the border crossing checks. The HSI special agent obtained the dates, locations, crossing method, license plate numbers of crossing vehicles, and the corresponding vehicle registration information of suspected straw purchasers.

The HSI special agent's first set of border crossing checks included the records of 24 persons crossing from Mexico into the United States over the previous 12



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months. There were positive responses on six persons. Then, on February 19, 2010, the HSI special agent and the CBP officer queried the border crossings of suspects again. The results of this query revealed that three of the persons queried in the first report had continued crossing into the United States from Mexico during the interim period. Only one border crossing check returned zero border crossings. The HSI special agent's last request for border crossing checks occurred in December 2010.

HSI special agents would be interested in queries that reveal suspects crossing the border often because it could indicate that the suspects could be transferring weapons to Mexico. The majority of crossings were made by persons in the main target's immediate family only. The HSI special agent relayed this information to ATF but the information, he said, seemed to "fall by the wayside." In its comments to our report, DOJ said that ATF used this information to try to further the investigation. However, the HSI special agent said that he thought that ATF did not use the information. Apparently, ATF had not informed him of the activities that arose from the information.

The HSI Special Agent and Other HSI Personnel Assisted With Arrests After the Indictment Was Issued

After OBP Agent Terry was shot on December 14, 2010, and Operation Fast and Furious suspect weapons were recovered at the murder scene, ATF prioritized the arrest of Operation Fast and Furious suspects. Following the indictment of 20 suspects, 4 search warrants and 17 arrest warrants were issued on January 25, 2011. Law enforcement agents from HSI Arizona, ATF Phoenix, other Federal agencies, and state and local agencies executed the warrants. The HSI special agent assisted with the arrests, as did some other HSI Arizona employees. We also spoke to one CBP OFO officer who also acknowledged that he participated in these arrests. They said that they had not conducted other work on the operation and did not have knowledge of the methodology at the time the operation was underway.

HSI Special Agent's Group Supervisors Attempted to Remove Him from the Task Force

As we discussed, the HSI special agent's group supervisor and the senior special agent argued against placing the special agent on Operation Fast and Furious, according to five HSI employees. Both attempted to remove the HSI special agent from the task force later. In February 2010, after the HSI special agent began working on the operation, his group supervisor attempted to persuade his



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ASAC to remove the special agent from the task force. The ASAC declined our request for a voluntary interview; however, email messages confirm that the group supervisor made the request to the ASAC. The HSI SAC said that he was not aware of the group supervisor's request to remove the HSI special agent.

In August 2010, the HSI special agent's group supervisor transferred to another position within ICE. The special agent was assigned to a new group supervisor and a new ASAC. The new group supervisor was the senior special agent who had expertise in weapons smuggling investigations and had interviewed the confidential informant with the special agent. The new group supervisor and his new ASAC decided to ask more senior HSI leaders to take the HSI special agent off Operation Fast and Furious. However, HSI Arizona senior leaders decided not to remove the HSI special agent because the investigative activities were almost over, and the task force was preparing for indictments.

In October 2010, ATF requested that the HSI special agent continue working on the OCDEF to assist ATF with another weapons smuggling operation that had ties to an ongoing HSI investigation. In an October 28, 2010 email message, the HSI special agent's group supervisor told his ASAC that he did not want to lose staff to ATF again, and that he thought that the HSI special agent was not the right person to monitor ATF and ensure HSI priorities were taken into account. The group supervisor and ASAC decided not to have the HSI special agent continue with the OCDEF after Operation Fast and Furious concluded.

The HSI special agent's group supervisors had initially argued against joining the Operation Fast and Furious task force. Later, they argued to remove the sole HSI special agent on the task force, but were unable to persuade HSI Arizona senior leaders. The group supervisors' chain of command in HSI Arizona are responsible for the decisions not only to participate but also to maintain participation, despite the group supervisors' arguments to the contrary. To his credit, the HSI SAC told us that he was responsible for any negative outcomes from HSI participation on the task force.

The HSI Special Agent's Group Supervisors Provided Minimal Guidance, and the HSI Special Agent Relied on ATF Guidance

During his assignment to Operation Fast and Furious, the HSI special agent received little guidance from his chain of command. His group supervisor initially instructed the HSI special agent to notify him if he was aware of firearms moving into Mexico. However, the HSI special agent engaged in only passing



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conversations with his group supervisors about the case sporadically throughout the duration of the operation.

Both of the HSI special agent's group supervisors distanced themselves from the case when more senior management overrode their arguments not to participate on the task force and rejected requests to remove the HSI special agent from it. They believed that participating in it was wrong, and they did not want to be involved with it. In avoiding the case, they also distanced themselves from the HSI special agent assigned to it.

The HSI special agent's first group supervisor felt that his chain of command found his complaints and concerns about ATF and the operation obstructive, and that raising more issues would damage his credibility with them. After his ASAC denied his request to remove the HSI special agent, the group supervisor stopped raising concerns. The better course of action would have been to advise the HSI special agent and continue raising the activities that violated ICE policy to management. However, doing so may have had an adverse affect on HSI Arizona management's assessment of him. His predicament was difficult, and his reasons for distancing himself from the case were understandable.

The HSI special agent's second group supervisor replaced the first in August 2010, when the operation's investigative activities were coming to a close. He had argued against participating in the operation and had tried to get permission to remove the HSI special agent from the task force. When senior leaders rejected his request, he also distanced himself from the case to the extent that he could. Again, it would have been better if he had mentored the HSI special agent and notified his chain of command of instances when the activities violated ICE policy. However, the new group supervisor's reasons for retreating are understandable.

The HSI special agent said that he knew that HSI did not approve of the methodology ATF employed, but HSI also placed him on the task force to "get along" with ATF. The HSI special agent realized that if he advocated for changes to the methodology, ATF would have perceived it as his failure to "get along." It was also important for him to cooperate with ATF so he still would be allowed to participate and receive information about the operation, which he could share with HSI.

The HSI special agent's two group supervisors did not provide much guidance or request information regarding the status of the operation. Throughout the duration of the operation, the HSI special agent requested approval of ROIs that



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discuss operational developments. However, his group supervisors did not provide substantive guidance, ask follow up questions regarding the ROIs' questionable content, or intervene after receiving the ROIs. Occasionally, his group supervisors returned an ROI back to him to correct format, grammar, or spelling errors. Usually his group supervisors signed the ROIs quickly, which indicated that they had reviewed and approved the content.

The HSI group supervisors' chain of command did not read the ROIs, inquire about the HSI special agent's activities, or attempt to guide the operation. As a result, HSI did not meet its stated goal to monitor the case or improve the investigative methodology.

Because of the HSI special agent's limited experience and his chain of command's overall indifference toward the execution of the operation, he relied on direction from the ATF lead case agent and the ATF chain of command, instead. He could not change the operation's methodology by himself. As a new investigator and a new HSI employee, he was less familiar with HSI investigative practices than other more experienced staff. He had received HSI training related to contraband smuggling techniques and policies. However, he did not have the investigative experience to speak with authority, and the ATF lead case agent and her chain of command did not allow him a decision-making role. As a result, the task force continued to use the same investigative methodology; it did not follow all viable investigative leads; and suspected straw purchasers continued to buy weapons that were transported to criminal organizations.

HSI SAC offices send regular reports of significant cases to HSI headquarters, and the HSI SAC Phoenix included short summaries of Operation Fast and Furious in its reports. However, the case summaries for Operation Fast and Furious did not discuss methodology or other substantive details. As a result, HSI headquarters did not have information about the methodology used during Operation Fast and Furious. Without knowledge of the problems, HSI and ICE headquarters did not consult with DOJ to improve the operation. HSI and ICE headquarters officials did not learn about the methodology used in Operation Fast and Furious until after OBP Agent Terry's murder.

Conclusion

The placement of the HSI special agent on Operation Fast and Furious reflects the HSI SAC's desire to accommodate ATF. However, the HSI SAC should have communicated with his staff to monitor the HSI special agent's activities and



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ensure that the operation identified smuggling activities and violations. The HSI SAC also should have directed the HSI special agent's chain of command to communicate with the HSI special agent and ATF task force management. It was the HSI SAC's decision to approve the placement of a special agent on the task force, and we agree with him: he bears the responsibility for the HSI special agent's participation in activities that violate ICE policy and procedure.

The HSI special agent's first group supervisor should have monitored the HSI special agent and reported up the chain of command each time he was asked to engage in activity that violated ICE policy. However, we understand that the group supervisor interpreted management's statements and actions as a desire to place him on the task force regardless of the operation's methodology. The group supervisor's effort to remove the HSI special agent from the task force was commendable. Because of what he saw as a diminution in senior leaders regard for his professionalism, he did not attempt to make changes to the HSI special agent's activities or the ATF methodology. He also did not attempt to persuade his management to make other changes to HSI participation on the operation again. His actions were appropriate, given the situation.

The HSI special agent's second group supervisor's actions also were appropriate. The HSI special agent's investigative activities on the operation ended shortly after the second group supervisor gained his position. The second group supervisor reported his concerns about the operation to his new ASAC. He and his ASAC attempted to remove the HSI special agent from the operation, but their suggestions were refused.

Recommendation #2:

We recommend that the Director of ICE determine whether the HSI SAC office's management of Operation Fast and Furious, which allowed an HSI special agent to participate in investigative activities that violated ICE policy and practice, adhered to ICE standards for its senior leaders.

ICE Released Policy That Should Prevent Similar Problems in the Future

In 2009 and 2010, ICE had not developed policy to guide field office SACs when they experienced serious concerns with other agencies. However, ICE recognized the gap after it learned more about Operation Fast and Furious. It published a new policy, *Accountability Requirements for Enforcement Operations Involving Contraband and Other Sensitive Items*, on February 21, 2012. The new



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policy provides direction to SACs when their staff work on interagency task forces and become aware of decisions that contravene ICE policy. Specifically, the policy states:

HSI routinely participates in joint or multi-agency investigations led by other law enforcement agencies and are subject to external agencies' operation decisions. If these decisions conflict with HSI policies and procedures, the HSI Special Agent in Charge (SAC) must be immediately notified. The SAC in turn will contact his/her counterpart advising of the conflict and potential for withdrawing HSI resources. The SAC will then notify HSI Headquarters... HSI Headquarters will determine any further appropriate response, including whether continued participation in the joint investigation should be curtailed.

The policy also restates other ICE policy not "to allow or facilitate uncontrolled cross-border movement of any dangerous contraband, including firearms..."

The policy should prevent similar circumstances from developing in the future; however, there are two areas of vulnerability. To be effective, ICE and HSI headquarters officials must support the policy and the HSI field office staff that encounter the types of problems addressed by the policy. In 2008 and early 2009, HSI Arizona staff had notified HSI headquarters officials that ATF was allowing firearms to be smuggled to Mexico. HSI headquarters officials dismissed the field's concerns quickly and assumed that the ICE/ATF MOU would resolve any conflicts. Yet, the ICE/ATF MOU and the ICE Director's message put the responsibility for conflict resolution on the field office. The HSI SAC had tried to influence ATF, but could not and should not have been expected to change ATF policies. HSI and ICE headquarters officials should have engaged on the issues in Arizona more intensively. In the future, ICE and HSI headquarters officials should continue to monitor the relationship between ATF and HSI Arizona field offices and engage with ATF headquarters if ICE is impeded from enforcing the statutes for which it has authority.

To be effective, the new policy also should directly address the ICE/ATF MOU clause that establishes an expectation for ICE field offices to be able to resolve conflicts without headquarters assistance. Our jurisdiction is limited to DHS entities, and we cannot judge ATF's actions. However, given the level of concern we noted during this review and the DOJ OIG's report of ATF's performance in Operation Fast and Furious, we conclude that ICE and HSI headquarters officials



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should have been more involved in resolving issues between HSI and ATF, at least between the HSI and ATF Arizona field offices.

Recommendation #3:

We recommend that the Director of ICE enhance ICE policy, *Accountability Requirements for Enforcement Operations Involving Contraband and Other Sensitive Items*, to ensure that the language in the ICE/ATF MOU does not continue to foster an expectation that HSI SACs resolve all conflicts with ATF in the field. The language of the policy should be modified to state that the duty to report conflicts covered by the policy overrides the ICE/ATF MOU language, which may seem to place the responsibility on SACs to resolve all conflicts at the field level.

CBP Had Minimal Involvement in the ATF Investigation and OCDETF Operation Fast and Furious and Was Not Aware of the Flawed Investigative Methodology

CBP Arizona officials in OFO and OBP were not aware of the investigative methodology employed in Operation Fast and Furious. The OFO Assistant Port Director said that what he knows he learned from the media. He said the operation was a “betrayal” and posed a risk for his staff. Likewise, the Deputy Chief Patrol Agent with whom we spoke said that it is quite “disturbing” that OBP was not aware of the operation when it was underway.

Neither organization participated in the operation’s task force. Their staff occasionally interacted with Operation Fast and Furious task force members, or provided minimal support, but were not involved in investigative techniques that allowed weapons to be lost and ultimately to be smuggled into Mexico. When OFO and OBP leaders learned about the huge number of weapons that were allowed to travel through their areas of responsibility, they were angry. The operation left their staff and the public vulnerable, and OBP felt the effect when its agent, Brian Terry, was murdered and weapons lost by the operation were discovered at the scene, dropped by the criminals who killed him.

We discuss OFO and OBP involvement with the operation briefly in the sections above that describe the HSI special agent’s activities on the operation. OFO provided border crossing information to the HSI special agent, who had requested the data. OFO commonly provides border crossing information to other agencies, and there was nothing unusual about the request that would



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have alerted CBP to the flawed investigative methodology. The names of the individuals whose border crossing records were checked did not have any significance to the OFO officer who provided the records.

An OFO officer also assisted the HSI special agent on the operation to navigate the roads of southern Arizona when the HSI special agent pursued the weapon, which was being transported toward the Mexican border. The OFO officer observed the investigative activity in the Tohono O'odham nation, but had no reason to develop concerns. OBP agents responded to his request to stop the vehicle that drove onto the Tohono O'odham nation. OBP stopped the vehicle and seized the weapons that were in it. The operation appeared to run normally and according to the MOU's mandate that OBP assist HSI when requested.

OFO officers stopped a vehicle attempting to cross the Lukeville, Arizona, port of entry into Mexico. OBP assigned an agent to assist OFO at the Lukeville port of entry. The OBP agent assisted with processing information from the stop. OFO officers discovered ammunition during their inspection of the vehicle. OFO did not attend the interview of the vehicle's occupants and did not have reason to be concerned about the investigative activity.

Conclusion

The activities that brought CBP employees in contact with Operation Fast and Furious did not provide them with an understanding of the methodological problems. The employees conducted their work according to routine operational procedures.

Management Comments and OIG Analysis

We evaluated technical comments from ICE and DOJ. We have made changes to the report where appropriate. We also analyzed formal comments from ICE regarding our recommendations. We provide the formal comments and our analysis below. Additionally, ICE formal comments, in their entirety, appear in appendix B.



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Recommendation # 1:

We recommend that the Director of ICE assess whether HSI Arizona senior leaders fulfilled their duty to enforce the weapons smuggling statutes for which DHS maintains jurisdiction.

ICE Response: ICE concurred with Recommendation 1. "ICE concurs with the recommendation that it must assess whether its HSI Phoenix senior leaders fulfilled their duty to enforce the weapons smuggling statutes of the United States for which DHS maintains jurisdiction. ICE will review its past practice and make determinations where modifications are required."

OIG Analysis: This recommendation will remain resolved and open pending our receipt of ICE's determination of whether HSI Arizona senior leaders fulfilled their duty to enforce the weapons smuggling statutes for which DHS maintains jurisdiction.

Recommendation #2:

We recommend that the Director of ICE determine whether the HSI SAC office's management of Operation Fast and Furious, which allowed an HSI special agent to participate in investigative activities that violated ICE policy and practice, adhered to ICE standards for its senior leaders.

ICE Response: ICE concurred with Recommendation 2. "ICE concurs with the recommendation that it assess whether the HSI SAC office's management of Operation Fast and Furious, which is alleged to have allowed an HSI special agent to participate in investigative activities that violated ICE policy and practice, adhered to ICE standards for its senior leaders. ICE will review its policies and practices and will conduct refresher training as needed."

OIG Analysis: This recommendation will remain resolved and open pending our receipt of ICE's assessment of the HSI SAC's management of Operation Fast and Furious and report of any corrective actions taken.

Recommendation #3:

We recommend that the Director of ICE enhance ICE policy, *Accountability Requirements for Enforcement Operations Involving Contraband and Other*



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Sensitive Items, to ensure that the language in the ICE/ATF MOU does not continue to foster an expectation that HSI SACs resolve all conflicts with ATF in the field. The language of the policy should be modified to state that the duty to report conflicts covered by the policy overrides the ICE/ATF MOU language, which may seem to place the responsibility on SACs to resolve all conflicts at the field level.

ICE Response: ICE concurred with Recommendation 3.

“ICE concurs with the recommendation that the agency review the aforementioned policy to determine where such changes could be made. This policy will remain Law Enforcement Sensitive and will not be made available to the public.”

OIG Analysis: This recommendation will remain resolved and open pending our receipt of the enhanced ICE policy.



Appendix A

Objectives, Scope, and Methodology

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

In February 2012, Representative Michael T. McCaul asked that we review the extent to which DHS and its components were involved in OCDETF Operation Fast and Furious. Our objectives were to determine DHS involvement in planning and implementing Operation Fast and Furious, and the extent to which the Department complied with DHS policies and procedures for weapons smuggling investigations.

We conducted our fieldwork between April and December 2012. During that time, we conducted interviews of 41 officials within DHS, ICE, and CBP, and one interview of a state and local law enforcement officer who was familiar with the operation. Specifically, we interviewed 3 officials from DHS headquarters offices, including Secretary Napolitano, 11 ICE officials from various ICE and HSI headquarters offices, including Director Morton, and 25 ICE staff members who worked in the HSI Arizona field offices and the Hermosillo Assistant Attaché's office during the course of the operation. We interviewed three CBP officials in Arizona.

We reviewed applicable laws, regulations, memoranda of understanding, and policies related to preventing, detecting, and investigating international weapons smuggling. We also reviewed ICE internal interim reports, ROIs, OCDETF proposal materials related to Operation Fast and Furious, and documents related to the internal ICE assessment of Operation Fast and Furious. We also reviewed email messages sent to or received from DHS personnel that DOJ OIG collected during its review of Operation Fast and Furious.

We obtained copies of hundreds of thousands of email messages, which we searched for relevancy. Among those were the email accounts of eight employees in HSI Arizona offices for the period of September 1, 2009 through June 30, 2011. Using a list of 44 search terms, we retrieved messages related to the scope of our review. Similarly, we retrieved the email accounts of five officials in ICE headquarters for the period of January 1, 2009 to April 31, 2011. We used 32 search strings with 196 search terms to collect all relevant messages. We also read all messages sent and received between certain DHS or DOJ employees during four key date ranges within that same period.



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We plan to conduct a third search of email messages from the accounts of two officials within DHS headquarters. We will limit the search to email messages sent and received between January 1, 2009 and April 31, 2011. Due to time constraints, we were unable to initiate these searches prior to our report's publication. If the documents produce additional information relevant to our findings, we will issue an addendum to this report.

Given that Operation Fast and Furious was conducted in a task force environment, we also provided a copy of our draft report to DOJ for comment.

We conducted this review under the authority of the *Inspector General Act of 1978*, as amended, and according to the Quality Standards for Inspections issued by the Council of the Inspectors General on Integrity and Efficiency.



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Appendix B
Management Comments to the Draft Report

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

January 17, 2013

MEMORANDUM FOR: Charles K. Edwards
Office of Inspector General

FROM: Radha C. Sekar 
Acting Executive Associate Director- Management and
Administration

SUBJECT: Draft Report substantive comments for OIG Project No. 12-126:
"DHS Involvement in OCDETF Operation Fast and Furious" –
For Official Use Only

U.S. Immigration and Customs Enforcement (ICE) appreciates the opportunity to provide substantive comments on OIG's Draft Report on "DHS Involvement in OCDETF Operation Fast and Furious."

If you have any questions, please contact Michael Moy, OIG Portfolio Manager, at 202-732-6263.

Attachment

www.ice.gov



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Substantive comments for OIG Draft Report on the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)-led Operation Fast & Furious

U.S. Immigration and Customs Enforcement (ICE) concurs with the three recommendations, set forth by the U.S. Department of Homeland Security's Office of Inspector General (OIG) in Part Two of the Draft Report on DHS Involvement in the Organized Crime Drug Enforcement Task Force (OCDETF) Operation Fast and Furious (the Report).

Recommendation 1: Assess whether HSI Arizona senior leaders fulfilled their duty to enforce the weapons smuggling statutes for which DHS maintains jurisdiction.

ICE concurs with the recommendation that it must assess whether its HSI Phoenix senior leaders fulfilled their duty to enforce the weapons smuggling statutes of the United States for which DHS maintains jurisdiction. ICE will review its past practice and make determinations where modifications are required.

Recommendation 2: Determine whether the HSI SAC office's management of Operation Fast and Furious, which allowed an HSI special agent to participate in investigative activities that violated ICE policy and practice, adhered to ICE standards for its senior leaders.

ICE concurs with the recommendation that it assess whether the HSI SAC office's management of Operation Fast and Furious, which is alleged to have allowed an HSI special agent to participate in investigative activities that violated ICE policy and practice, adhered to ICE standards for its senior leaders. ICE will review its policies and practices and will conduct refresher training as needed.

Recommendation 3: Enhance ICE Policy "Accountability Requirements for Enforcement Operations Involving Contraband and Other Sensitive Items" to ensure that the language in the ICE/ATF MOU does not continue to foster an expectation that ICE SACs resolve all conflicts with ATF in the field. The language of the policy should be modified to state that the duty to report conflicts covered by the policy overrides the ICE/ATF MOU language, which may seem to place the responsibility on SACs to resolve all conflicts at the field level.

ICE concurs with the recommendation that the agency review the aforementioned policy to determine where such changes could be made.



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Appendix C
ICE/ATF Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

Between
U.S. Immigration and Customs Enforcement
and the
Bureau of Alcohol, Tobacco, Firearms and Explosives

I. Scope and Purpose

This Memorandum of Understanding (MOU) is intended to formalize a partnership to promote effective, coordinated and collective law enforcement efforts both nationally and internationally between the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF" or "Agency") and U.S. Immigration and Customs Enforcement ("ICE" or "Agency")(collectively referred to as "Agencies") by the collaborative use of both Agencies' investigative authorities. By working as partners, ATF and ICE will continue to be successful in the fight against those persons and criminal organizations involved in violent crime. The following sections articulate the procedures to be followed by both Agencies in accord with the authorities vested in them by Congress. Our mutual goal is to keep the public and the United States safe by using those tools given to both Agencies either through statute or regulation and which are vital to the effective control of the domestic and international trafficking of firearms, ammunition, explosives, weapons and munitions. To more effectively utilize Federal investigative resources, ATF and ICE are committed to enforcing the statutes and regulations within each agency's jurisdiction while at the same time working in partnership and in support of each other. In those situations where the Agencies' respective mission efforts coincide, this MOU will serve to coordinate how both will pursue their investigations cooperatively to optimize the use of resources and minimize duplication of efforts.

Title 28, United States Code, § 599A establishes ATF as an agency within the Department of Justice (DOJ). ATF's investigative jurisdiction is quite broad and includes the administration and enforcement of firearms and explosives laws and regulations, to include investigating Federal crimes involving the possession, licensing, transporting, sale and receipt of firearms, explosives and ammunition in interstate or foreign commerce.

ICE was created pursuant to the Homeland Security Act of 2002¹, Pub. L. No. 107-296, 116 Stat. 2135 (2003), which transferred to the Agency the investigative authorities of the U.S. Customs Service and the Immigration & Naturalization Service. Numerous provisions throughout the U.S. Code either expressly or implicitly authorize ICE to enforce export laws, including those related to export of firearms and explosives.

¹ References to the Homeland Security Act of 2002 include the associated Department of Homeland Security Reorganization Plan of November 25, 2002, and the Reorganization Plan Modification for the Department of Homeland Security of January 30, 2003.



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The authorities and statutes upon which ATF and ICE exercise jurisdiction are contained in Annex One to this agreement, which is fully incorporated by reference herein.

This MOU supersedes both the "Memorandum of Agreement and Investigative Guidelines, Customs and BATF," signed May 15, 1978, and the "Memorandum of Understanding Between the Bureau of Alcohol, Tobacco and Firearms and the Immigration and Naturalization Service Regarding the Anti-Drug Abuse Act of 1988," signed August 23, 1989 and September 7, 1989.

II. Intelligence and Information Sharing

- A. ICE shall report to the appropriate ATF field office in a timely manner any intelligence received relating to attempted or planned violations of Federal firearms and explosives laws/regulations within the investigative jurisdiction of ATF, including firearms and explosives trafficking, and violations of laws or regulations by Federal Firearms Licensees (FFLs) and/or Federal Explosive Licensees and Permittees (FELs), violations of Section 38 of the Arms Export Control Act and 27 CFR Part 447, and information received from or about FFLs or FELs. ICE will inform the recipient of any restrictions on the use of the intelligence.
- B. ATF shall report to the appropriate ICE field office in a timely manner any intelligence received relating to the illegal exportation, attempted exportation, or planned exportation of any item on the United States Munitions List, including export transactions by FFLs and FELs to non-licensees. ATF will inform the recipient of any restrictions on the use of the intelligence.
- C. ICE agrees eTrace is the preferred method for tracing firearms, however ICE personnel may contact ATF at the local level when necessary. Based on the Agencies' arrangement set forth in the Memorandum of Understanding Regarding the eTrace Internet Based Firearm Tracing Application, effective March 24, 2006, ATF/ICE "eTrace MOU" (Armex Two), ICE agrees to contact ATF prior to initiation of any independent firearms investigation based on firearm tracing data/intelligence obtained via eTrace.
- D. Information concerning the registration status of National Firearms Act, 26 U.S.C. Chapter 53 (NFA) weapons shall be open to inspection by, or disclosure to, officers and employees of a Federal agency, including ICE, whose official duties require such inspection or disclosure. Pursuant to 26, U.S.C. § 6103, no disclosure of registration status may be made to State or local officials unless they have been deputized by the United States Marshals Service. ICE, as well as any agency receiving NFA information from ICE, must agree to appropriately safeguard such information as specified in 26 U.S.C. § 6103.



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- E. When the recipient of intelligence is apprised of an ongoing investigation by the Agency reporting the intelligence, the recipient will take appropriate steps to ensure that the use of such intelligence does not jeopardize the investigation.

III. General Investigative Guidelines

- A. The Agencies recognize the inherent and shared responsibility to operate collaboratively in order to ensure the mutual success of the activities of both Agencies in support of the nation's security. This MOU is not intended to confer or grant authority to either Agency, but rather the purpose of the MOU is to strengthen the partnership between the Agencies.
- B. For purposes of this MOU, "investigation" means a documented systematic inquiry or examination into allegations of criminal violations with intent to prosecute those identified. This shall not include investigations deemed by each Agency to be internal in nature.
- C. During an investigation it may become apparent to the initiating Agency that ATF and ICE have a shared interest with respect to the case or parts thereof. The Agencies agree to coordinate all pertinent and necessary information concerning firearms/explosives investigations implicating both ATF's and ICE's authorities.² In furtherance of officer and public safety, the initiating Agency will make every effort for deconfliction to occur, particularly when there is any indication that the investigation might coincide with the other Agency's concurrent efforts. The deconfliction should occur at the local level and in a timely manner to avoid confusion and improve coordination between the agencies.
1. Upon establishing that firearms and/or explosives-related violations have been identified during an ICE investigation, ICE field offices will notify and invite participation by the appropriate ATF field office(s) prior to further investigative action.
 2. Upon establishing that customs or immigration violations have been identified during an ATF investigation, ATF field offices will notify and invite participation by the appropriate ICE field office(s) prior to further investigative action.
- D. If an Agency declines to participate in an investigation, the investigation will continue by the initiating Agency at its own discretion, within that Agency's appropriate jurisdiction and with the full cooperation of the other Agency. The Agencies agree that a declination to participate in a particular investigation under the terms of this MOU will be communicated to the other Agency as soon as possible and at the appropriate field level.

² For example, no matter which agency is investigating, ICE and ATF will work together to ensure successful Federal prosecution if a case has elements requiring proof of alienage or proof of the interstate nexus of a firearm.



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- E. Forfeiture proceeds derived from joint investigations will be handled in accordance with rules and procedures governing the lead Agency in the corresponding investigation. Asset sharing requests will be considered in each joint investigation where there is substantive participation by the other Agency.
- F. At the completion of a joint investigation, if appropriate, the matter will be referred to the United States Attorney for a determination as to which violation(s), if any, should be prosecuted. Case reports and the information contained therein may not be disclosed, except as required by law, or by policies approved by the Attorney General or the Secretary of Homeland Security to any third party without the prior consent of the originating Agency.
- G. Notification as described in this section shall not alter either Agency's internal reporting requirements.

IV. Specific Investigative Guidelines

- A. Recognizing that the regulation and inspection of the firearms industry is within the sole purview of ATF, ICE must coordinate all activities involving FFLs, FELs and gun shows with the local ATF office and invite ATF to participate. This includes, but is not limited to, the gathering or reviewing of or obtaining information contained in records relating to any firearms or explosives transactions by FFLs and FELs as well as conducting outreach activities. If ATF declines or cannot accommodate the request within a reasonable time, ICE may proceed without further coordination.
- B. Recognizing that all investigative activities at the Ports of Entry, borders and their functional equivalent must be coordinated through ICE, ATF will notify and coordinate with the local ICE field office when it is anticipated that an investigation will have an ICE-related violation. Further, if during the course of an investigation, ATF anticipates the need for assistance in conducting inspections, detentions, or seizures of international shipments, ATF will notify the local ICE office and invite ICE to participate. If ICE declines or cannot accommodate the request within a reasonable period of time, ATF may proceed without further coordination.

V. Sources of Information

- A. In the event either an ATF or ICE special agent introduces their confidential informant (CI) to the other Agency during a joint investigation, the Agency which introduced the CI will maintain control of that CI for the duration of that specific joint investigation and will follow its departmental procedures for handling CIs.
- B. Duplicative and excessive rewards to informants will be avoided. In joint investigations, every effort should be made for ATF and ICE to agree on the



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payment of a single reward. Regardless of which Agency furnishes the funds, the Agency responsible for the informant will have the right to make payment if desired. No rewards will be offered or paid to an FFL, FEL or their employee(s) for information contained in records required to be maintained under Federal firearms and explosives laws and regulations.

- C. ICE will not authorize any FFL and/or FEL or their employee(s) to conduct a transaction with the knowledge or a reason to believe it would be a violation of Federal firearms or explosives laws or regulations.
- D. ICE permits an informant to work with another agency. If ICE is directing the informant or if the informant is primarily supporting an ICE investigation, the operation of and information from the informant must comply with ICE and Department of Homeland Security (DHS) guidelines and be subjected to ICE suitability parameters.
- E. ATF permits an informant to work with another agency. If ATF is directing the informant or if the informant is primarily supporting an ATF investigation, the operation of and information from the informant must comply with ATF and Department of Justice (DOJ) guidelines and be subjected to ATF suitability parameters.
- F. In cases where ATF is conducting an investigation and its confidential informant is illegally in the United States, ATF will be responsible for applying to ICE for approval of the proper parole documentation.

VI. Conflict Resolution

- A. The Agencies are committed to close cooperation. Efforts to resolve interagency conflicts will begin at the lowest possible level. The National Headquarters elements rely on the sound judgment of ATF and ICE Special Agents in Charge, who should be able to ensure deconfliction of activities in the field.
- B. In those instances where competing equities prevent the field elements from reaching a mutually satisfactory conclusion on any matter under the purview of this MOU, each Agency will promptly refer the matter to their appropriate headquarters elements for resolution. The ICE Director, Office of Investigations, and the ATF Assistant Director, Field Operations, will serve as the adjudicators for conflict resolutions.

VII. Conclusion

- A. This MOU is effective upon the date of the last signature by the authorized representative of each Agency and shall remain in effect until terminated by either Agency.



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- B. This MOU may be amended or modified only by written agreement and only by an authorized representative of ATF and ICE. The amendment or modification shall take effect on the date of the last signature.
- C. ATF or ICE may terminate their participation in this MOU at any time after giving 30 days written notice of their intent to withdraw to the other Agency.
- D. Nothing in this MOU is intended to conflict with current law or regulation or the directives of the parties. If any term of this MOU is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect.
- E. This MOU is an internal arrangement between the Agencies and does not create or confer any right or benefit on any other person or party, private or public.
- F. Each Agency is responsible for any expenses it incurs as a result of activities under this MOU. Nothing in this MOU is meant to imply that Congress will appropriate funds for activities under this MOU.

Kenneth Melson
Acting Director
Bureau of Alcohol, Tobacco,
Firearms and Explosives (ATF)

June 30, 2009
Date

John Morton
Assistant Secretary
U.S. Immigration and Customs
Enforcement (ICE)

6/30/09
Date



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Department of Homeland Security

Annex One- Legal Authorities

A. Bureau of Alcohol, Tobacco, Firearms and Explosives

ATF's investigative jurisdiction is quite broad and includes the administration and enforcement of firearms and explosives laws and regulations, to include investigating Federal crimes involving the possession, licensing, transporting, sale and receipt of firearms, explosives and ammunition in interstate or foreign commerce.

1. Title 28, United States Code, § 599A establishes ATF as an agency within the Department of Justice (DOJ) and delegates to ATF through the Attorney General the responsibility to investigate:
 - a. criminal and regulatory violations of the Federal firearms, explosives, arson, alcohol, and tobacco smuggling laws; and
 - b. any other function related to the investigation of violent crime or domestic terrorism that is delegated to the Bureau by the Attorney General.
2. Additionally, pursuant to Title 28, Code of Federal Regulations § 0.130, the Attorney General, the Deputy Attorney General and the Director of ATF are directed to investigate, administer, and enforce the laws related to alcohol, tobacco, firearms, explosives and arson to specifically include exercising these functions and powers under the following legal authorities, abbreviated for the purpose of this MOU. These authorities, in part, are as follows, but are not limited to:
3. 18 U.S.C. chapters 40 (explosives) and 44 (the Gun Control Act also known as GCA), which include, but are not limited to:

a. Investigations a (violations of 18 U.S.C. §§ 842(i) and 922(g))

1. There are certain categories of persons whom Congress has deemed ineligible to possess explosives and firearms/ammunition. These violations fall within the Federal explosives laws and the Gun Control Act for which the authority to investigate has specifically been delegated to ATF.

b. Regulation of Federal Firearms Licensees (FFLs)

11. The regulation of the firearms industry is within the sole purview of ATF. The statutes and regulations relating to the inspection of a FFL's records and inventory are very specific to ATF and are authorities not shared with any other Federal agency. See 18 U.S.C. § 923 (g) and 27 CFR Part 478. Any misuse of the FFL, their employee(s), or any of the records required to be kept by



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Department of Homeland Security

the FFL may put their license at risk and subject them to criminal and administrative action.

c. Regulation of Federal Explosives Licensees and Permittees (FFLs)

- iii. ATF is responsible for administering the regulatory provisions, including the licensing of dealers, users, manufacturers and importers of explosives as well as the storage of explosives. Additionally, ATF Officers have the right of entry and examination of required records, places of storage, as well as inventory. See 18 U.S.C. §§ 843 and 846 and 27 CFR Part 555. Any misuse of the FEL, their employee(s), or any of the records required to be kept by the FEL may put their license at risk and subject them to criminal and administrative action.

4. 26 U.S.C Chapter 53 (National Firearms Act also known as NFA);
5. Section 38 of the Arms Export Control Act, as amended, 22 U.S.C. § 2778 (relating to the importation of items on the U.S. Munitions Import List), except violations relating to exportation, in transit, temporary import, or temporary export transactions;
6. Any offense relating to the primary jurisdiction of the Bureau of Alcohol, Tobacco, Firearms and Explosives that the United States would be obligated by a multilateral treaty either to extradite the alleged offender or to submit the case for prosecution if the offender were found within the territory of the United States;
7. Subject to the limitations of 3 U.S.C. § 301, exercise the authorities of the Attorney General under section 38 of the Arms Export Control Act, 22 U.S.C. § 2778, relating to the importation of defense articles and defense services, including those authorities set forth in 27 CFR part 447.

B. U.S. Immigration and Customs Enforcement

ICE was created pursuant to the Homeland Security Act of 2002³, Pub. L. No. 107-296, 116 Stat. 2135 (2003), which transferred to the Agency the investigative authorities of the U.S. Customs Service and the Immigration & Naturalization Service. Numerous provisions throughout the U.S. Code either expressly or implicitly authorize ICE to enforce export laws. ICE's authorities, abbreviated for purposes of this MOU, include, but are not limited to:

³ References to the Homeland Security Act of 2002 include the associated Department of Homeland Security Reorganization Plan of November 25, 2002, and the Reorganization Plan Modification for the Department of Homeland Security of January 30, 2003.



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1. As customs officers, ICE agents have the authority to enforce export laws, including those pertaining to firearms. As a general matter, the border search exception to the Fourth Amendment permits customs officers to conduct searches for merchandise, including firearms, at the border, the functional equivalent of the border, or the extended border without a warrant and without probable cause.
2. Through the Arms Export Control Act (AECA) and its implementing regulations, the International Trafficking in Arms Regulations (ITAR), ICE is granted:
 - a. Authority to inspect the loading or unloading of any vessel, vehicle, or aircraft for the purpose of ensuring observance of the ITAR, 22 C.F.R. § 127.4;
 - b. Authority as the sole investigative agency to enforce violations of ITAR export provisions, barring foreign counterintelligence matters, 22 C.F.R. § 127.4;
 - c. Authority to detain or seize any export or attempted export of defense articles, contrary to the ITAR, 22 C.F.R. § 127.4;
 - d. Authority to inspect records required to be maintained by the Directorate of Defense Trade Controls (DDTC), Department of State, 22 C.F.R. § 122.5(b);
 - e. Authority to investigate violations of the export provisions of 22 C.F.R. § 127.1, including violations of registration requirements as required by the DDTC, 22 C.F.R. § 127.4.
3. Under the Export Administration Act (EAA) and its implementing regulations, the Export Administration Regulations (EAR), which continue in effect through Executive Orders and Federal Register Notices issued pursuant to the International Emergency Economic Powers Act (IEEPA), ICE has the authority to investigate, detain or seize any export or attempted export of dual-use commodities (or "Commerce Control List" commodities).
 - a. ICE has authority to employ the IEEPA, in relation to the illegal export of sporting shotguns regulated by the Department of Commerce, and enforcement of sanctions against terrorist and drug trafficking organizations regulated by the Department of Treasury, Office of Foreign Assets Control.
4. The USA Patriot Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, 120 Stat. 192, § 311 (2006), codified a new statute, Smuggling goods from the United States, at 18 U.S.C. § 554, and added related seizure and forfeiture laws for such merchandise under 19 U.S.C. § 1595a. 18 U.S.C. § 554 was codified in the Customs chapter of Title 18 (Chapter 27).



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It is understood by the Agencies that if the statutory and regulatory authorities change, the Annex of Legal Authorities may be amended; at the agreement of the parties, at a level lower than the Director and Assistant Secretary, if desired by either agency but that such change does not, of itself, invalidate the MOU, if acceptable to both agencies.



Appendix D

Major Contributors to This Report

Douglas V. Ellice, Chief Inspector
Elizabeth A. Kingma, Senior Inspector
Lindsay K. Clarke, Inspector
Isabelle M. Gama, Intern



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Department of Homeland Security

Appendix E
Report Distribution

Department of Homeland Security

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