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OPERATION FAST AND FURIOUS: RECKLESS DECISIONS, TRAGIC OUTCOMES

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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OPERATION FAST AND FURIOUS: RECKLESS DECISIONS, TRAGIC OUTCOMES

WEDNESDAY, JUNE 15, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m., in room 2154, Rayburn House Office Building, Hon. Darrell E. Issa (chairman of the committee) presiding.

Present: Representatives Issa, McHenry, Jordan, Chaffetz, Mack, Walberg, Lankford, Amash, Buerkle, Gosar, Labrador, Meehan, DesJarlais, Gowdy, Ross, Guinta, Farenthold, Kelly, Cummings, Towns, Maloney, Kucinich, Tierney, Clay, Lynch, Connolly, Quigley, and Yarmuth.

Staff present: Linda Good, chief clerk; Molly Boyl, parliamentarian; Steve Castor, chief counsel, investigations; Carlton Davis, Henry J. Kerner, Jessica L. Laux, counsels; Kate Dunbar, staff assistant; Jean Humbrecht, professional staff member; Ashok M. Pinto, deputy chief counsel, investigations; Jonathan J. Skladany, senior investigative counsel; Beverly Britton Fraser, Justin Kim, Scott Lindsay, Donald Sherman, and Carlos Uriarte, minority counsels; Kevin Corbin, minority staff assistant; Ashley Etienne, minority director of communications; Jennifer Hoffman, minority press secretary; Carla Hultberg, minority chief clerk; Chris Knauer, minority senior investigator; Dave Rapallo, minority staff director; and Susanne Sachsman Grooms, minority chief counsel.

Chairman ISSA. The committee will come to order.

We exist to secure two fundamental principles: First, Americans have a right to know that the money Washington takes from them is well-spent. And, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. We work tirelessly, in partnership with citizen watchdogs, to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

The mission of the Bureau of Alcohol, Tobacco, and Firearms is to protect our communities from violent criminals, criminal organizations, and the illegal use and trafficking of firearms. Since the Gun Control Act of 1968, the ATF has been organized as a unique law enforcement agency that Americans could trust to reduce the illegal transfer of guns into the hands of criminals.

Today's hearing concerns a breach of that trust that has left countless innocent Mexican citizens and at least one Federal Border Patrol agent dead.

In 2009, the ATF began allowing straw purchasers to walk guns into Mexico, believing that this initiative would help them track the use of firearms by higher-ups within the Mexican drug cartels. Guns instead were being seized and allowed to cross the Mexican border without the knowledge of the Mexican Government. This effort failed.

Over strong objections of the ATF field agents, the program continued. And approximately 2,000 AK–47s and derivatives, and some .50-caliber sniper rifles and others, and 10,000 or more rounds of live ammunition went into the arsenals of the Mexican drug lords.

Despite these strong objections by field agents, Operation Fast and Furious continued. And not only did it continue, but those at the highest level of ATF showed great interest in the program. A document, displayed on the screen now, shows that two of the most senior leaders in ATF, Acting Director Kenneth Melson and Acting Deputy Director Billy Hoover, were being briefed weekly on Fast and Furious. The documents show that both Melson and Hoover were keenly interested in the case and updates.

A second document shows Deputy Assistant Director for Field Operations William McMahon was so excited about Fast and Furious that he received a special briefing on the program in Phoenix scheduled a mere 45 minutes after his plane landed.

A third and perhaps the most disturbing document, indicates that Acting Director Melson was very much in the weeds with Operation Fast and Furious. After a detailed briefing on the program at the ATF field division, Acting Director Melson had a plethora of follow-up questions that required additional research to answer. And as documents indicate, Mr. Melson was interested even in receiving the IP address for hidden cameras located inside cooperating gun shops. With this information, Acting Director Melson was able to sit at his desk in Washington and, himself, watch a live feed of straw buyers entering the gun stores and purchasing dozens of AK–47 variants.

Earlier this month, the Mexican Government reported that more than 34,000 lives have been lost in the 4½ years, and scores of others remain missing. Last year, 111 U.S. citizens were killed in Mexico, which has been the most violent year in the drug war's history, according to the U.S. State Department.

When Senator Chuck Grassley, who we welcome here today, and I first learned about Operation Fast and Furious earlier this year, we were both shocked that such a brutal and reckless, and blatantly reckless, program had ever been conceived, authorized, or executed by Federal law enforcement. Candidly, at first I believed that it had to be, as it was being alleged, an operation that was a few loose cannons and could not have been possibly properly briefed.

Last night, Senator Grassley and I released a joint report from the investigation entitled, "Operation Fast and Furious: Accounts of the ATF Agents." After these accounts, after the many depositions that have been taken, the witnesses that have come forward,

the whistleblowers, if you will, it is now clear this was not rogues at a local level—just the opposite. What we find is that people at the local level overwhelmingly objected to this program but were assured that it was approved at the highest levels.

Today, we will hear from the family of Agent Terry about how Fast and Furious devastated their lives. And we will hear from ATF agents who saw the risk, opposed the program, and have come forward to tell the American people what happened.

The American people have a right to know the facts about Operation Fast and Furious, and Congress has a responsibility to find and reveal those facts. Thus far, more than 30 Democratic House Members have joined Senator Grassley and myself in calls for the truth.

I hope this will continue to be a bipartisan effort. I believe that in spite of slowness to react by the administration, there has now become a focus on getting the truth out in a more timely fashion, allowing the families to understand how it happened, and hopefully, working together with Senator Grassley and this committee, to ensure it never happens again. That includes holding those whose judgment was so poor accountable.

And, with that, I recognize the ranking member for his opening statement.

[The prepared statement of Chairman Darrell E. Issa follows:]

Hearing on "Operation Fast and Furious: Reckless Decisions, Tragic Outcomes"
June 15, 2011
Chairman Issa Opening Statement

- The mission of the Bureau of Alcohol, Tobacco, and Firearms is to protect our communities from violent criminals, criminal organizations, and the illegal use and trafficking of firearms.
- Since the Gun Control Act of 1968, the ATF has been organized as a unique law enforcement agency that Americans could trust to reduce the illegal transfer of guns into the hands of criminals.
- Today's hearing concerns a breach of that trust that has left countless innocent Mexican civilians – and at least one federal border agent – dead.
- In 2009, ATF began allowing straw purchasers to "walk" guns into Mexico, believing that this initiative would help them track the use of firearms by higher-ups within the Mexican drug cartels. Guns, instead of being seized, were allowed to cross the U.S. border into Mexico without the knowledge of the Mexican government.
- Over the strong objections of ATF field agents, the program continued and approximately 2,000 AK-47 derivatives, similar types of weapons, and tens of thousands of rounds of live ammunition are in the arsenals of Mexican drug lords.
- Despite these strong objections by Field Agents, *Operation Fast and Furious* continued. And not only did it continue, but those at the highest level of ATF showed great interest in the program.
- A document displayed on the screen now shows that the two most senior leaders in ATF, Acting Director Kenneth Melson, and Acting Deputy Director Billy Hoover, were "being briefed weekly on" Fast and Furious. The document shows that both Melson and Hoover were "keenly interested in case updates."
- A second document shows that Deputy Assistant Director for Field Operations William McMahon was so excited about Fast and Furious that he received a special briefing on the program in Phoenix - scheduled for a mere 45 minutes after his plane landed.
- A third - and perhaps the most disturbing - document indicates that Acting Director Melson was very much in the weeds with Operation Fast and Furious. After a detailed briefing of the program by the ATF Phoenix Field Division, Acting Director Melson had a plethora of follow-up questions that required additional research to answer. As the document indicates, Mr. Melson was interested in the IP Address for hidden cameras located inside cooperating gun shops. With this information, Acting Director Melson was able to sit at his desk in Washington and – himself – watch a live feed of the straw buyers entering the gun stores to purchase dozens of AK-47 variants.
- Earlier this month, the Mexican government reported that more than 34,000 have died in the last 4 ½ years. Scores of others remain missing. Last year, 111 U.S. citizens were

killed in Mexico, which has been the most violent year in the drug war according to the U.S. State Department.

- When Senator Chuck Grassley – who we welcome today -- and I first learned about *Operation Fast and Furious* earlier this year, we were both shocked that such a blatantly reckless program was ever conceived, authorized, or executed by a federal law enforcement agency.

- Last night, Senator Grassley and I released a joint report from the investigation, entitled: *Operation Fast and Furious: Accounts of ATF Agents.*

- Today, we will hear from the family of Agent Terry about how *Operation Fast and Furious* devastated their lives. And we will hear from ATF agents who saw the risk, opposed the program, and have come forward to tell the American people what happened.

- The American people have a right to know the facts about *Operation Fast and Furious,* and Congress has a responsibility to find those facts. Thus far, more than 30 Democratic House Members have joined Senator Grassley and me in calls for the truth.

- I hope that this bipartisan oversight effort will shed truth on this reckless program, hold those responsible to account for their decisions, and ultimately correct serious flaws in the Department of Justice so that this mistake isn't repeated.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. And I thank you, Mr. Chairman, for holding this hearing.

I would like to start by saying a few words directly to the members of the Terry family who are here today. Over the past week, my family suffered a horrific tragedy that, in some ways, is similar to your own.

Nobody can really know how that feels until they go through it themselves. On the one hand, you want the criminals who did this to be brought to justice as fast as possible. You want them punished for what they did, for who they took from you. On the other hand, that is after the fact. It simply will not bring them back. So you also want answers. You want to know whether something could have been done to prevent their death, and you want to prevent it from happening to anyone else in the future.

I want to tell you that I know how you feel, and I want to help as much as I can. Of course, we want the prosecutors to succeed in bringing the perpetrators to justice. You also deserve direct and straightforward answers from your government. Working together, we can and must achieve both of these goals. And so I thank you for being here today.

Now, let me welcome Senator Grassley. Your reputation as a defender of good government transcends party lines. I have always been impressed by your determination, and I welcome you here today.

And you said something in your statement, in your written statement, that I totally agree with and I want to reiterate. You said, "Any attempt to retaliate against them," speaking of the ATF officers, "for their testimony today would be unfair, unwise, and unlawful." And I am here to say that I have always taken that position, and I share that view with you, and I will work with you to make sure that does not happen. And I am sure it won't.

Let me also welcome the ATF agents who are here to provide their testimony. It is not easy to testify before Congress under normal circumstances, but it is even more difficult when you are testifying about allegations involving your own agency. That is tough. Nevertheless, I know you are here today because you want to improve this process.

Finally, let me welcome Mr. Weich from the Justice Department. This will not be an easy hearing for you either, but I know that you, too, are here because you want to improve this process. We look forward to talking with you about ways we can meet both the Department's obligations for the prosecution and the committee's obligations for oversight.

We thank each and every one of you for your service to the country. We will have tough questions today, but you all deserve our courtesy and respect.

On the substance of today's hearing, the allegations that have been made are very troubling. And new information we have obtained raises additional concerns about the role of various actors involved in these incidents.

Based on the interviews conducted by the committee so far and the documents we have reviewed to date, I have two concerns that I would like to explore.

First, we will hear testimony that surveillance of suspected straw purchasers was discontinued repeatedly, seemingly for no reason, so agents could return to gun stores to start over with new suspects. The Phoenix group handling this investigation was tiny, with only three to seven ATF agents. Although other offices and agencies were involved, the allegation is that these scarce resources were not used appropriately.

Second, we will hear testimony that specific individuals in the U.S. attorney's office in Phoenix refused to prosecute legitimate and promising gun cases involving straw purchasers. This gives me great concern. It is not clear whether this reluctance was based upon negative court decisions, inadequate resources, or other issues. But one thing is clear: The allegations relating to this particular office span several years and several administrations.

I want to make two additional points about today's hearing.

This weekend, Chairman Issa stated on national television that this committee's investigation and these hearings are not about finding the facts. He said, "This is not a discovery process of what happened. We know what happened." With all due respect, I strongly disagree. We do not know all the facts. We still have much to learn in this ongoing investigation, and we should not rush to judgment.

Finally, no legitimate examination of this issue will be complete without analyzing our Nation's gun laws, which allow tens of thousands of assault weapons to flood into Mexico from the United States every year, including .50-caliber sniper rifles, multiple AK variants, and scores of others, some of them landing in neighborhoods like mine, the one I represent in Baltimore. When Mexican President Calderon addressed Congress in May, he pleaded for us to stop fueling a full-scale drug war with military-grade assault weapons.

In order to explore these issues further today, I am exercising my right under the rules, Mr. Chairman, of the House for a minority day of hearings with several witnesses who will testify about these issues in great detail. I did not think it was necessary to call these witnesses for today's hearing, but I will work with the chairman on scheduling these hearings in the near future.

Finally, let me say this. ATF Special Agent Forcelli said something in his written statement that we all need to take note of, Mr. Chairman. He says these words: "As a career law enforcement officer who has had to investigate the deaths of police officers, children, and others at the hands of armed criminals, I was and continue to be horrified." And this is the piece that I want us to concentrate on: "I believe that these firearms will continue to turn up at crime scenes on both sides of the border for years to come."

With that, Mr. Chairman, I yield back.

[The prepared statement of Hon. Elijah E. Cummings follows:]

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Opening Statement
Rep. Elijah E. Cummings, Ranking Member

Hearing on "Operation Fast and Furious: Reckless Decisions, Tragic Outcomes"

June 15, 2011

Thank you, Mr. Chairman. I would like to start by saying a few words directly to the members of the Terry family who are here today. Over the past week, my family suffered a tragedy that, in some ways, is similar to yours. Nobody can really know how that feels until they go through it themselves.

On one hand, you want the criminals who did this to be brought to justice. You want them punished for what they did, for who they took from you. On the other hand, that's after-the-fact. It won't bring them back. So you also want answers. You want to know whether something could have been done to prevent their death. And you want to prevent it from happening to anyone else in the future.

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Contact: Ashley Etienne, Communications Director, (202) 226-5181

Chairman ISSA. I thank the gentleman.

Members may have 7 days to submit opening statements and extraneous materials for the record.

We now recognize our first panel. The distinguished Senator Charles Grassley is the ranking member of the Senate Committee on Judiciary. In that role, I have an opportunity to work with the Senator on patent issues and many other issues of law enforcement. But today the Senator is here to speak about a joint investigation that has spanned many months and ultimately has consumed a great deal of the Senator's personal time and attention.

And I thank you for being here. Your entire written statement will be placed in the record. And you are recognized.

STATEMENT OF HON. CHARLES E. GRASSLEY, RANKING MEMBER, COMMITTEE ON THE JUDICIARY, U.S. SENATE

Senator GRASSLEY. Chairman Issa, Ranking Member Cummings, thank you very much for inviting me to be here; more importantly, for calling these important hearings and for the great work that you and your staff have done in your constitutional responsibility of oversight.

I am grateful to Agent Brian Terry's family for being here today and wish to express my sympathy for their loss. I hope that we can get the Terry family the answers that they deserve.

I also want to thank the brave people who are testifying from the Bureau of Alcohol, Tobacco, and Firearms, these Federal agents. I know that they are here to tell the unvarnished truth. I also know that that can be very tough, since they still work for the ATF. These agents already risk their lives to keep us safe; they shouldn't have to risk their jobs as well. Continuing to highlight what Congressman Cummings highlighted from my statement, any attempt to retaliate against them for their testimony today would be unfair, unwise, and unlawful. And let me add to what Congressman Cummings said, it would be a personal affront to this Senator.

When I became ranking member of the Judiciary Committee in January, this was the first oversight issue to land on my desk. Several other Senators' offices contacted my office to pass along these allegations about an ATF case called "Operation Fast and Furious." At first, the allegations sounded too shocking to believe, but, sadly, they turned out to be true.

ATF is supposed to stop criminals from trafficking guns to Mexican drug cartels or, I guess, anyplace else. Instead, the ATF made it easier for alleged cartel middlemen to get weapons from U.S. gun dealers. Agents were actually ordered to stand by and watch these middlemen, these straw purchasers, buy hundreds upon hundreds of weapons. Agents warned that inaction could lead to tragedy, but management didn't want to listen. We will hear from some of those agents today and hear from their point of view.

Inaction would be bad enough, but ATF went even further. ATF encouraged gun dealers to sell to straw buyers. Emails prove that at least one dealer worried prophetically about that risk. He wrote to ATF about his concerns that a Border Patrol agent might end up facing the wrong end of one of those weapons. ATF supervisors told the dealer, "Don't worry."

So, the agent said it was a bad idea, and the gun dealers said it was a bad idea. Who thought it was a good idea? Why did this happen? Congress deserves answers to these questions.

The President said that he didn't authorize it and that the Attorney General didn't authorize it. They have both admitted that, "a serious mistake may have been made."

There are a lot of questions and a lot of investigating to do, but one thing has become clear already: This was no mistake. It was a conscious decision by senior officials. It was written down. It was briefed all the way up to Washington, DC. According to an internal briefing paper, Operation Fast and Furious was intentionally designed to, "allow the transfer of firearms to continue to take place."

Why would the ATF do such a thing? Well, the next line in the brief paper tells us. It was, "to further the investigation and allow for the identification of additional co-conspirators." So, very clearly, that was the goal. The purpose of allowing straw buyers to keep buying was to find out who else might be working with them, who else might be in their network of gun traffickers.

Of course, that assumes that they are part of a big sophisticated network. That kind of assumption can cause one to start with a conclusion and then work backward, looking for the facts that fit the case. Until you figure out that you have the cart before the horse, you are probably not going to get anywhere.

Professor of criminology Gary Kleck recently published an article in the Wall Street Journal called, "The Myth of Big-Time Gun Trafficking." Professor Kleck said that, according to his study of national crime data, ATF handles only about 15 operations each year that involve more than 250 guns. According to his study, a typical trafficking operation involves fewer than 12 guns.

So, why would the ATF make it a priority to identify large networks of traffickers? And, again, why would senior leadership decide to explicitly elevate that goal above ATF's traditional work of seizing weapons that were illegally purchased?

On October 26, 2009, emails indicate that there was a meeting of senior law enforcement officials at our Justice Department. It appears to have included the heads of every law enforcement component of the Department, including directors of the FBI, the DEA, and the ATF. It also included the U.S. attorneys for all of the southwest-border States, the director of the Organized Crime Drug Enforcement Task Force, and the chairman of the Attorney General's Advisory Committee. Sounds like a pretty big, important meeting, doesn't it?

On the agenda at the meeting was a document describing the Department's strategy for combatting Mexican cartels. In a section called, "Attacking the Southbound Flow of Firearms," it says, and I quote from the document, "Merely seizing firearms through interdiction will not stop firearms trafficking to Mexico. We must identify, investigate, and eliminate the sources of illegally trafficked firearms and the networks that transport them."

Well, the message in that document is pretty clear, isn't it? Trying to identify networks of traffickers is more important than seizing weapons. This document was transmitted to the head of the Phoenix Field Division on October 27, 2009.

Four days later, the Phoenix Field Division began investigating Uriel Patino on suspicion of being involved in a gun-trafficking ring. Ten days after that, Patino was assigned his own case number. In the first 24 days that the ATF was on to him, Patino bought 34 guns from dealers cooperating with the ATF. That is nearly three times more than the typical gun-trafficking operation, according to the study in the Wall Street Journal that I just mentioned.

But that was just the beginning. Since the dealers were cooperating, ATF received notices of each purchase right away. Analysts enter the serial numbers into ATF's Suspect Gun Data base usually within days of the purchase. On November the 20th, one of the 34 guns Patino bought turned up in Mexico, just 14 days after he bought it in Phoenix. ATF learned of the recovery through a hit in a Suspect Gun Data base on November the 24th.

That same day, Patino brought Jaime Avila into a cooperating gun dealer, and they bought five more guns. ATF had realtime notice from the dealer, and agents raced to the store to follow them, but they arrived too late.

Over the next 6 weeks, Avila bought 13 guns at dealers cooperating with the ATF. The dealers notified the ATF of each purchase right away. Analysts entered the serial numbers in the ATF data base, usually within about 2 days of purchase. Yet ATF did nothing to deter or interrupt the straw purchasers. Avila went back to a cooperating dealer and purchased three more AK–47-type weapons on January 16, 2010. ATF simply put the serial numbers in its data base. Still, ATF did nothing to stop Avila and Patino.

Eleven months later, two of those three rifles were recovered at the scene of Agent Terry's murder. During those 11 months, Avila purchased another 34 arms, but Patino purchased 539. Again, cooperating gun dealers notified ATF of each and every purchase. It usually took about 5 days to enter the serial numbers into the ATF data base, but ATF often had realtime or even advanced notice of the purchases from the dealers. ATF even specifically approved of particular transactions.

I will give you an example. In August 2010, a gun dealer cooperating with the ATF asked for guidance. Patino wanted 20 more weapons, but the dealer only had 4 in stock. The dealer told ATF that if he were to sell the guns he would have to, "obtain the additional 16 specifically for this purpose." An ATF supervisor wrote back, "Our guidance is that we would like you to go through with Mr. Patino's request and order the additional firearms." At this point, ATF already knew that he had bought 673 guns from cooperating dealers and that many had already been recovered at crime scenes. I want to be clear that we don't know for sure whether this particular order was actually filled for these additional 16 guns.

However, these new emails support what agents and dealers have been telling us for many months. According to them, dealers identified ATF when any of the straw purchasers bought guns either before, during, or at least shortly after the sale. We don't know what the exact totals are, but we know that the Suspect Gun Data base had at least 1,880 guns related to this case. At least 30 of them were high-power .50-caliber rifles.

The straw purchasers bought 212 guns in just 6 days, December 2009. Seventy percent of all guns in the data base were bought by

just five straw purchasers. If ATF agents had been allowed to stop just those five buyers, most of the guns in this case would not have fallen into the wrong hands.

Finally, I want to say something about the politics of gun control. This investigation is not about politics. It is about getting the facts. That is what constitutional responsibility of oversight is all about. That is our checks and balances of government.

No matter what side of that issue you are on, the facts here should be disturbing. There will be plenty of time for both sides to argue about policy implications of all this at some point, but I hope that we can do that at another day. Today is all about these agents not being allowed to do their job. Today is about the Terry family and their search for the truth.

Too often, we want to make everything about politics. We pick sides and only listen to what we want to hear. At least for today, let's just listen to these agents and let's just listen to this family and hear what they have to say. Let's hear their stories and hear it loud and clearly. Let's then work together to get answers for this family and the other families who may have suffered.

It is time to get to the truth and hold our government accountable. The public's business ought to be public, the public's right to know. And with the public's right to know comes that accountability. That is the checks and balances of our government, and that is what congressional oversight is all about.

Thank you, Mr. Chairman.

[The prepared statement of Senator Charles E. Grassley follows:]

Statement of Senator Charles E. Grassley
Before the United States
House of Representatives
Fast and Furious
June 15, 2011

Thank you, Chairman Issa, for calling these important hearings and for the great work you and your staff have done. I am grateful to Agent Brian Terry's family for being here today and wish to express my sympathies for their loss. I hope we can get them the answers they deserve. I also want to thank the federal agents who will be testifying from the Bureau of Alcohol, Tobacco, and Firearms. I know they are here to tell the unvarnished truth. I also know that can be tough, since they still work for ATF. These agents already risk their lives to keep us safe. They shouldn't have to risk their jobs too. ***Any*** attempt to retaliate against them for their testimony today would be unfair, unwise, and unlawful.

When I became Ranking Member of the Judiciary Committee in January, this was the first oversight issue to land on my desk. Several other Senators' offices contacted my office to pass along these allegations about an ATF case called "Operation Fast and Furious." At first, the allegations sounded too shocking to believe. But sadly, they turned about to be true.

ATF is supposed to ***stop*** criminals from trafficking guns to Mexican drug cartels. Instead, ATF made it ***easier*** for alleged cartel middlemen to get weapons from U.S. gun dealers. Agents were ordered to stand by and watch these middlemen — these straw purchasers — buy ***hundreds*** upon ***hundreds*** of weapons. Agents warned that inaction could lead to tragedy, but management didn't want to listen. We will hear from some of those agents today.

Inaction would be bad enough, but ATF went even further.

ATF ***encouraged*** gun dealers to sell to straw buyers. Emails prove that at least one dealer worried prophetically about the risk.[1] He wrote to ATF about his concern that a border patrol agent might end up facing the wrong end of one of these guns.[2] ATF supervisors told the dealer not to worry. So, the ***agents*** said it was a bad idea. And, the ***gun dealers*** said it was a bad idea.

Who thought it was a good idea? Why did this happen?

The President said he didn't authorize it and that the Attorney General didn't authorize it. They have both admitted that a "serious mistake" may have been made. There are a lot of questions, and a lot of investigating to do. But one thing has become clear already — this was ***no mistake***.

---

[1] Email from Cooperating FFL to ATF Group VII Supervisor David Voth, Jun. 17, 2010 (Attachment 1).
[2] *Id.*

It was a conscious decision by senior officials. It was written down. It was briefed up to Washington, D.C. According to an internal briefing paper, Operation Fast and Furious was intentionally designed to "***allow the transfer of firearms*** to continue to take place."[3]

Why would the ATF do such a thing?

Well, the next line in the brief paper tells us. It was, "to further the investigation and allow for the ***identification of additional co-conspirators[.]***"[4] So, that was the goal. The purpose of allowing straw buyers to keep buying was to find out who else might be working with them — who else might be in their network of gun traffickers. Of course, that assumes that they are part of a big, sophisticated network. That kind of assumption can cause you to start with a conclusion and work backwards, looking for facts that fit. Until you figure out that you've got the cart before the horse, you're probably not going to get anywhere.

Professor of Criminology Gary Kleck recently published an article in the *Wall Street Journal* called "The Myth of Big-Time Gun Trafficking."[5] Professor Kleck said that according to his study of national crime data, ATF handles ***only about 15*** operations each year that involve more than 250 guns.[6] According to his study, a typical trafficking operation involves ***fewer than 12 guns.***[7]

So why would the ATF make it a priority to identify large networks of traffickers? Why would senior leadership decide to explicitly elevate that goal above ATF's traditional work of seizing weapons that were illegally purchased?

On October 26, 2009, emails indicate that there was a meeting of senior law enforcement officials at the Justice Department.[8] It appears to have included the heads every law enforcement component of the Department, including directors of the FBI, the DEA and the ATF.[9] It also included the U.S. Attorneys for all the Southwest border states, the Director of the Organized Crime Drug Enforcement Task Force, and the Chair of the Attorney General's Advisory Committee.[10]

Sounds like a pretty big, important meeting, doesn't it?

On the agenda at that meeting was a document describing the Department's strategy for combatting the Mexican cartels. In a section called "Attacking the Southbound Flow of Firearms," it says:

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[3] Bureau of Alcohol, Tobacco, Firearms and Explosives, "Briefing Paper, Phoenix Field Division – Phoenix Group VII (SWB Group)" (Attachment 2).
[4] *Id.*
[5] *See* Gary Kleck, The Myth of Big-Time Gun Trafficking, WALL ST. J., C2, May 21, 2011 (Attachment 3).
[6] *Id.*
[7] *Id.*
[8] Email from Winnie Brinkley to Lanny Breuer, et. al, Oct. 26, 2009 (Attachment 4).
[9] *Id.*
[10] *Id.*

> Thus, given the national scope of this issue, merely ***seizing firearms through interdiction*** will not stop firearms trafficking to Mexico. We must ***identify***, investigate, and eliminate the sources of illegally trafficked firearms and ***the networks*** that transport them.[11]

The message was clear. Trying to identify networks of traffickers is more important than seizing weapons. This document was transmitted to the head of the Phoenix Field Division on October 27, 2009.[12]

Four days later, the Phoenix Field Division began investigating Uriel Patino on suspicion of being involved in a gun trafficking ring. Ten days after that, Patino was assigned his own case number. In the first 24 days that the ATF was on to him, Patino bought 34 guns from dealers cooperating with the ATF. That's nearly three times more than the typical gun trafficking operation, according to the study in the *Wall Street Journal* I mentioned earlier.

But that was just the beginning.

Since the dealers were cooperating, ATF received notice of each purchase right away. Analysts entered the serial numbers into ATF's Suspect Gun Database, usually within days of the purchase. On November 20th, one of the 34 guns Patino bought turned up in Mexico — just 14 days after he bought it in Phoenix. ATF learned of the recovery through a hit in the suspect gun database on November 24th.[13] That same day, Patino brought Jaime Avila into a cooperating gun dealer and they bought five more guns.[14] ATF had real-time notice from the dealers and agents rushed to the store to follow them, but arrived too late.

Over the next six weeks, Avila bought 13 guns at dealers cooperating with the ATF.[15] The dealers notified the ATF of each purchase right away. Analysts entered the serial numbers into the ATF database, usually within about 2 days of the purchase.

Yet ATF did nothing to deter or interrupt the straw purchasers. Avila went back to the cooperating dealer and purchased three more AK-47-type weapons on January 16, 2010.[16] ATF simply put the serial numbers in its database. Still, ATF did nothing to stop Avila and Patino.

11 months later, two of those three rifles were recovered at the scene of Agent Terry's murder.[17] During those 11 months, Avila purchased another 34 firearms. Patino purchased ***539***.

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[11] Department of Justice Strategy for Combating the Mexican Cartels, p.6 (Attachment 4).
[12] Email from Raymond Rowley to William Newell, Oct. 27, 2009 (Attachment 4).
[13] Bureau of Alcohol, Tobacco, Firearms and Explosives, "Firearms Trace Summary," Nov. 24, 2009 (Attachment 5).
[14] *See* Bureau of Alcohol, Tobacco, Firearms and Explosives, "Multiple Sale Summary," Nov. 24, 2009; *see also* Bureau of Alcohol, Tobacco, Firearms and Explosives, "Suspect Gun Summary," Nov. 25, 2009 (Attachment 6).
[15] *See* Bureau of Alcohol, Tobacco, Firearms and Explosives, "Suspect Gun Summary," Nov. 24, 2009 (Attachment 6); *see also* Bureau of Alcohol, Tobacco, Firearms and Explosives, "Suspect Gun Summary," Dec. 12, 2009 (Attachment 7); *see also* Bureau of Alcohol, Tobacco, Firearms and Explosives, "Suspect Gun Summary," Jan. 09, 2010 (Attachment 8).
[16] *See* Bureau of Alcohol, Tobacco, Firearms and Explosives, "Suspect Gun Summary," Jan. 19, 2010 (Attachment 9).

Again, cooperating gun dealers ***notified ATF of each purchase.*** It usually took about 5 days to enter the serial numbers into ATF's database. But ATF often had real-time or even ***advanced*** notice of the purchases from the dealers.

ATF even specifically ***approved*** particular transactions.

For example, in August of 2010, a gun dealer cooperating with the ATF asked for guidance. Patino wanted 20 more weapons, but the dealer only had 4 in stock.[18] The dealer told ATF that if he were to sell the guns, he would have to "obtain the additional 16 specifically for this purpose."[19] An ATF supervisor wrote back, "our guidance is that we would like you to go through with Mr Patino's request and order the additional firearms[.]"[20] At this point, ATF ***already knew*** that he bought ***673*** guns from cooperating dealers and that many had already been recovered at crime scenes. I want to be clear that we don't know whether this particular order was actually filled.[21]

However, these new emails support what agents and dealers have been telling us for months. According to them, dealers notified ATF when ***any*** of the straw purchasers bought guns — either before, during, or shortly after the sale.

We don't know what the exact totals are. But, we know the Suspect Gun Database had at least 1,880 guns related to this case.[22] At least 30 of them were high-power, .50 caliber rifles.[23] The straw purchasers bought 212 guns in just ***six days*** in December 2009.[24] 70% of all the guns in the database were bought by just 5 straw purchasers.[25] If ATF agents had been allowed to stop just those five buyers, most of the guns in this case would not have fallen into the wrong hands.

Finally, I want to say something about the politics of gun control. This investigation ***is not*** about politics. It is about getting the facts. No matter what side of that issue you are on, the facts here should be disturbing. There will be plenty of time for both sides to argue about policy implications of all this at some point. But I hope we can do that another day.

---

[17] *See* Email from REDACTED to ATF Group VII Supervisor David Voth, Dec. 15, 2010 (Stating "[t]he NTC further advised that on 01/16/10 Jaime Avila purchased three Romarm 7.62 rifles…, *two of these firearms are the recovered firearms cited above*") (emphasis added) (Attachment 10); *see also* Bureau of Alcohol, Tobacco, Firearms and Explosives, "Significant Information Report, Arrest of Jaime Avila" (declaring two of the AK-47 rifles purchased by Jaime Avila on January 16, 2010 were recovered at the scene of the shooting death of Brian Terry on December 15, 2010) (Attachment 11).
[18] Email from Cooperating FFL to ATF Group VII Supervisor David Voth, Aug. 25, 2010 (Attachment 12).
[19] *Id.*
[20] Email from ATF Group VII Supervisor David Voth to Cooperating FFL, Aug. 25, 2010 (Attachment 12).
[21] Email from Cooperating FFL to ATF Group VII Supervisor David Voth, Aug. 26, 2010 (Attachment 12).
[22] Senator Charles E. Grassley, "The Department of Justice's Operation Fast and Furious," Before the U.S. House of Representatives Committee on Oversight and Government Reform, Jun. 15, 2011, slide 8 (Attachment 13).
[23] *Id.* at slide 9.
[24] *Id.* at slide 10.
[25] *Id.* at slide 11.

Today is about these agents not being allowed to do their job. Today is about the Terry family and their search for the truth. Too often, we want to make everything about politics. We pick sides and only listen to what we want to hear. At least for today, let's just listen to what these agents and this family has to say. Let's hear their stories. Then let's work together to get answers for this family and the other families who may have suffered. It's time to get to the truth and hold our government accountable.

Attachments:

Attachment 1 – Email re Cooperating FFL Concerns to Voth
Attachment 2 – ATF Briefing Paper
Attachment 3 – Gary Kleck WSJ Article
Attachment 4 – DOJ Strategy Combating Mexican Cartels and Related Emails
Attachment 5 – Nov. 24, 2009 Firearm Trace for Patino Purchased Gun Recovered on Nov. 20, 2009
Attachment 6 – SGS for Avila Purchase of 5 Guns on Nov. 24, 2009 and MMS for Avila Purchase of 5 Guns on Nov. 24, 2009
Attachment 7 – SGS for Avila Purchase of 5 Guns on Dec. 12, 2009
Attachment 8 – SGS for Avila Purchase of 3 Guns on Jan. 09, 2010
Attachment 9 – SGS for Avila Purchase of 3 Guns on Jan. 16, 2010
Attachment 10 – Email to ATF Group VII Supervisor David Voth re: Terry Shooting and Avila Connection to Guns Found at Scene
Attachment 11 – Suspect Incident Report re Avila Arrest
Attachment 12 – Cooperating FFL and Voth Emails re Patino Purchase of 20 Guns
Attachment 13 – Senator Grassley Presentation

ATTACHMENT 1

Fox News report

3 messages

Cooperating FFL
To: "Voth, David J." <@usdoj.gov>

Thu, Jun 17, 2010 at 11:56 AM

David,

I hope this email finds you well.

As per our discussion about over communicating I wanted to share some concerns that came up. Tuesday night I watched a segment of a Fox News report about firearms and the border. The segment, if the information was correct, is disturbing to me. When you, Emory and I met on May 13th I shared my concerns with you guys that I wanted to make sure that none of the firearms that were sold per our conversation with you and various ATF agents could or would ever end up south of the border or in the hands of the bad guys. I guess I am looking for a bit of reassurance that the guns are not getting south or in the wrong hands. I know it is an ongoing investigation so there is limited information you can share with me. But as I said in our meeting, I want to help ATF with its investigation but not at the risk of agents safety because I have some very close friends that are US Border Patrol agents in southern AZ as well as my concern for all the agents safety that protect our country. If possible please email me back and share with me any reassurances that you can.

As always thank you for your time and I send this email with all respect and a hart felt concern to do the right thing.

Respectfully,

Cooperating FFL

Voth, David J. <@usdoj.gov>
To: Cooperating FFL

Fri, Jun 18, 2010 at 2:25 PM

[redacted]

[redacted]

Thanks for reaching out to me with your concerns. I would be happy to stop by and speak with you. If possible I have [redacted] next Tuesday, June 22, 2010. Any chance you are available that day around 10:00-10:30 am?

Thanks,

Dave Voth

From: [redacted]
Sent: Thursday, June 17, 2010 11:56 AM
To: Voth, David J.
Subject: Fox News report

[redacted]

[redacted] **Mon, Jun 21, 2010 at 9:34 PM**
Reply-To: [redacted]
To: "Voth, David J." <[redacted]@usdoj.gov>

David,

I am back intown. If you are still free to meet on the 22nd [redacted] around 10 and there for a few hours. Please stop by if you are available, if not let me know when we can reschedule.

Thank you,

[redacted]

Sent from my Verizon Wireless BlackBerry

From: "Voth, David J." <[redacted]@usdoj.gov>
Date: Fri, 18 Jun 2010 17:25:25 -0400
To: [redacted]
Subject: RE: Fox News report

[redacted]

[redacted]

ATTACHMENT 2

Phoenix Field Division
Phoenix Group VII (SWB Group)
Briefing Paper on: 785115-10-[redacted]

Background

1. This investigation has currently identified more than 20 individual connected straw purchasers. More suspects are being identified as the scope of the investigation expands. The straw-purchase suspects currently identified are associated with one another through [redacted] To date (September 2009 – present) this group has purchased in excess of 650 firearms (mainly AK-47 variants) for which they have paid cash totaling more than $350,000.00.

2. To date there have been five (5) notable seizure events connected with this group, and approximately 53 firearms originally purchased by this group have been recovered. Three of these seizures have been in the Country of Mexico, one recovery in Douglas, AZ, and one recovery in Nogales, AZ. The U.S. recoveries were both believed to be destined for Mexico.

3. The seizures referenced above were not from any member of the targeted group of straw purchasers identified in this investigation. Rather, they were from Hispanic individuals (both male and female) whose association with our target group is currently unknown. This is consistent with what ATF agents have observed thus far during surveillance: straw-purchase suspects delivering recently purchased firearms to Hispanic males. Two such transactions were observed to take place at [redacted].

4. At one of the Mexico seizures there were 45 firearms recovered in addition to 500 kilograms of cocaine, 85 pounds of methamphetamine, and over $2,000,000.00 in U.S. currency. Of the 45 firearms recovered, 14 of those firearms (all AK-47 variants) were originally purchased by this target group. Our investigation has not produced any indication of drug trafficking or financial resources consistent with the seizures listed above.

5. In coordinating with DEA in Phoenix, AZ, [redacted]

6. [redacted]

7. There have been [redacted] since January 4, 2010, between the most prolific suspected straw-purchaser and the Federally Licensed Firearms Dealer [redacted] The anticipated purchase is approximately forty (40) rifles.

8. On January 5, 2010, [redacted] GS Voth, and case agent [redacted] met with AUSA Emory Hurley, who is the lead, federal prosecutor on this matter. Investigative and prosecution strategies were discussed and a determination was made that there was minimal evidence at this time to support any type of prosecution; therefore, additional firearms purchases should be monitored and additional evidence continued to be gathered. This investigation was briefed to United States Attorney Dennis Burke, who concurs with the assessment of his line prosecutors and fully supports the continuation of this investigation.

9. [redacted]

10. A joint strategy/de-confliction meeting is planned for Friday, January 15, 2010, with representatives from ICE, DEA, and ATF. This investigation, as well as other ongoing investigations, will be briefed to all present.

Investigative Techniques Used to Date

11. To date in this investigation we have utilized numerous proactive, advanced investigative techniques:
    - [redacted]
    - [redacted]
    - [redacted]
    - [redacted]
    - OCDETF submission to regional committee for approval.
    - Financial investigation.
    - State of Arizona law enforcement queries.
    - [redacted]

- Coordination and de-confliction with other Federal agencies (USAO, DEA, IRS, ICE.)
- Coordination with EPIC and ATF HQ Intel.
- Entering of all known firearms into ATF Suspect Gun Database.
- Coordination with ATF Tracing Center.
- Obtaining ATF Form 4473 and sales receipts from all known firearm purchases.
- Establishing and maintain working relationships with FFLs involved in this investigation to include requesting that they "slow down" their on hand inventory of AK-47 type firearms. (Our relationship is good with the FFLs involved thus far, if we cut off our group they may find other FFLs not as friendly and our intelligence will become exponentially more difficult and slow.)

Strategy

12. This investigation is currently being conducted in conjunction with the Phoenix DEA OCDETF strike force. ATF Phoenix VII is the lead investigating enforcement group. A formal OCDETF proposal is completed and will be presented on January 26, 2009, in furtherance of this investigation. It is unknown at this time what connection exists between these straw-purchasers and the drug trafficking organizations (DTOs) of Mexico.

13. Currently our strategy is to allow the transfer of firearms to continue to take place in order to further the investigation and allow for the identification of additional coconspirators who would continue to operate and illegally traffic firearms to Mexican DTOs which are perpetrating armed violence along the Southwest Border. This all in compliance with ATF 3310.4(b) 148(a)(2).

14. The ultimate goal is to secure [redacted] to identify and prosecute all co-conspirators of the DTO to include the [redacted] identified straw purchasers, the facilitators of the distribution cell centered here in Phoenix, the transportation cells taking firearms South, and ultimately to develop and provide prosecutable information to our Mexican law enforcement counterparts for actions.

ATTACHMENT 3

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LIFE & CULTURE | MAY 21, 2011

The Myth of Big-Time Gun Trafficking

Crime weapons usually come from petty theft and opportunistic dealers, not from an organized black market

By GARY KLECK

In recent decades, advocates of gun control have taken their cause to court, bringing lawsuits that charge the gun industry with negligence because of how it distributes firearms. Large-scale traffickers, these suits claim, purchase guns in big batches from corrupt or irresponsible dealers, especially those operating in states with weak gun control laws. These guns are then moved to places with stricter laws, where they are sold, supposedly at high markups, to criminal buyers.

Advocates argue that gun manufacturers and distributors are aware of these illegal practices and could stop them, if they chose to, by refusing to supply guns to the problematic dealers.

Reuters

Testing out rifle scopes at a Las Vegas convention.

More

- **An American Gun in Mexico**

This theory has been embraced by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, the Brady Campaign to Prevent Gun Violence and even some scholars. They argue that disrupting trafficking operations can have a substantial impact on rates of criminal gun possession and gun violence.

Unfortunately, there is little evidence to support this set of interconnected claims.

The best available study, by researchers at the University of Massachusetts, Amherst, indicates that criminals obtain guns from a wide variety of largely interchangeable low-volume sources. Criminals usually get their guns in one of three ways: as a byproduct of thefts, primarily residential burglaries; by buying guns one at a time from friends and relatives who neither regularly sell guns nor act as "straw purchasers" (legally qualified buyers who purchase guns for those prohibited from doing so); or, if they have no criminal convictions, by lawfully buying guns from licensed dealers.

As my colleague Kevin Wang and I found by examining federal crime data, the overall volume of gun theft alone is huge—at least 400,000 to 600,000 guns are stolen each year in the U.S. This is easily enough to resupply the entire criminal population with guns even if they were completely disarmed at the start of each year.

Based on the findings of law enforcement authorities, which we also gathered for our study, the typical trafficking operation handles fewer than a dozen guns each. The ATF uncovers fewer than 15 high-volume operations (involving over 250 guns) in the country each year.

High-volume trafficking, with or without the involvement of corrupt or negligent dealers, probably supplies less than 1% of the guns in criminal hands. Illicit gun sellers are instead more likely to be burglars who sell a few guns (typically fewer than a half dozen a year) along with all the other saleable property that they steal.

The view that extensive, organized trafficking is important in arming American criminals is based on isolated anecdotes about the occasional large-scale trafficking effort uncovered by law enforcement authorities and on interpretations of highly ambiguous ATF gun "trace" data.

When a criminal is arrested and found to be in possession of a firearm, the police may ask the ATF to trace the gun. This means that its past history, as officially recorded on various legal forms, is established, ideally up to the point when it was first sold as a new gun.

The problem with using these data is that only some crime guns are traced, and those that are traced are not representative of the full set of crime guns. Based on such traces, some claim, for example, that most Mexican crime guns originate with U.S. gun dealers.

But it's likely that police in Mexico submit for ATF tracing only those crime guns that they believe originated in the U.S. This would be reasonable, since those are the ones that the ATF is likely to be able to trace, but it is not a sample from which to generalize.

Even if guns of American origin account for only a small share of all Mexican crime guns, they would comprise nearly all of those submitted by the Mexican authorities for tracing by the ATF.

As for the U.S., when deciding which crime guns to trace, police tend to pick the newer ones because successfully tracing them can provide relatively fresh leads concerning who recently purchased the guns and what dealers sold them. Likewise, police who think (correctly or not) that crime guns in their city are coming from out-of-state sources are more likely to ask the ATF to trace the very guns that they believe to meet that description.

Because the "newness" of crime guns and out-of-state origins are regarded as indicators that the guns were trafficked, trace data provide a misleading picture of the sources of guns used in crimes, exaggerating the share that appears to have been trafficked. As Kevin Wang and I concluded, trafficking levels have no measurable effect on the incidence of gun possession by criminals or the rate of violent crime.

It is hard to avoid the conclusion that strategies aimed at reducing gun trafficking are unlikely to have any measurable effect on gun violence in the U.S. or Mexico. Criminals have plenty of other ways to get guns.

—Mr. Kleck is a professor of criminology at Florida State University and the author of "Targeting Guns: Firearms and Their Control."

Printed in The Wall Street Journal, page C2

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ATTACHMENT 4

[redacted]

From: Newell, William D.
Sent: Tuesday, October 27, 2009 9:00 AM
To: [redacted]
Subject: FW: Southwest Border Strategy Group Meeting
Attachments: cartel strategy2.wpd

Importance: High

Please read and we will discuss. I have a conference call with HQ on this

Bill Newell
Bureau of ATF
Special Agent in Charge
Phoenix Field Division
Office - (602) [redacted]

From: [redacted]
Sent: Tuesday, October 27, 2009 8:22 AM
To: [redacted]; [redacted]; Newell, William D.; [redacted] [redacted]
Subject: FW: Southwest Border Strategy Group Meeting
Importance: High

FYI. Not sure anyone forwarded this document to you. It is the Department's new strategy for combating Mexican drug cartels. A component of the strategy is the reduction of the flow of firearms from the U.S. to Mexico. You may want to take a look prior to our conference call. It is my belief that our enforcement strategies should be aligned with this DOJ strategy.

Thanks.

[redacted]

From: [redacted]
Sent: Monday, October 26, 2009 1:50 PM
To: Chait, Mark R.; McMahon, William G.; Kumor, Daniel J.; [redacted]; McDermond, James E.; O'Keefe, Kevin C.; [redacted]; [redacted]
Cc: [redacted]; Hoover, William J.
Subject: FW: Southwest Border Strategy Group Meeting

As discussed at staff. Please find attached the proposed DOJ Cartel Strategy, which will be run by the DAG's Southwest Border Strategy Group. Please let me know if you have any comments or questions.

From: [redacted] **On Behalf Of** Ogden, David W. (ODAG)
Sent: Friday, October 23, 2009 6:03 PM
To: [redacted] (ODAG); [redacted] (ODAG); [redacted] (ODAG); [redacted] (CTV); [redacted] Breuer, Lanny A. (CRM); [redacted] (CRM); Melson, Kenneth E.; [redacted] Hoover, William J.; Leonhart, Michele M. (DEA-US); Mueller, Robert S. III (FBI); [redacted] (FBI); [redacted] (FBI); [redacted] (FBI); [redacted] (FBI); [redacted] (USMS) DIR; [redacted] (USMS); [redacted] (BOP); [redacted] (BOP); [redacted] (BOP); [redacted] (USAEO); [redacted] (USAEO); [redacted] (ODAG); Burke, Dennis (USAAZ); [redacted] (USACAS); [redacted] (USANM); [redacted] (USATXS) 7; [redacted] (USATXW); [redacted] (USMS)

1

Cc: [redacted] (CRM); [redacted] (CRM); [redacted] (CRM)
Subject: RE: Southwest Border Strategy Group Meeting

On behalf of DAG Ogden
Earlier today you received notice from [redacted] of the inaugural meeting of the Southwest Border Strategy Group next Monday. One of the items that will be on the agenda for that meeting is discussion, and, if possible, adoption, of the Department's Strategy for Combating the Mexican Cartels. I am attaching hereto a draft copy of the strategy. It reflects a great deal of discussion with, and contributions from, many of your components over the past several months. The DAG asks that you come prepared with any specific suggestions or recommendations you may have related to this document

And here is the document to attach:
<<cartel.strategy2.wpd>>

[redacted]

From: [redacted] **On Behalf Of** Ogden, David W. (ODAG)
Sent: Thursday, October 22, 2009 6:32 PM
To: [redacted] (ODAG); [redacted] (ODAG); [redacted] (CV); [redacted] Breuer, Lanny A. (CRM); [redacted] (CRM); Melson, Kenneth E. (ATF); [redacted] (ATF); Hoover, William J. (ATF); Leonhart, Michele M. (DEA-US); Mueller, Robert S. III (FBI); [redacted] (FBI); [redacted] (FBI); [redacted] (FBI); [redacted] (USMS) DIR; [redacted] (USMS); [redacted] (BOP); [redacted] (BOP); [redacted] (BOP); [redacted] (USAEO); [redacted] (USAEO); [redacted] (ODAG); Burke, Dennis (USAAZ); [redacted] (USACAS); [redacted] (USANM); [redacted] (USATXS) 7; [redacted] (USATXW); [redacted] (USMS)

Cc: [redacted] (CRM); [redacted] (CRM); [redacted] (CRM)
Subject: Southwest Border Strategy Group Meeting
When: Monday, October 26, 2009 11:30 AM-12:30 PM (GMT-05:00) Eastern Time (US & Canada).
Where: Main RFK Bldg., Room [redacted]

Call in telephone #: (202) 353-[redacted] and Pass Code #: [redacted]

Briefing materials in binder -- Tab #3.

Attendees: [redacted] AAG Lanny Breuer/CRM [redacted]

- Ken Melson, Director, ATF, [redacted] William Hoover
- Michelle Leonhart, Administrator, DEA
- Robert Mueller, Director, FBI, [redacted]
- [redacted], Director, USMS, [redacted]
- [redacted] Director, BOP, [redacted] attending on behalf of [redacted]
- [redacted] Director, EOUSA, [redacted]
- [redacted], Director, OCDETF
- Dennis Burke, U.S. Attorney, District of Arizona by telephone
- Karen Hewitt, U.S. Attorney, Southern District of California
- Greg Fouratt, U.S. Attorney, District of New Mexico
- Tim Johnson, U.S. Attorney, Southern District of Texas by telephone
- John Murphy, U.S. Attorney, Western District of Texas
- [redacted] Chair, Attorney General's Advisory Committee ("AGAC")

DEPARTMENT OF JUSTICE STRATEGY FOR COMBATING THE MEXICAN CARTELS

It is a priority of the Department of Justice to stem the growing violence and associated criminal activity perpetrated by the Mexican drug cartels, along the Southwest Border and throughout the nation. In order to maximize the efficacy of its limited resources, which are spread through numerous components of the Department, it is necessary that the Department deploy those resources pursuant to a single, coherent strategic plan.

An essential aspect of the DOJ plan must be ensuring a productive partnership with the government of Mexico, as well as with our state and local law enforcement counterparts. Equally important, we must avoid wasteful overlap and duplication with the activities of our other federal partners, particularly the law enforcement agencies at the Department of Homeland Security.

The following document sets forth the policy considerations that will guide the Department in this process.

The Strategy

The Department will implement its Strategy for Combating the Mexican Cartels under the supervision of the newly-created Southwest Border Strategy Group.

Operationally, the strategy will be executed through the proven mechanism of prosecutor-led, multi-agency task forces, using the Organized Crime Drug Enforcement Task Forces (OCDETF) Program as the primary coordinating platform. The Strategy's key objectives are to:

- Increase the safety and security of U.S. citizens throughout the United States by enforcing violations of federal law along the Southwest Border.

- Reduce the flow of narcotics and other contraband entering the United States

- Reduce the flow of illegal weapons, ammunition, explosives, and currency exiting the United States and entering Mexico.

- Strengthen Mexico's operational capacities and enhance its law enforcement institutions.

- Increase bilateral cooperation between Mexico and the United States on fugitive capture and extradition activities.

Increase intelligence and information sharing to achieve focused targeting of the most significant criminal organizations.

Improve case building through interagency coordination, leveraging the expertise and authority of each investigative and prosecutorial agency.

Maximize the effectiveness of prosecution by locating, arresting, extraditing, and trying all levels, including most importantly the leadership, of these criminal organizations, and disrupting and dismantling the organizations' domestic transportation and distribution cells.

Division of Responsibilities with DHS

Addressing the Southwest Border threat has two basic elements: policing the actual border to interdict and deter the illegal crossing of undocumented persons or contraband goods, and confronting the large criminal organizations operating simultaneously on both sides of the border.

Given its statutory mission and the resources it can bring to bear at the border, DHS clearly bears primary responsibility for the policing function. DOJ fully supports DHS in that endeavor by sharing relevant intelligence and by prosecuting the most egregious offenders DHS arrests in the course of its policing function. The Department of Justice prosecutes tens of thousands of these reactive law enforcement cases in federal court every year.

However, the root cause of the explosion of violence along the Southwest Border is the conflicts within and among a limited number of sophisticated, transnational criminal organizations. These hierarchical, Mexico-based cartels are responsible for smuggling into the United States most of our nation's illegal drug supply. While the cartels' primary business is drug trafficking, they also sponsor a panoply of other crimes that support their illegal operations. These other crimes include extortion, torture, murder, corruption of public officials, sheltering of wanted fugitives, kidnapping and human smuggling, laundering of illicit criminal proceeds through the existing financial system and through bulk cash smuggling, and the illegal acquisition, trafficking, and use of firearms and explosives.

It is in taking down these organized, multi-faceted criminal enterprises that DOJ plays the primary role and brings to bear its special expertise. DOJ's success in this endeavor assists, in turn, DHS in the performance of its policing and enforcement function, by disrupting the operations of the cartels, thereby decreasing the pressure on the border. For its part, DHS, and in particular ICE, provides invaluable assistance to the attack on these criminal organizations, by bringing to bear its unique expertise on cross-border transit of contraband.

Border policing and interdiction, and the resulting prosecutions, are key elements of the U.S. government's overall border security strategy. However, the investigation, apprehension, extradition, and prosecution of key cartel leaders and their associates, and the deprivation through forfeiture of their ill-gotten gains, is the most effective means by which we can move past merely addressing the symptoms of our problems along the Southwest Border and attack, instead, the underlying causes.

Deployment of Resources

The Department's view – based on its decades of experience in investigating, prosecuting, and dismantling organized criminal groups, such as the Mafia, international terrorist groups, and domestic and transnational gangs – is that the best way to fight large scale criminal organizations is through intelligence-based, prosecutor-led, multi-agency task forces that blend the strengths, resources, and expertise of the complete spectrum of federal, state, local, and international investigative and prosecutorial agencies. Through their participation in such task forces, the Department's prosecutors, together with its component law enforcement agencies – DEA, ATF, FBI, and USMS – give the Department the capacity to carry out the full range of activities necessary to succeed against these organizations.

The Department has embraced a model to achieve these comprehensive goals that is proactive, in which we develop priority targets through the extensive use of intelligence. This intelligence is obtained from law enforcement sources, as well as through the careful and disciplined use of classified information from intelligence community agencies to provide unclassified leads. Sharing information, we build cases, coordinating long-term, extensive investigations to identify all the tentacles of a particular organization. Through sustained coordination of these operations, we are able to execute a coordinated enforcement action, arresting as many high-level members of the organization as possible, disrupting and dismantling the domestic transportation and distribution cells of the organization, and seizing as many of the organization's assets as possible, whether those assets be in the form of bank accounts, real property, cash, drugs, or weapons. Finally, we prosecute the leaders of the cartels and their principal facilitators, locating, arresting, and extraditing them from abroad as necessary. In this effort, we coordinate closely with our Mexican counterparts to achieve the goal: destruction or weakening of the drug cartels to the point that they no longer pose a viable threat to U.S. interests and can be dealt with by Mexican law enforcement in conjunction with a strengthened judicial system and an improved legal framework for fighting organized crime.

The principal platform for the support and oversight of these prosecutor-led, multi-agency task forces is the OCDETF Program. In most places, along the border and throughout the country, OCDETF provides an effective mechanism for law

enforcement agencies from within DOJ, from elsewhere in the federal government (including DHS and Treasury), and state and local law enforcement, to combine with federal prosecutors to form a "virtual task force" for the purpose of investigating and prosecuting a particular high-value drug trafficking organization. In certain key locales, OCDETF has established actual, brick-and-mortar Co-Located Strike Forces, for the pursuit of the highest level traffickers of drugs, guns, and money. For instance, the San Diego Major Mexican Traffickers Task Force has been responsible for coordinating the U.S. government's successful efforts against the Arellano-Felix Organization. The Houston OCDETF Strike Force has directed our most damaging blows against the Gulf Cartel. And in the first several months of its existence, the Arizona OCDETF Strike Force has been responsible for the indictment of a leader and other members of a major Mexican cartel and the seizure of over $43 million in cartel assets.

The Department will use the OCDETF Strike Force concept to target all the organized crime activities of the drug cartels – not just those crimes directly related to the drug trade. By further leveraging and coordinating the investigative expertise and jurisdiction of law enforcement agencies outside the drug enforcement area, the Department will task the Strike Forces to disrupt and dismantle every area of the cartels' infrastructure and undermine their ability to operate successfully in any illegal activity.

On a local level, each Strike Force co-locates law enforcement resources that are supplemented by one or more on-site Assistant United States Attorneys. Retaining the current Strike Force structure, specifically the co-location and intensive and early prosecutorial involvement, ensures that the Department capitalizes upon the proven synergy of these Strike Forces to maximize the effectiveness of long-term investigations of these organizations.

In those locations where they currently exist, DOJ will make the OCDETF Co-Located Strike Forces the focal point for interagency efforts against the Mexican criminal organizations.[1] Elsewhere along the border, and throughout the nation, DOJ will seek to replicate, to the extent possible, the OCDETF Strike Force model, in particular the characteristics of interagency cooperation, information sharing, and strategic, intelligence-based targeting that have been embodied in these Strike Forces. Depending on local conditions, existing institutions, such as HIDTA task forces, Southwest Border Initiative Groups, VICIT teams, or Safe Streets Task forces may serve as the appropriate focal point for this interagency cooperation in locations that do not have OCDETF Strike Forces.

The OCDETF Strike Force is a proven law enforcement strategy with a proven history of success in combating the major drug trafficking organizations. The synergy

[1] OCDETF Co-Located Strike Forces are currently located in [redacted]

created by co-locating the diverse expertise of federal, state, and local law enforcement agencies with prosecutors from the U.S. Attorney's Office, has had demonstrable success against major criminal organizations operating throughout the country.

Supplementing the regional operations of the Strike Forces with a comprehensive national policy and coordination body run out of the Office of the Deputy Attorney General, will give the Department a unified and comprehensive vehicle through which the United States government can disrupt the influence of the cartels. This unified and coordinated approach to law enforcement is not only the best way to use the formidable resources of the United States government, but also the most effective way to decrease the influence of these violent criminal enterprises while enhancing the public safety.

While the prosecutor-led, intelligence-driven, multi-agency task force model is a key component of the Department's Southwest Border Strategy, it will not be the only component. We must also recognize and support the important daily work performed by our investigators and prosecutors in stopping and seizing the flow of massive amounts of narcotics, firearms, and bulk cash from flowing across the border in both directions. These more reactive narcotics cases are important to the overall cartel strategy, because in the process we are seizing millions of pounds of drugs, thousands of firearms, and millions of dollars in bulk cash as they enter and exit the country. In addition, these commodity-focused cases yield significant intelligence that is then fed into the Special Operations Division (SOD), the OCDETF Fusion Center (OFC), and the El Paso Intelligence Center (EPIC) for use in supporting more proactive, intelligence-driven investigations that are designed to attack all of the cartels' diverse lines of illegal business. Therefore, the Department's Strategy for Combating the Mexican Cartels must include an assessment of the resource needs of all our components, and a plan for how they intend to achieve the stated goals of the Strategy in light of the specific cartel activity impacting their jurisdictions.

Intelligence

Law enforcement agencies must have the ability to access, link, and interpret voluminous intelligence information from as wide a community as possible. We use this shared information to identify and target the most significant organizations, so that we can achieve the greatest impact with our finite resources. We also use shared information to develop coordinated, multi-jurisdictional investigations of those high-impact targets, making sure that investigations are mutually reinforcing, without duplicating or jeopardizing other investigations targeting overlapping organizations.

Several multi-agency endeavors are particularly important to the provision of tactical intelligence and operational support in targeting the largest and most dangerous Mexican cartels.

The Attorney General's Consolidated Priority Organization Target (CPOT) List

The CPOT list of international "Most Wanted" drug kingpins will be used to help focus our critical resources on the greatest threats from the Mexican cartels. Of the 59 worldwide cartels currently on the list, 25 of them are Mexico-based.

The El Paso Intelligence Center (EPIC)

EPIC is a DEA-led multi-agency organization that provides case-specific tactical intelligence, focusing specifically on the Southwest Border. [redacted]

The Special Operations Division (SOD)

[redacted]

The OCDETF Fusion Center (OFC)

[redacted]

Current Areas of Focus

Pursuant to the principles articulated above, DOJ is pursuing initiatives in the following areas:

1. Ramping up Establishment and Use of Vetted Units in Mexico

An important aspect of case building in Mexico involves U.S. cooperation with specially vetted Mexican law enforcement units. DOJ law enforcement agents work in an advisory capacity to develop elite vetted units of Mexican federal police officers, training them to conduct law enforcement operations that lead to the discovery and seizure of drugs, guns, explosives, money, and documentary evidence to support bilateral investigations and prosecutions. The Mexican units also arrest active members of the cartels, who may eventually become either cooperating witnesses, defendants, or both. These units are essential to our operations. In order to properly leverage and support these crucial operations, the Department must expand their number, to include more drug trafficking units, a firearms trafficking unit, a money-laundering/financial unit, and a fugitive apprehension unit.

2. Continued Focus on Attacking Cartel Finances

A particular point of emphasis in recent years has been the dismantlement of the financial infrastructure of the drug trafficking organizations. These efforts have been hampered by the fact that financial cases are complex and time-consuming, and the pool of experienced financial investigators is finite. Since the curtailment of IRS involvement in drug investigations in 2005, ATF, DEA, FBI, and USMS have hired additional financial investigators and forfeiture specialists. OCDETF has established the Financial Investigative Contractor (FIC) Program to bring additional experienced financial investigators to bear on the largest cartels, and has buttressed the analytical and document exploitation capabilities of its Co-Located Strike Forces in [redacted] DEA has implemented Financial Investigation Teams (FITs) in its field divisions to target the financial assets of drug traffickers. Analysts and attorneys in the U.S. Attorney's Offices and in the Department's Asset Forfeiture and Money Laundering Section have also stepped up their efforts to assist. In addition, Southwest Region federal agencies are working with state and local law enforcement agencies on an OCDETF bulk currency initiative that targets the highest level drug cartels and their transportation routes in the Southwest. These efforts must be supported and expanded.

3. Attacking the Southbound Flow of Firearms

Addressing the flow of weapons into Mexico from the United States is also a primary focus of our efforts. ATF's intelligence has shown that the prevalence of firearms and explosives trafficking into Mexico has a direct nexus to the cartels' national domestic drug distribution network. Thus, given the national scope of this issue, merely seizing firearms through interdiction will not stop firearms trafficking to Mexico. We must identify, investigate, and eliminate the sources of illegally trafficked firearms and the networks that transport them. Since 2006, Project Gunrunner has been ATF's comprehensive strategy to combat firearms-related violence perpetrated by the drug cartels along the Southwest Border. Increasingly close collaboration between ATF and the efforts of the multi-agency drug task forces along the border, including, most particularly,

the OCDETF co-located Strike Forces, ensures that scarce ATF resources are directed at the most important targets.

4. Increased Focus on Locating and Apprehending Fugitives

[redacted]

5. Expanded Use of the Extradition Process

[redacted]

6. Continued Pursuit of Corrupt Public Officials Who Facilitate the Drug Trade

[redacted]

7. Merida

[redacted]

[redacted]

ATTACHMENT 5

DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
NATIONAL TRACING CENTER
Phone:(800) [redacted] Fax:(800) [redacted]
Print Date: [redacted]

FIREARMS TRACE SUMMARY

Trace Number: T20090344359 Request Date: November 24, 2009 Completion Date: November 30, 2009

[redacted]
OFFICE OF STRATEGIC INTEL.
[redacted]
WASHINGTON, DC 20226
PHONE: (202) [redacted] Ext:
FAX (202) [redacted]

Badge No:
Investigation No: 164020-10-[redacted]

[redacted]
INFORMATION CENTER COMBATTING
[redacted]
MEXICO CITY, DF 04640
MEXICO

Badge No:
Investigation No:

FIREARM INFORMATION

Manufacturer: ROMARM/CUGIR
Model: DRACO
Caliber: 762
Serial Number: DR-3389-09
Type: PISTOL
Country: ROMANIA
Importer: CENTURY ARMS INC (CAI), NY
Obliterated:
Identifying Marks:
NIBIN:
Gang Name:

RECOVERY INFORMATION

Recovery Date: 11/20/2009
Time to Crime: 14 days
ADRIANA DE NACO, SO
MEXICO
Possessor: [redacted]
DOB: [redacted]
POB: [redacted] UNITED STATES

PURCHASER INFORMATION

Purchase Date: 11/08/2009
URIEL NMN PATINO
[redacted]
PHOENIX, AZ 85037
DOB: [redacted]
POB: PHOENIX, AZ UNITED STATES
Race: HISPANIC Height: ft in
Sex: Male Weight: lbs
ID 1: AZ DRIVER'S LICENSE: [redacted]
ID 2: : REMOVED
Contact the local ATF office for additional information.

DEALER INFORMATION

FFL: [redacted]
LONE WOLF TRADING COMPANY LLC
[redacted]
GLENDALE, AZ 85302
Phone: (623) [redacted] Ext: Ship-To-Date:

ADMINISTRATIVE INFORMATION

PREVIA: AP/PGR/SON/AGP-I/492/2009

SUMMARY OF RESULTS

THE DESCRIBED FIREARM WAS DETERMINED TO HAVE BEEN SOLD AS PART OF A MULTIPLE HANDGUN SALE AND REPORTED TO ATF BY A FEDERAL FIREARMS LICENSEE (FFL). THE TRANSACTION DATE NOTED IN THIS TRACE SUMMARY IS THE DATE THE MULTIPLE SALE WAS GENERATED BY THE FFL AND MAY NOT REPRESENT THE ACTUAL TRANSACTION DATE OF THE TRACED FIREARM. TO VERIFY THE ACTUAL TRANSACTION DATE OF THE TRACED FIREARM, PLEASE CONTACT THE FFL.

The information in this report must be validated prior to use in any criminal proceedings.

Unclassified Controlled Information

ATTACHMENT 6

DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
NATIONAL TRACING CENTER

Phone:(800)[redacted] Fax:(800)[redacted]

Print Date:[redacted]

MULTIPLE SALE SUMMARY

Multiple Sale Number: M20090200525 **Entered Date: November 25, 2009** **Field Division: PHOENIX**

DEALER INFORMATION

Business Name:
Licensee Name: [redacted]
Address: [redacted]
GLENDALE, AZ 85302
Phone: (623)[redacted] Ext:
FFL Number: [redacted]

PURCHASER INFORMATION

Purchase Date: 11/24/2009
Name: JAIME NMN AVILA JR
Address: [redacted]
PHOENIX, AZ 85035
DOB: [redacted] **Race:** HISPANIC **Sex:** Male
POB: [redacted] UNITED STATES
ID 1: AR DRIVER'S LICENSE #: [redacted]
ID 2: #:
Purchaser may be associated with 9 other trace(s)/multiple sale(s).

Weapon Summary

Weapon Count: 5

Manufacturer	Model	Caliber	Serial Number	Type	Importer	Origin
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386195549	PISTOL		BG
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386195544	PISTOL		BG
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386194225	PISTOL		BG
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386195542	PISTOL		BG
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386195543	PISTOL		BG

Unclassified Controlled Information

DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
NATIONAL TRACING CENTER

Phone: (800) [redacted] Fax: (800) [redacted]
Print Date: [redacted]

SUSPECT GUN SUMMARY

Suspect Gun Number: S20090001704 Entered Date: November 25, 2009

[redacted]
PHOENIX FD GROUP VII
[redacted]
PHOENIX, AZ 85004

Badge No:
Investigation No: 785115-10-[redacted]

DEALER INFORMATION

Business Name:
Licensee Name: [redacted]
Address: [redacted]
GLENDALE, AZ 85302
Phone: (623) [redacted] Ext:
FFL Number: [redacted]
Invoice #:

INDIVIDUAL INFORMATION

Name: JAIME AVILA JR
Address: [redacted]
PHOENIX, AZ 85035
DOB: [redacted] Race: HISPANIC Sex: Male
Height: Weight: Date: 11/24/2009
ID 1: AZ DRIVER'S LICENSE #: [redacted]
ID 2: #:

NOTICE

The firearm(s) listed below was entered into the Firearms Tracing System as a suspect gun. You have requested NTC maintain a lookout for the firearm(s). If any of the suspect guns in this report are traced by another agency and/or individual, your Division's Firearms Trafficking Coordinator (FTC) will be notified in writing by the NTC. The notification will include the identity of the officer and/or agency requesting the trace. It will be incumbent upon the FTC or yourself to contact the firearms trace requestor. The NTC will not release any information concerning your suspect gun(s).

Weapon Summary

Weapon Count: 5

Manufacturer	Model	Caliber	Serial Number	Type	Importer
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386195549	PISTOL	UNKNOWN IMPORTER
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386195544	PISTOL	UNKNOWN IMPORTER
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386194225	PISTOL	UNKNOWN IMPORTER
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386195542	PISTOL	UNKNOWN IMPORTER
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386195543	PISTOL	UNKNOWN IMPORTER

Unclassified Controlled Information

ATTACHMENT 7

DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
NATIONAL TRACING CENTER

Phone:(800) [redacted] **Fax:(800)** [redacted]
Print Date: [redacted]

SUSPECT GUN SUMMARY

Suspect Gun Number: S20090001790 **Entered Date: December 14, 2009**

[redacted]
PHOENIX FD GROUP VII
[redacted]
PHOENIX, AZ 85004

Badge No:
Investigation No: 785115-10-[redacted]

DEALER INFORMATION		INDIVIDUAL INFORMATION	
Business Name:		**Name:** JAIME AVILA JR	
Licensee Name:	[redacted]	**Address:**	[redacted]
Address:	[redacted] GLENDALE, AZ 85302	**DOB:** [redacted]	**Race:** HISPANIC **Sex:** Male
Phone: (623) [redacted] Ext:		**Height:**	**Weight:** **Date:** 12/12/2009
FFL Number: [redacted]		**ID 1:**	#:
Invoice #:		**ID 2:**	#:

NOTICE

The firearm(s) listed below was entered into the Firearms Tracing System as a suspect gun. You have requested NTC maintain a lookout for the firearm(s). If any of the suspect guns in this report are traced by another agency and/or individual, your Division's Firearms Trafficking Coordinator (FTC) will be notified in writing by the NTC. The notification will include the identity of the officer and/or agency requesting the trace. It will be incumbent upon the FTC or yourself to contact the firearms trace requestor. The NTC will not release any information concerning your suspect gun(s).

Weapon Summary

Weapon Count: 5

Manufacturer	Model	Caliber	Serial Number	Type	Importer
ROMARM/CUGIR	GP WASR-10	762	SI-3471-1988	RIFLE	CENTURY ARMS INC (CAI), ST. ALBANS, VT
ROMARM/CUGIR	GP WASR-10	762	1984PF6264	RIFLE	CENTURY ARMS INC (CAI), ST. ALBANS, VT
ROMARM/CUGIR	GP WASR-10	762	1973EI3356	RIFLE	CENTURY ARMS INC (CAI), ST. ALBANS, VT
ROMARM/CUGIR	GP WASR-10	762	1979IS3200	RIFLE	CENTURY ARMS INC (CAI), ST. ALBANS, VT
ROMARM/CUGIR		762	1970CO1639	RIFLE	CENTURY ARMS INC (CAI), ST. ALBANS, VT

Unclassified Controlled Information

ATTACHMENT 8

DEPARTMENT OF JUSTICE

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

NATIONAL TRACING CENTER

Phone:(800)[redacted] Fax:(800)[redacted]

Print Date: [redacted]

SUSPECT GUN SUMMARY

Suspect Gun Number: S20100000059 **Entered Date: January 14, 2010**

[redacted]
PHOENIX FD GROUP VII
[redacted]
PHOENIX, AZ 85004

Badge No:
Investigation No: 785115-10-[redacted]

DEALER INFORMATION

Business Name:
Licensee Name: [redacted]
Address: [redacted]
GLENDALE, AZ 85302
Phone: (623)[redacted] Ext:
FFL Number: [redacted]
Invoice #:

INDIVIDUAL INFORMATION

Name: JAIME NMN AVILA JR
Address: [redacted]
PHOENIX, AZ 85035
DOB: [redacted] **Race:** HISPANIC **Sex:** Male
Height: **Weight:** **Date:** 01/09/2010
ID 1: AZ DRIVER'S LICENSE **#:** [redacted]
ID 2: **#:**

NOTICE

The firearm(s) listed below was entered into the Firearms Tracing System as a suspect gun. You have requested NTC maintain a lookout for the firearm(s). If any of the suspect guns in this report are traced by another agency and/or individual, your Division's Firearms Trafficking Coordinator(FTC) will be notified in writing by the NTC. The notification will include the identity of the officer and/or agency requesting the trace. It will be incumbent upon the FTC or yourself to contact the firearms trace requestor. The NTC will not release any information concerning your suspect gun(s).

Weapon Summary

Weapon Count: 3

Manufacturer	Model	Caliber	Serial Number	Type	Importer
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386203502	PISTOL	FNH USA LLC, FREDERICKSBURG VA
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386203509	PISTOL	FNH USA LLC, FREDERICKSBURG VA
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386206115	PISTOL	FNH USA LLC, FREDERICKSBURG VA

Unclassified Controlled Unclassified Information

ATTACHMENT 9

DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
NATIONAL TRACING CENTER

Phone:(800) [redacted] **Fax:(800)** [redacted]
Print Date: [redacted]

SUSPECT GUN SUMMARY

Suspect Gun Number: S20100000088 **Entered Date: January 19, 2010**

[redacted]
PHOENIX FD GROUP VII
[redacted]
PHOENIX, AZ 85004

Badge No:
Investigation No: 785115-10-[redacted]

DEALER INFORMATION

Business Name:
Licensee Name: [redacted]
Address: [redacted]
GLENDALE, AZ 85302
Phone: (623) [redacted] Ext:
FFL Number: [redacted]
Invoice #:

INDIVIDUAL INFORMATION

Name: JAIME AVILA JR
Address: [redacted]
PHOENIX, AZ 85035
DOB: [redacted] **Race:** HISPANIC **Sex:** Male
Height: **Weight:** **Date:** 01/16/2010
ID 1: #:
ID 2: #:

NOTICE

The firearm(s) listed below was entered into the Firearms Tracing System as a suspect gun. You have requested NTC maintain a lookout for the firearm(s). If any of the suspect guns in this report are traced by another agency and/or individual, your Division's Firearms Trafficking Coordinator(FTC) will be notified in writing by the NTC. The notification will include the identity of the officer and/or agency requesting the trace. It will be incumbent upon the FTC or yourself to contact the firearms trace requestor. The NTC will not release any information concerning your suspect gun(s).

Weapon Summary

Weapon Count: 3

Manufacturer	Model	Caliber	Serial Number	Type	Importer
ROMARM/CUGIR	WASR-10	762	1983AH3977	RIFLE	CENTURY ARMS INC (CAI), ST. ALBANS, VT
ROMARM/CUGIR	WASR-10	762	1979IS1530	RIFLE	CENTURY ARMS INC (CAI), ST. ALBANS, VT
ROMARM/CUGIR	WASR-10	762	1971CZ3775	RIFLE	CENTURY ARMS INC (CAI), ST. ALBANS, VT

Unclassified Controlled Information

ATTACHMENT 10

[redacted]

From: Newell, William D.
Sent: Wednesday, December 15, 2010 5:30 PM
To: [redacted]
Subject: RE: Nogales Shooting

Call my extensión. Thanks

Bill Newell
Special Agent in Charge
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
Phoenix Field Division (Arizona and New Mexico)
Office - (602) [redacted]

From: [redacted]
Sent: Wednesday, December 15, 2010 5:01 PM
To: [redacted]
Cc: Voth, David J.; [redacted] Newell, William D.
Subject: Re: Nogales Shooting

10-4. Thanks!

[redacted]
Cell: 602 [redacted]

***
NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: [redacted]
To: [redacted]
Sent: Wed Dec 15 18:46:14 2010
Subject: Re: Nogales Shooting

Boss Thus far these are the only two that have been identified that I know. Very difficult to reach these guys roaming the hills. I will find out. From talking with [redacted] sounds like they are out in the middle of nowhere. He had to climb a ridge for air service. Talked to she will call with trace results. From Fast and Furious

***
NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: [redacted]
To: [redacted]

Cc: Newell, William D.
Sent: Wed Dec 15 18:31:58 2010
Subject: Re: Nogales Shooting

Thank you, [redacted]. Are these two in addition to the gun already recovered this morning?

[redacted]
Cell: 602[redacted]

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: [redacted]
To: [redacted]
Sent: Wed Dec 15 16:26:40 2010
Subject: Re: Nogales Shooting

[redacted] I am still here at the CISEN intel meeting at TPD. I just talked [redacted] out in Nogales in the hills. They have two AKs WASHRs from CAI. I have called [redacted] to trace the guns. She has initiated an urgent. I am the poc for the traces

---

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From: [redacted]
To: [redacted]
Cc: [redacted]; Newell, William D.
Sent: Wed Dec 15 12:02:14 2010
Subject: RE: Nogales Shooting
Thanks [redacted]. I appreciate the update.

From: [redacted]
Sent: Wednesday, December 15, 2010 9:54 AM
To: [redacted]
Cc: [redacted]
Subject: Nogales Shooting

Just talked to an FBI agent, the BP did recovered an AK47, and they will provide us the info. We will conduct an urgent trace immediately after we get the info- if they haven't already through other channels.

[redacted]
Cell [redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 15, 2010 5:47 PM
To: Newell, William D.
Cc: [redacted]
Subject: Fw: U.S. Border Patrol Agent killed in the line of duty - Two firearms recovered by ATF

Bill -

FYI -

[redacted]
Cell: 602-[redacted]

***

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: [redacted]
To: [redacted] Voth, David J.; [redacted]; [redacted]
Cc: [redacted]; [redacted]
Sent: Wed Dec 15 19:45:03 2010
Subject: U.S. Border Patrol Agent killed in the line of duty - Two firearms recovered by ATF

The two firearms recovered by ATF this afternoon near Rio Rico, Arizona, in conjunction with the shooting death of U.S. Border Patrol agent Terry were identified as 'Suspect Guns' in the Fast and Furious investigation 785115-10-[redacted]

The firearms are identified as follows:

Romarm/CUGIR, 762 rifle, Model GP WASR 10/63, serial number 1971CZ3775
Romarm/CUGIR, 762 rifle, Model GP WASR 10/63, serial number 1983AH3977

[redacted] contact me late this afternoon requesting Intel assistance in the tracing of two recovered firearms.

I initiated an urgent firearms trace requests on both of the firearms and then contacted the NTC to ensure the traces were conducted today.

I was advised by the NTC that the firearms were entered into ATF Suspect Gun database by [redacted] and associated to the Fast and Furious investigation. The NTC further advised that on 01/16/10 Jaime AVILA purchased three Romarm 7.62 rifles from Lone Wolf Trading Company, two of these firearms are the recovered firearms cited above.

No trace has been submitted on the third firearm purchased by AVILA (serial number 1979IS1530). I am researching the trace status of the firearms recovered earlier today by the FBI.

Should you have any questions or need further assistance, please contact me.

[redacted] - Senior IRS
Acting Intel Group Supervisor
(602[redacted] - Direct
(602)[redacted] - Mobile
(602)[redacted] - Fax

From: [redacted]
Sent: Wednesday, December 15, 2010 11:24 AM
To: All Phoenix Exchange
Subject: U.S. Border Patrol Agent killed in the line of duty

A U.S. Border Patrol agent, Brian A. Terry, 40, was shot and killed north of the Arizona-Mexico border while trying to catch bandits who target illegal immigrants. Terry, working as part of a BORTAC unit, was waiting with three other agents in a remote area north of Nogales, Ariz., late Tuesday night when a gunfight with the bandits began. No other agents were injured, but one of the suspects was wounded in the shootout. Terry was shot in the back and was pronounced dead at approximately 4:00 AM today.

The FBI is investigating the shooting. Four suspects are in custody and Law Enforcement Personnel are searching for a fifth.

ATF Tucson personnel are assisting with the follow-up investigation and will be assisting with a search of the area. A firearm in the custody of the FBI is currently being traced.

[redacted]
Office: (602)[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 15, 2010 6:05 PM
To: Newell, William D.
Cc: [redacted]
Subject: Fw: FYI...

Bill -

Fyi. Also, the USMS will be contacting GS Voth to assist.

[redacted]
Cell: 602-[redacted]

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Voth, David J.
To: Newell, William D.; [redacted]
Cc: [redacted]
Sent: Wed Dec 15 20:00:47 2010
Subject: FYI...

Jamie Avila purchased 52 firearms from November 2009 thru June 2010 for which he paid approximately $48,000.00 cash. The firearms consisted of FN 5.7 pistols, 1 Barrett 50 BMG rifle, AK-47 variant rifles, Ruger 9mm handguns, Colt 38 supers etc...

David Voth
Group Supervisor
Phoenix Group VII
602-[redacted]

[redacted]

From: Newell, William D.
Sent: Wednesday, December 15, 2010 9:43 PM
To: Voth, David J.; [redacted]
Cc: [redacted]
Subject: Re: Avila in custody

Great job.

...

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From: Voth, David J.
To: Newell, William D.; [redacted]
Cc: [redacted]
Sent: Wed Dec 15 23:41:30 2010
Subject: Avila in custody

We (ATF) have Jaime Avila in our custody. We are coordinating with the USAO to charge him in the morning via Complaint. We are holding him overnight in custody.

We are charging Avila with a standalone June 2010 firearms purchase where he used a bad (old) address on the 4473. [924(a)(1)(A) – False records required to be kept by dealer.] This way we do not divulge our current case (Fast & Furious) or the Border Patrol shooting case.

Thanks,

David Voth
Group Supervisor
Phoenix Group VII
602-[redacted]

[redacted]

From: Voth, David J.
Sent: Wednesday, December 15, 2010 9:42 PM
To: Newell, William D.; [redacted]
Cc: [redacted]
Subject: Avila in custody

We (ATF) have Jaime Avila in our custody. We are coordinating with the USAO to charge him in the morning via Complaint. We are holding him overnight in custody.

We are charging Avila with a standalone June 2010 firearms purchase where he used a bad (old) address on the 4473. [924(a)(1)(A) – False records required to be kept by dealer.] This way we do not divulge our current case (Fast & Furious) or the Border Patrol shooting case.

Thanks,

David Voth
Group Supervisor
Phoenix Group VII
602-[redacted]

[redacted]

From: [redacted]
Sent: Thursday, December 16, 2010 9:35 AM
To: [redacted] Newell, William D.
Subject: SIR

DEPARTMENT OF JUSTICE - BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES SIGNIFICANT INFORMATION REPORT

DATE: December 16, 2010
FROM: Phoenix Field Division
FIELD OFFICE: Phoenix VII Field Office

CASE INFORMATION

CASE NUMBER: 785115-10-[redacted]
CASE TITLE: [redacted]
SPECIAL AGENT: Voth, David
TELEPHONE NUMBER: (602) [redacted]

SYNOPSIS OF INCIDENT/ACTIVITY:

Arrest of Jaime AVILA.

NARRATIVE OF INCIDENT/ACTIVITY:

On January 16, 2010, Jaime AVILA purchased three (3) AK-47 variant rifles from a Phoenix area FFL. On December 15, 2010, after the shooting death of a U.S. Border Patrol agent in Southern Arizona law enforcement officers/agents conducted a search of the area. Two (2) of the AK-47 variant rifles purchased by AVILA on 01/16/2010 were recovered in the area during this search.

On December 15, 2010, ATF agents located AVILA and subsequently interviewed and arrested him on charges stemming from this January 16, 2010, firearm purchase. In summary AVILA admitted to ATF agents that he straw purchased these firearms for an unidentified Hispanic male.

AVILA was held overnight and ATF agents have prepared a criminal complaint for Jaime AVILA on firearm charges relating to the straw purchase of these three (3) AK-47 variant rifles on 01/16/2010 and are presenting it to a Federal Magistrate today (12/16/10.)

[redacted]

From: Voth, David J.
Sent: Thursday, December 16, 2010 10:11 AM
To: Newell, William D.; [redacted]
Subject: change in charging

Gentlemen,

After speaking with Emory he saw the wisdom in not charging the AK-47 rifles in question so as to not complicate the FBI's investigation. As such we are back to our original plan to charge the June guns purchased by Jaime AVILA.

David Voth
Group Supervisor
Phoenix Group VII
602-[redacted]

[redacted]

From: Voth, David J.
Sent: Thursday, December 16, 2010 11:36 AM
To: Newell, William D.; [redacted]
Subject: clarification

Gentlemen,

For the sake of clarity, we alleged 8 firearms from 3 different FFLs in the complaint affidavit stemming from June 12 & June 15, 2010 purchases. However, the actual Criminal Complaint is for one (1) count of lying on the form 4473.

I will send the affidavit and complaint once the USAO has finished making revisions.

Thanks,

David Voth
Group Supervisor
Phoenix Group VII
602-[redacted]

[redacted]

From: Newell, William D.
Sent: Thursday, December 16, 2010 1:27 PM
To: [redacted]
Subject: December Fast and Furious BP for SAC (2)
Attachments: December Fast and Furious BP for SAC (2).docx

Please review and send back to me with "LE Sensitive - For Official Use Only" watermark in the appropriate places. Thanks

ATTACHMENT 11

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Significant Information Report

DATE: [redacted]
FROM: Phoenix Field Division
FIELD OFFICE: Phoenix VII Field Office

CASE INFORMATION

CASE NUMBER: 785115-[redacted]

CASE TITLE: [redacted]

SPECIAL AGENT:	**TELEPHONE NUMBER:**
Voth, David	(602[redacted]

SYNOPSIS OF INCIDENT/ACTIVITY

Arrest of Jaime AVILA.

NARRATIVE OF INCIDENT/ACTIVITY

On January 16, 2010, Jaime AVILA purchased three (3) AK-47 variant rifles from a Phoenix area FFL. On December 15, 2010, after the shooting death of a U.S. Border Patrol agent in Southern Arizona law enforcement officers/agents conducted a search of the area. Two (2) of the AK-47 variant rifles purchased by AVILA on 01/16/2010 were recovered in the area during this search.

On December 15, 2010, ATF agents located AVILA and subsequently interviewed and arrested him on charges stemming from this January 16, 2010, firearm purchase. In summary AVILA admitted to ATF agents that he straw purchased these firearms for an unidentified Hispanic male.

AVILA was held overnight and ATF agents have prepared a criminal complaint for Jaime AVILA on firearm charges relating to the straw purchase of these three (3) AK-47 variant rifles on 01/16/2010 and are presenting it to a Federal Magistrate today (12/16/10.)

ATTACHMENT 12

Uriel Patino

To: "Voth, David J." <
Cc:

Wed, Aug 25, 2010 at 5:13 PM

Good Afternoon David,

One of our associates received a telephone inquiry from Uriel Patino today. Uriel is one of the individuals your office has interest in, and he looking to purchase 20 FN-FNX 9mm firearms. We currently have 4 of these firearms in stock. If we are to fulfill this order we would need to obtain the additional 16 specifically for this purpose.

I am requesting your guidance as to weather or not we should perform the transaction, as it is outside of the standard way we have been dealing with him.

I look forward to your advisment.

--
Thank you,

Uriel Patino

Voth, David J. < Wed, Aug 25, 2010 at 6:09 PM
To:
Cc:

Thank you very much for contacting us regarding Mr. Patino and this order/inquiry. We (ATF) are very much interested in this transaction and would like to coordinate (with your cooperation) the delivery of these firearms to Mr. Patino under our direction; i.e. date, time, etc. Be assured no enforcement action will take place on or near the property. We have other matters pressing but late next week (Thursday/Friday) would be good timing for us. Another technique to allow for greater control would be if you are willing to request a partial down payment from Mr. Patino for a "*special order*." This tends to increases the individual's future compliance when they are already financially invested in the situation.

In summary our guidance is that we would like you to go through with Mr. Patino's request and order the additional firearms he is requesting, and if possible obtain a partial down payment. This will require further coordination of exact details but again we (ATF) are very much interested in this transaction and appreciate your willingness to cooperate and assist us.

Special Agent (CC'd in this e-mail) is the ATF case agent for this investigation. Please coordinate this delivery of these firearms to Mr. Patino through her (cell phone for SA) or by contacting me when she is not available.

Thanks again for your cooperation and support of our joint mission.

Respectfully,

David Voth

Group Supervisor

Phoenix Group VII

[redacted]

Cell - [redacted]

[redacted]

Uriel Patino

Thu, Aug 26, 2010 at 10:52 AM

To: "Voth, David J." <
Cc: ,

David,

Thank you for your response. Per your email we will move forward with this transaction in accordance with your direction of having Mr. Patino provide payment prior to the transfer of the firearms.

We will suspend the transaction to meet with your ideal time frame of next week, at which point we will contact Hope when Mr. Patino is on his way to the store, and provide all standard documentation.
If you have any other requirements or requests please let me know.

[Quoted text hidden]

ATTACHMENT 13

The Department of Justice's Operation Fast and Furious

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

Before the U.S. House of Representatives
Committee on Oversight and Government Reform
June 15, 2011

ATF Strategy: Let Guns Go

"...our strategy is to ***allow the transfer of firearms*** to continue to take place in order to further the investigation and allow for the ***identification of additional coconspirators***..."

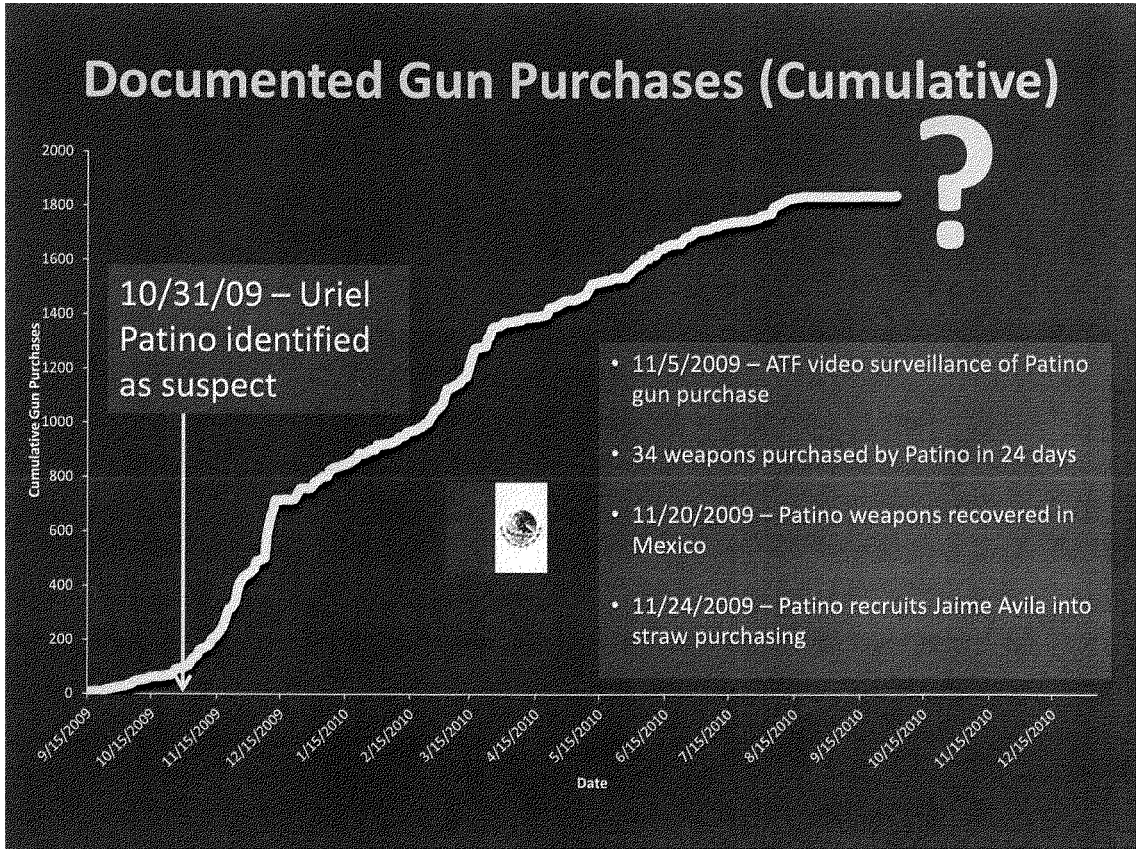
13. Currently our strategy is to allow the transfer of firearms to continue to take place in order to further the investigation and allow for the identification of additional coconspirators who would continue to operate and illegally traffic firearms to Mexican DTOs which are perpetrating armed violence along the Southwest Border. This all in compliance with ATF 3310.4(b) 148(a)(2).

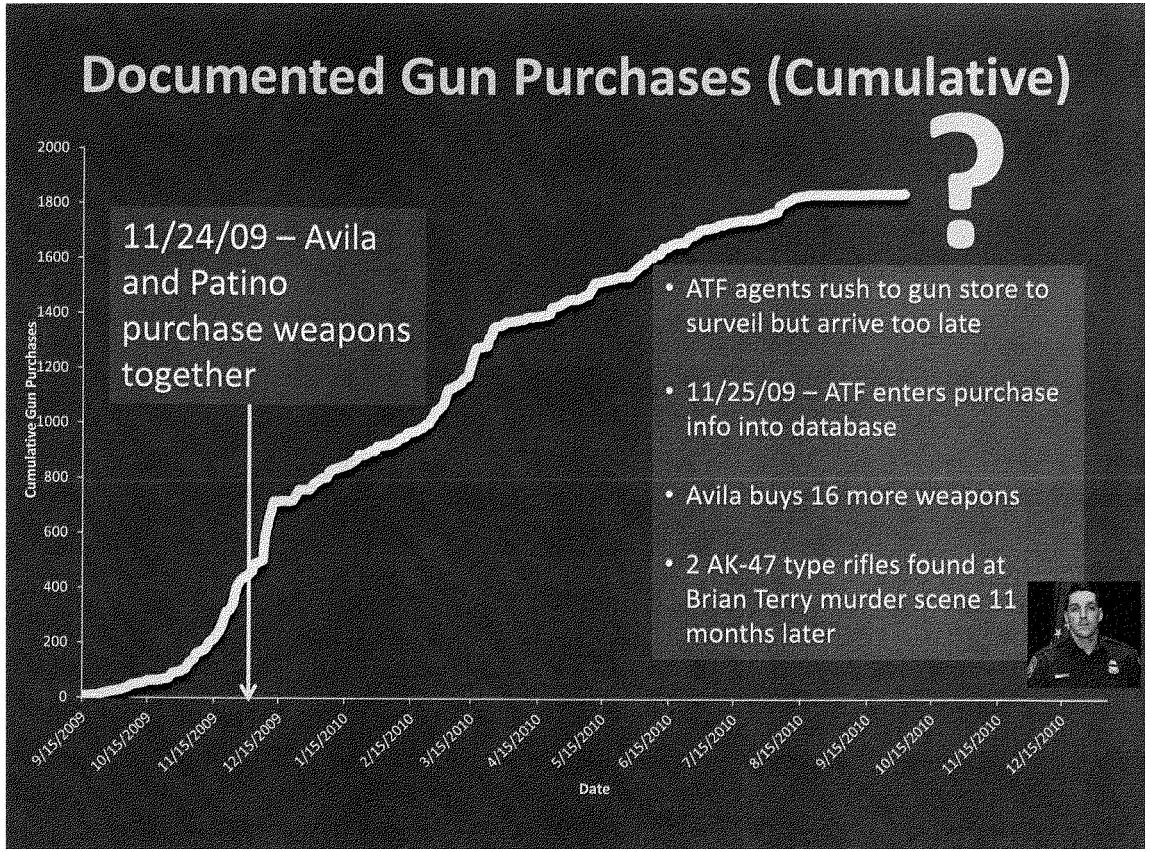
DOJ Policy: ID the Networks

"...merely ***seizing firearms*** through interdiction will not stop firearms trafficking to Mexico. ***We must identify***, investigate, and eliminate the sources of illegally trafficked firearms and ***the networks*** that transport them."

3. Attacking the Southbound Flow of Firearms

Addressing the flow of weapons into Mexico from the United States is also a primary focus of our efforts. ATF's intelligence has shown that the prevalence of firearms and explosives trafficking into Mexico has a direct nexus to the cartels' national domestic drug distribution network. Thus, given the national scope of this issue, merely seizing firearms through interdiction will not stop firearms trafficking to Mexico. We must identify, investigate, and eliminate the sources of illegally trafficked firearms and the networks that transport them. Since 2006, Project Gunrunner has been ATF's comprehensive strategy to combat firearms-related violence perpetrated by the drug cartels along the Southwest Border. Increasingly close collaboration between ATF and the efforts of the multi-agency drug task forces along the border, including, most particularly,


Documented Gun Purchases (Cumulative)
Cumulative Gun Purchases
2000
1800
1600
1400
1200
1000
800
600
400
200
0
9/15/2009
10/15/2009
11/15/2009
12/15/2009
1/15/2010
2/15/2010
3/15/2010
4/15/2010
5/15/2010
6/15/2010
7/15/2010
8/15/2010
9/15/2010
10/15/2010
11/15/2010
12/15/2010
Date
10/31/09 – Uriel Patino identified as suspect
?
• 11/5/2009 – ATF video surveillance of Patino gun purchase
• 34 weapons purchased by Patino in 24 days
• 11/20/2009 – Patino weapons recovered in Mexico
• 11/24/2009 – Patino recruits Jaime Avila into straw purchasing


Documented Gun Purchases (Cumulative)
Cumulative Gun Purchases
2000
1800
1600
1400
1200
1000
800
600
400
200
0
9/15/2009
10/15/2009
11/15/2009
12/15/2009
1/15/2010
2/15/2010
3/15/2010
4/15/2010
5/15/2010
6/15/2010
7/15/2010
8/15/2010
9/15/2010
10/15/2010
11/15/2010
12/15/2010
Date
11/24/09 – Avila and Patino purchase weapons together
?
• ATF agents rush to gun store to surveil but arrive too late
• 11/25/09 – ATF enters purchase info into database
• Avila buys 16 more weapons
• 2 AK-47 type rifles found at Brian Terry murder scene 11 months later

ATF Approved Gun Order

"If we are to fulfill this order we would need to obtain the additional 16 specifically for this purpose."

[redacted]

Wed, Aug 25, 2010 at 5:13 PM

To: "Voth, David J." <[redacted]@usdoj.gov>
Cc: [redacted]

Good Afternoon David,

One of our associates received a telephone inquiry from Uriel Patino today. Uriel is one of the individuals your office has interest in, and he looking to purchase 20 FN-FNX 9mm firearms. We currently have 4 of these firearms in stock. If we are to fulfill this order we would need to obtain the additional 16 specifically for this purpose.

I am requesting your guidance as to weather or not we should perform the transaction, as it is outside of the standard way we have been dealing with him.

I look forward to your advisment.

ATF Approved Gun Order

"...our guidance is that we would like you to go through with Mr. Patino's request and order the additional firearms[.]"

In summary our guidance is that we would like you to go through with Mr. Patino's request and order the additional firearms he is requesting, and if possible obtain a partial down payment. This will require further coordination of exact details but again we (ATF) are very much interested in this transaction and appreciate your (SCG) willingness to cooperate and assist us.

Statistics Summary

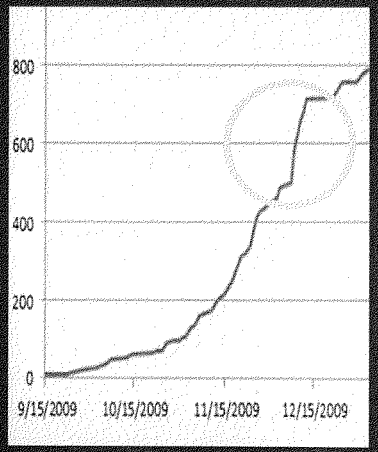
- Data is available for 1880 guns purchased
- 84 guns did not have documented sell date

Statistics Summary

- 30 guns purchased were high-power .50 BMG rifles

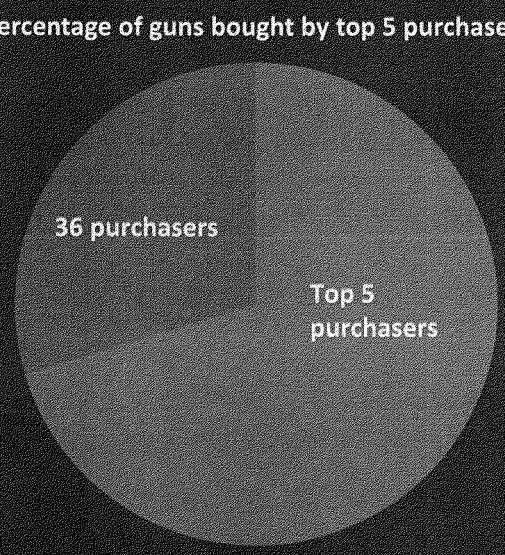
Statistics Summary

- 212 gun purchases in 6 days (12/7/09-12/12/09)
  - 157 of those guns were from 1 buyer



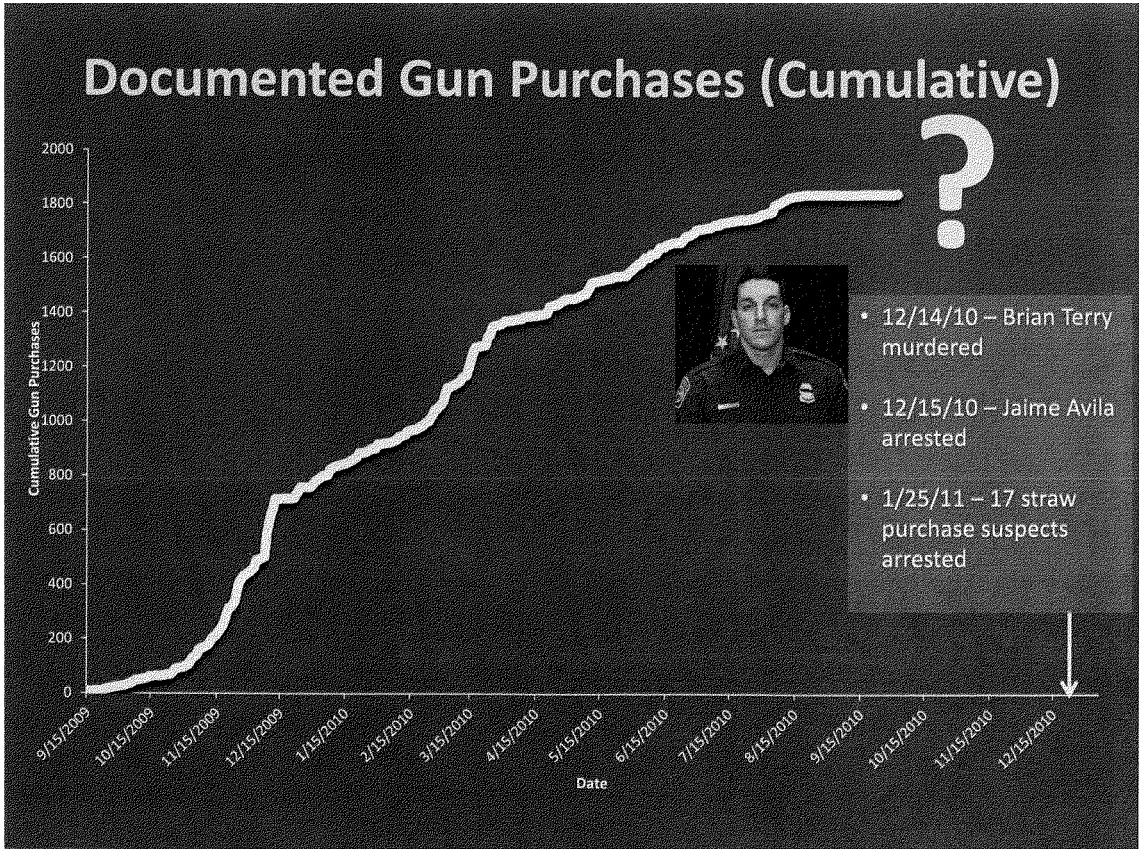
Statistics Summary

- Top 5 purchasers accounted for 70% of the 1880 guns sold



Statistics Summary

- Top 5 identified by ATF between 11/19/09 – 1/28/10
- 203 guns before identified
- ***988 more*** after identified


Documented Gun Purchases (Cumulative)
Cumulative Gun Purchases
2000
1800
1600
1400
1200
1000
800
600
400
200
0
9/15/2009
10/15/2009
11/15/2009
12/15/2009
1/15/2010
2/15/2010
3/15/2010
4/15/2010
5/15/2010
6/15/2010
7/15/2010
8/15/2010
9/15/2010
10/15/2010
11/15/2010
12/15/2010
Date
?
• 12/14/10 – Brian Terry murdered
• 12/15/10 – Jaime Avila arrested
• 1/25/11 – 17 straw purchase suspects arrested

Chairman ISSA. Thank you, Senator. Thank you for taking so much time out of your busy schedule to testify here today.

While we set up for the next panel, we will take a short recess.

[Recess.]

Chairman ISSA. The hearing will come to order, please.

We will now recognize our next panel of witnesses.

Mrs. Josephine Terry is the mother of the late Border Patrol Agent Brian Terry. Ms. Michelle Terry is the sister of the late Border Patrol Agent Brian Terry. Mr. Robert Heyer is the cousin of the late Border Patrol Agent Brian Terry.

The committee would also like to recognize other members of Agent Terry's family, including his father, Kent Terry, who is unable to be here today; his stepmother, Carolyn Terry; his older brother, Kent Terry, Jr.; and his younger sister, Kelly Terry Willis.

Our thoughts today are with Agent Terry and his entire family as they continue to mourn the untimely passing of their loved one.

Our remaining witnesses on the second panel are:

Mr. John Dodson. He is a special agent in the Phoenix Field Division of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Mr. Olindo "Lee," as he is known, Casa is a special agent in the Phoenix Field Division of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

And Mr. Peter Forcelli is the group supervisor of the Phoenix Field Division of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Ladies and gentlemen, pursuant to the rules of our committee, all witnesses are to be sworn in order to testify. Would you please rise to take the oath and raise your right hands?

[Witnesses sworn.]

Chairman ISSA. Let the record reflect that all witnesses answered in the affirmative.

Please be seated.

In order to allow time, particularly with such a large panel, your entire written statements and any inclusive material you want to have put in the record will be placed in the record, so feel free to summarize. Try to stay within 5 minutes. For the field agents, we will hold you closer to it. For the mother and sister, not so much.

We will start with Mr. Heyer. You are recognized for 5 minutes.

STATEMENTS OF ROBERT HEYER, COUSIN OF LATE BORDER AGENT BRIAN TERRY; JOSEPHINE TERRY, MOTHER OF LATE BORDER AGENT BRIAN TERRY; MICHELLE TERRY BALOGH, SISTER OF LATE BORDER AGENT BRIAN TERRY; JOHN DODSON, SPECIAL AGENT, PHOENIX FIELD DIVISION, BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES; OLINDO "LEE" CASA, SPECIAL AGENT, PHOENIX FIELD DIVISION, BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES; PETER J. FORCELLI, GROUP SUPERVISOR, PHOENIX FIELD DIVISION, BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

STATEMENT OF ROBERT HEYER

Mr. HEYER. Good morning, Chairman Issa, Ranking Member Cummings, and other members of the committee.

My name is Robert Heyer. I am the cousin of slain Border Patrol Agent Brian A. Terry. As you know, I am joined on the panel this morning by Brian's mother, Josephine, and his older sister, Michelle. They have asked me to give this opening statement on behalf of the entire Terry family.

It was just 10 days before Christmas last year when our family received the devastating news. Brian had been shot and killed while engaged in a firefight with a group of individuals seeking to do harm to American citizens and others.

We knew that Brian faced imminent danger on a daily basis as a part of his chosen career. But we also knew that he and his unit were highly trained and equipped with the best weapons this country could provide to their fighting men and women. They were confident in overcoming any threat that they may face in the desolate section of desert that they patrolled. He and his team prided themselves as being the tip of the spear that defended this country and its borders.

The telephone call came in the middle of the night. I know this type of horrible notification has been received many times during the past 10 years by families of our military sons and daughters as the United States has fought wars in both Iraq and Afghanistan. After all, Brian had taken an oath to defend this country from all terrorist threats.

What makes Brian's death so shocking to his family is that he did not die on a foreign battlefield. He was killed in the line of duty as a U.S. Border Patrol agent. He died not in Iraq or Afghanistan but in a desert outside of Rio Rico, Arizona, some 18 miles inside of the U.S.-Mexican border. His killers were not Taliban insurgents or al Qaeda fighters but a small group of Mexican drug cartel bandits heavily armed with AK–47 assault rifles. The rifles and the ammunition that they carried in those weapons were designed to do one thing, and that was to kill.

Brian was an amazing man. And I say that not just because he was family. Many people thought he was almost superhuman. After his death, we visited his former duty stations in Arizona. Each time we met one of his fellow agents, they spoke of how impressed they were with him. He was what we expect in our brothers and sons: a strong, competitive, handsome, courageous, funny, and incredibly patriotic American. Some of his coworkers even had bestowed him with the nickname of "Superman."

Brian was very proud to serve as a Federal agent. He had joined the U.S. Marine Corps right after high school. He went on to college and earned a bachelor of science degree in criminal justice. He then became a local police officer in the communities of Ecorse and Lincoln Park, Michigan.

When he sought to have more of an impact on keeping this country safe, he joined the Border Patrol. Brian, it seemed, had found his niche. Before long, he tried out and became a member of the Border Patrol's elite tactical unit known as BORTAC. At age 40, he had much to look forward to, which included getting married and starting a family. But for now, he was living his dream. He wore his BORTAC-winged insignia with great pride and excelled as a BORTAC team member.

During BORTAC training, Brian was given a classroom writing assignment. The assignment was to write something about himself that would give the instructors some insight as to who he was. He composed a poem that he entitled, "If Today is to Be the Day, So Be It." I would like to read you that poem so that you can have a better understanding of the man he was.

"If you seek to do battle with me this day, you will receive the best that I am capable of giving. It may not be enough, but it will be everything that I have to give, and it will be impressive, for I have constantly prepared myself for this day. I have trained, drilled, and rehearsed my actions so that I might have the best chance of defeating you. I have kept myself in peak physical condition, schooled myself in the martial skills, and have become proficient in the applications of combat tactics.

"You may defeat me, but I'm willing to die if necessary. I do not fear death, for I have been close enough to it on enough occasions that it no longer concerns me. But I do fear the loss of my honor and would rather die fighting than to have it said that I was without courage. So I will fight you, no matter how insurmountable it may seem, to the death if need be, in order that it may never be said of me that I was not a warrior."

Brian was due to complete his shift of duty that night in the desert outside of Rio Rico at midnight on December 15th and then take some much-deserved time off. He had already made his travel plans to fly back to Michigan and spend the Christmas holiday with his family. Brian's attention to detail had ensured that all the Christmas gifts he had meticulously selected for his family had already been bought and sent in the mail prior to his arrival.

Brian did ultimately come home that Christmas. We buried him not far from the house that he was raised in, just prior to Christmas Day.

The gifts that Brian had picked out with such thought and care began to arrive in the mail the same week. With each delivery, we felt the indescribable pain of Brian's death but, at the same time, also remembered his amazing love and spirit.

We hope that you now know a little bit more about our Brian. We ask that you honor his memory by continuing to ensure what he worked so hard to do and ultimately gave his life doing—that is, to keep this country safe and its borders secure.

We hope that the Bureau of Alcohol, Tobacco, and Firearms is forthcoming with all information that the panel is seeking. We ask that if a government official made a wrong decision, that they admit their error and take responsibility for his or her actions. We hope that all individuals involved in Brian's murder and those that played a role in putting the assault weapons in their hands are found and prosecuted to the full extent of the law. Finally, it is our hope that no more law enforcement officers die at the hands of these heavily armed Mexican drug cartel members operating on and inside the borders of the United States.

The Terry family would like to acknowledge and thank the special agents in the FBI's Tucson Field Office and the prosecutors in the U.S. attorney's Tucson office that have worked so hard and continue to work in bringing Brian's killers to justice.

We would also like to acknowledge the courage and integrity of the three special agents of ATF's Phoenix Field Division sitting with us on this panel: Lee Casa, Pete Forcelli, and John Dodson. We recognize the professional risk you face by coming forward and speaking to the public about an investigation that you believe was ill-conceived and reckless.

The Marine Corps has the motto of "Semper fidelis," which most of you know is Latin for "Always faithful." The Border Patrol has the motto of "Honor first." Brian lived a life of honor, duty, and sacrifice, which reflected both of these mottos and the two organizations that he was so proud to serve in. It is now up to all of us to put honor first and to remain always faithful in the quest for justice.

On behalf of the entire Terry family, thank you.

[The prepared statement of Mr. Heyer follows:]

Terry Family Opening Statement – June 15, 2011

Good morning Chairman Issa, Ranking Member Cummings and other members of the committee. My name is Robert Heyer. I am the cousin of slain Border Patrol Agent Brian A. Terry. I am joined on this panel today along with Brian's mother, Josephine Terry; and sister, Michelle Terry Balogh. They have asked me to give this opening statement on behalf of the entire Terry Family.

It was just ten days before Christmas last year when our family received the devastating news; Brian had been shot and killed while engaged in a firefight with a group of individuals seeking to do harm to Americans citizens and others. We knew that Brian faced imminent danger on a daily basis as part of his chosen career, but we also knew that he and his unit were highly trained and equipped with the best weapons this country could provide to their fighting men and women. They were confident in overcoming any threat that they might face in the desolate section of desert that they patrolled. He and his team prided themselves as being the tip of the spear that defended this country and its borders.

The telephone call came in the middle of the night. I know that this type of horrible notification has been received many times during the last 10 years by the families of our military's sons and daughters as the United States has fought wars

in both Iraq and Afghanistan. After all, Brian had taken an oath to defend this country from all terrorist threats. What makes Brian's death so shocking to his family is that he did not die on a foreign battlefield; he was killed while in the line of duty as a U.S. Border Patrol Agent. He died not in Iraq or Afghanistan, but in the desert outside of Rio Rico, Arizona some 18 miles inside of the U.S. – Mexican border. His killers were not Taliban insurgents or Al Qaeda fighters but a small group of Mexican drug cartel bandits heavily armed with AK-47 assault rifles. The rifles and the ammunition they carried were designed to do one thing and that was to kill.

Brian was an amazing man. And I say that not just because he was family. Many people thought him to be almost super human. After his death, we visited his former duty stations in Arizona. Each time we met one of his fellow agents, they spoke of how impressed they were him. He was what we expect in our brothers and sons; a strong, competitive, handsome, courageous, funny, and incredibly patriotic American. Some of his co-workers even had bestowed him with the nickname of "Superman". Brian was very proud to serve as a federal agent. He had joined the United States Marine Corps right after high school. He went on to college and earned a Bachelor of Science Degree in Criminal Justice.

He then became a local police officer in the communities of Ecorse and Lincoln Park, Michigan. When he sought to have more of an impact on keeping this country safe, he joined the Border Patrol. Brian, it seemed had found his niche. Before long he tried out and became a member of the Border Patrol's elite Tactical Unit known as BORTAC. At age 40, he had much to look forward to which included getting married and starting a family; but for now, he was living his dream. He wore his BORTAC winged insignia with great pride and excelled as a BORTAC team member.

During BORTAC training, Brian was given a class room writing assignment. The assignment was to write something about himself that would give the instructors some insight as to who he was. He composed a poem that he entitled "If Today Is to Be the Day...So Be It" and I would like to read it to you so that you can have a better understanding of who he was:

"If you seek to do battle with me this day, you will receive the best that I am capable of giving.

"It may not be enough, but it will be everything that I have to give and it will be impressive for I have constantly prepared myself for this day.

"I have trained, drilled and rehearsed my actions so that I might have the best chance of defeating you.

"I have kept myself in peak physical condition, schooled myself in the martial skills and have become proficient in the applications of combat tactics.

"You may defeat me, but I'm willing to die if necessary. I do not fear death for I have been close enough to it on enough occasions that it no longer concerns me.

"But, I do fear the loss of my honor and would rather die fighting than to have it said that I was without courage.

"So I will fight you, no matter how insurmountable it may seem, to the death if need be, in order that it may never be said of me that I was not a warrior."

Brian was due to complete his shift of duty that night in the desert outside of Rio Pico at midnight on December 15th and then take some much deserved time off. He had already made his travel plans to fly back to Michigan and spend the Christmas holiday with his family. Brian's attention to detail had insured that all the Christmas gifts he had meticulously selected for his family had already

been bought and sent in the mail prior to his arrival. Brian did ultimately come home that Christmas; we buried him not far from the house that he was raised in just prior to Christmas day. The gifts that Brian had picked out with such thought and care began to arrive in the mail that same week. With each delivery, we felt the indescribable pain of Brian's death, but at the same time also remembered his amazing love and spirit.

We hope that you now know a little bit more about our Brian. We ask that you honor his memory by continuing to ensure what he worked so hard to do and ultimately gave his life doing; that is to keep this country safe and its borders secure. We hope that the Bureau of Alcohol Tobacco and Firearms is forthcoming with all information that the panel is seeking. We ask that if a government official made a wrong decision that they admit their error and take responsibility for his or her actions. We hope that all individuals involved in Brian's murder and those that played a role in putting the assault weapons in their hands are found and prosecuted to the full extent of the law. Finally, it is our hope that no more law enforcement officers die at the hands of these heavily armed Mexican drug cartel members operating on and inside the borders of the United States.

The Terry Family would also like to acknowledge and thank the Special Agents in the FBI's Tucson Field Office and the prosecutors in the U.S. Attorney's Tucson Office that have worked so hard and continue to work in bringing Brian's killers to justice.

The Marines have the motto of Semper Fidelis which most of you know is Latin for always faithful. The Border Patrol has the motto of Honor First. Brian lived a life of honor, duty and sacrifice which reflected both of these mottos and the two organizations he was so proud to serve in. It is now up to all of us to put honor first and to remain always faithful in the quest for justice. On behalf of the entire Terry Family, thank you.

Chairman ISSA. Thank you.

Special Agent Dodson, you are recognized for 5 minutes.

STATEMENT OF JOHN DODSON

Mr. DODSON. Mr. Chairman, Ranking Member Cummings——

Chairman ISSA. Please pull the mike a little closer, if you would, please, and make sure it is on.

Mr. DODSON. Yes, sir. Is that better?

Mr. Chairman, Ranking Member Cummings, other honorable members of this committee, I thank you.

Beginning with my military service and continuing through to this day, I am proud to have spent nearly my entire adult life in service of this country, under sworn oath to defend its Constitution, with my allegiance always pledged to this Republic.

I spent the vast majority of my law enforcement career conducting criminal investigations, with a particular focus on those involving the trafficking of narcotics and firearms. I have been involved in countless investigations and arrests, from basic misdemeanors to complex conspiracies of international drug-trafficking organizations, many times as an undercover. I have made thousands of investigative stops and scores of arrests and have testified many times in Federal and State courts across this country, often as a qualified expert.

I do not appear before you as some remote observer of these events casting a judgmental finger over the actions of others. I come, as I have been asked to do, bearing only my firsthand account. I have not the burdens of rendering judgment, determining responsibility, or holding others accountable. I yield those to this committee.

The only message I hope to convey is that through this process some resolve may finally be brought to the families of Brian Terry and Jaime Zapata, that we may truly honor their service and mourn their sacrifice. I hope that your inquiry and those of Senator Grassley's office and the inspector general will yet yield a true account for the many others on both sides of our border who have already been or will be affected by this operation. Furthermore, I am grateful to have the opportunity to appear here today alongside the Terry family so that I may personally express to them my sorrow and my regret.

Simply put, during this operation referred to as "Fast and Furious," we, the ATF, failed to fulfill one of our most fundamental obligations: to caretake the public trust, in part to keep guns out of the hands of criminals.

When I became involved in this operation in late 2009, the ATF agents running it briefed me that the local Phoenix firearms dealers had provided them with a list of more than 40 individuals whom they believed to be purchasing guns for others—straw purchasers. Of these individuals, several were members or believed to have connections with Mexican drug cartels.

Those identified straw purchasers were the initial suspects of this investigation. From the earliest days of that operation after the briefing, I had no question that the individuals we were watching were acting as straw purchasers and that the weapons they purchased would soon be trafficked to Mexico and/or other locales

along the southwest border or other places in the United States and, ultimately, that these firearms would be used in a violent crime.

However, we did nothing to intervene. Over the course of the next 10 months that I was involved, we monitored as they purchased handguns, AK–47 variants, and .50-caliber rifles, almost daily at times. Rather than conduct any enforcement actions, we took notes, we recorded observations, we tracked movements of these individuals, we wrote reports, but nothing more, knowing all the while, just days sometimes after these purchases, the guns that we saw these individuals buy would begin turning up at crime scenes in the United States and in Mexico. And yet we still did nothing.

I recall, for example, one suspect, as he met with another, receive a bag full of cash. That cash he then proceeded to a local FFL, who conducted a transaction of firearms that we had authorized him to do. This straw purchaser then left the Federal firearms dealer and met again with that third party and delivered the firearms to him. And still we did nothing. Although my instincts made me want to intervene and interdict those weapons, my supervisors directed me and my colleagues not to make any stop or arrest, but rather to keep him under surveillance, while allowing the guns to walk.

Surveillance operations like these were the rules; they were not the exceptions. This is not a matter of some weapons that had gotten away from us or allowing a few to walk so that we could follow them to a much larger, more significant target. Allowing loads of weapons that we knew to be destined for criminals was the plan. This was the mandate.

I remember a lecture by Army Lieutenant Colonel Dave Grossman, and I borrow from it now. ATF is supposed to be the guardians, the sheepdogs that protect against the wolves that prey upon us, especially along our southern border. But rather than meet the wolf head-on, we sharpened his teeth, added number to his claw. All the while, we sat idly by watching, tracking, and noting as he became a more efficient and effective predator.

Prior to my coming to Phoenix, I had never been involved in or even heard of an operation in which law enforcement officers would let guns walk. The very idea of doing so is unthinkable to most law enforcement. I and other field agents involved in this operation repeatedly raised these concerns with our supervisors. In response, we were told that we simply did not understand the plan.

I cannot begin to think of how the risk of letting guns fall into the hands of known criminals could possibly advance any legitimate law enforcement interest. I hope the committee will receive a better explanation than I.

Thank you again for the opportunity to appear here today before you, and I look forward to answering any questions that any of you may have.

[The prepared statement of Mr. Dodson follows:]

TESTIMONY OF SPECIAL AGENT JOHN DODSON BEFORE THE HOUSE COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM
June 15, 2011

Mr. Chairman, Ranking Member Cummings, honorable members of this Committee. I am grateful you have called this hearing today, and I hope that my testimony will assist in your investigation. Beginning with my military service and continuing through this day, I am proud to have spent nearly my entire adult life in service of this Country, under sworn oath to defend the Constitution, with my allegiance always pledged to this Republic. I have patrolled highways and back country roads as a uniformed patrol officer while working local law enforcement in Virginia. I was a detective and then attached to a Drug Enforcement Administration Task Force just outside the beltway surrounding this city, and I am before you now, as a Special Agent with the Bureau of Alcohol, Tobacco and Firearms.

I have spent the vast majority of my law enforcement career conducting criminal investigations, with a particular focus on those involving the trafficking of narcotics and firearms. I have been involved in countless investigations and arrests, from basic misdemeanors to complex conspiracies of international drug trafficking organizations, many times as a case agent, many times as an undercover. I have made thousands of investigative stops and scores of arrests, and have testified many times in federal and state courts across the country, as a witness and often as a qualified expert.

Although it has neither been my desire nor my expectation to provide testimony to a committee such as this, I see it as merely the well and faithful discharge of my duties. I do not appear before you as a remote observer of these events, casting a judgmental finger over the actions of others. I come, as I have been asked to do, bearing only my first-hand account. I have not the burdens of rendering judgment, determining responsibility, or holding others accountable. I yield those to this committee. The only message I hope to convey is that through this process, some resolve may finally be brought to the families of Brian Terry and Jaime Zapata; that we may truly honor their service and mourn their sacrifice. I hope that your inquiry, and those of Senator Grassley and the Inspector General, will yield a true account for the many others who have already been or will be affected by this operation. Furthermore, I am grateful to have this opportunity to appear today with the Terry family so that I may personally express my sorrow and regret about my involvement in this.

Simply put, during this operation known as Fast and Furious, we, ATF, failed to fulfill one of our most fundamental obligations, to caretake the public trust; in part, to keep guns out of the hands of criminals. When I became involved in this operation in late 2009, the ATF agents running it briefed me that local Phoenix firearms dealers had provided them with more than 40 individuals whom they believed to be purchasing guns for others—"straw purchasers"—including members of Mexican drug cartels. These identified straw purchasers were the initial subjects of this investigation. From the earliest days of the operation after being fully briefed on what was known to date, I had no question that the individuals we were watching were acting as straw purchasers and that the weapons they purchased would soon be trafficked to Mexico and locales all along the Southwest border, where they would be used in violent crime if we did not intervene. However, we did not intervene.

Over the course of the next 10 months that I was involved in this operation, we monitored as they purchased hand guns, AK-47 variants, and .50 caliber rifles almost daily. Rather than conduct any enforcement actions, we took notes, we recorded observations, we tracked movements of these individuals for a short time after their purchases, but nothing more. Knowing all the while, just days after these purchases, the guns that we saw these individuals buy would begin turning up at crime scenes in the United States and Mexico, we still did nothing. I can recall, for example, watching one suspect receive a bag filled with cash from a third party then proceed to a gun dealer and purchase weapons with that cash and deliver them to this same unknown third party. Although my instincts made me want to intervene and interdict these weapons, my supervisors directed me and my colleagues not to make any stop or arrest, but rather, to keep the straw purchaser under surveillance while allowing the guns to walk. Surveillance operations like this were the rule, not the exception. This was not a matter of some weapons getting away from us, or allowing a few to walk so as to follow them to a much larger or more significant target. Allowing loads of weapons that we knew to be destined for criminals—this was the plan. It was so mandated.

I have never heard an explanation from anyone involved in Operation Fast and Furious that I believe would justify what we did. The ATF is supposed to be a guardian of our citizens. To paraphrase the analogy of Army LTC Dave Grossman, ATF is supposed to be the sheepdog that protects against the wolves that prey upon our southern border. But rather than meet the wolf head-on, we sharpened its teeth and added number to its claws, all the while we sat idly by watching, tracking, and noting as it became a more efficient killer.

Prior to my coming to the Phoenix Field Division, I had never been involved in or even heard of an operation in which law enforcement officers let guns walk. The very idea of letting guns walk is unthinkable to most law enforcement. I and other field agents involved in the operation repeatedly raised these concerns with our supervisors. In response, we were told that we simply did not understand the plan. However, the numerous guns we let walk have yet to be recovered. Those that have been, were only recovered after the last time they were used in a crime. I cannot begin to think of how the risk of letting guns fall into the hands of known criminals could possibly advance any legitimate law enforcement interest. I hope the Committee will receive a better explanation than I ever did.

Thank you again for the opportunity to appear before you today. I look forward to answering any questions you may have.

Chairman ISSA. Thank you, sir.

Special Agent Casa.

STATEMENT OF OLINDO "LEE" CASA

Mr. CASA. Good morning, Mr. Chairman. Good morning, Mr. Cummings. Good morning, honorable Members of Congress. My name is Olindo James Casa, and I am a senior special agent with the Bureau of ATF.

I have been employed with ATF since March 1993 as both an inspector and later as a special agent. I am currently assigned to the Phoenix Field Division, Phoenix Group VII, an OCDETF strike force group, and I have been assigned to that group since December 2009 to the present.

As a special agent with ATF, I have been a case agent, I have been a co-case agent, and I have participated in many firearms-trafficking investigations, both domestic and international in scope. Needless to say, I feel I have extensive experience in regards to firearms-trafficking investigations, and my work has resulted in the successful prosecution of many individuals who have violated the law.

After reporting to Phoenix Group VII office in December 2009, I was briefed by group members on the investigation Fast and Furious. Shortly after, I became aware of what I believed to be unusual and questionable investigative techniques. For instance, I became aware that certain straw purchasers were purchasing numerous firearms from firearm dealers. What I found concerning and alarming was, more times than not, no law enforcement activity was planned to stop these suspected straw purchasers from purchasing firearms. The only law enforcement activity that was occasionally taken was to conduct a surveillance of the transaction, and then nothing more.

As the investigation progressed over the next couple of months, additional suspected straw purchasers were identified, again with no obvious attempts to interdict the weapons or interview the suspects. Around the same time, Phoenix Group VII office started to receive numerous firearm traces detailing recoveries of firearms in the country of Mexico. Many of those traces disclosed the aforementioned straw purchasers were responsible for purchasing those recovered firearms.

At this time, several special agents in the group, including myself, became increasingly concerned and alarmed at Case Agent Hope MacAllister and Group Supervisor Dave Voth's refusal to stop or address the suspected straw purchasers from purchasing additional firearms. Special Agent John Dodson and I continually raised our concerns directly with the case agent, Co-Case Agent Tonya English, and Group Supervisor Voth, to no avail.

In response to our increasingly voiced concerns, the group supervisor issued the infamous "schism" email to the group. In essence, the email was a direct threat to the special agents who were not in agreement on how Case Agent MacAllister, Co-Case Agent English, or how Group Supervisor Voth managed the investigation. Based on my 18 years of experience with ATF, I did not think the email was an empty threat. I took it very seriously. It has been

common practice for ATF supervisors to retaliate against employees that do not blindly toe the company line.

Sometime in March 2010, at the direction of Group Supervisor Voth and Case Agent MacAllister, daily surveillance of the straw purchasers started to be conducted by members of ATF Group VII as well as ATF special agents from other offices who were detailed to assist with the Operation Fast and Furious. ATF Special Agent Lawrence Alt reported to the Phoenix Group VII office around this period of time and, like Special Agent Dodson and I, became alarmed of the direction of the investigation and spoke out against the practices that were being utilized.

My role during these daily surveillances was that of shift supervisor. As a shift supervisor, my responsibility was to oversee surveillance agents at the direction of Case Agent MacAllister, Co-Case Agent English, and/or Group Supervisor Dave Voth.

In general, my fears were realized while out on these aforementioned surveillances. On numerous occasions, the surveillance team followed straw purchasers to Phoenix-area firearms dealers and would observe these straw purchasers buying and depart with numerous firearms in hand. Those firearms included but were not limited to AK–47 variant rifles, .50-caliber rifles, and 5.7-millimeter FN pistols, all of which are devastating weapons.

On many of those occasions, the surveillance team would follow the straw purchasers either to residences, a public location, or until the surveillance team was spotted by straw purchasers. But the end result was always the same: The surveillance was terminated by the case agent, co-case agent, or supervisor without interdicting or seizing the firearms.

On several occasions, I personally requested to interdict or seize the firearms in such a manner that would only further the investigation, but I was always told to stand down and not to seize the firearms. I made these requests over the air and have many law enforcement witnesses that can verify my assertions.

Reflecting back to that period of time during the investigation, I thought the poor decisions were made due to incompetency or a lack of experience, which would have made the situation bad enough. Unfortunately, in recent light of documents that have been released, especially the briefing paper dated January 8, 2010, it appears the investigation was conducted in a recklessly planned manner with a specific strategy in mind. Per the briefing paper, the strategy was to allow the transfer of firearms to take place in order to further the investigation and allow for the identification of additional co-conspirators who would continue to operate and illegally traffic firearms to Mexican drug trafficking organizations.

Special Agent Dodson, Special Agent Alt, and I, at times on a daily basis, had warned the case agent, co-case agent, and group supervisor of the reckless course they were taking in regards to the investigation. We sternly warned them of the consequences of their actions but were repeatedly ignored. In fact, on at least a couple occasions I witnessed, Special Agent Dodson asked both Special Agent MacAllister and Group Supervisor Voth if they were prepared to attend the funeral of a slain agent or officer after he or she was killed with one of those straw-purchased firearms. Neither

one answered or even seemed concerned by the question posed to them.

To close, I would like to extend my heartfelt condolences to Border Patrol Agent Brian Terry's family. I am truly sorry for your loss. I hope you find peace.

[The prepared statement of Mr. Casa follows:]

Opening Statement

Good morning honorable members of Congress. My name is Olindo James Casa and I am a Senior Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, commonly known by the acronym ATF. I have been employed by ATF since March 1993. From March 1993 until June 1999, I held the position of Inspector with ATF. From June 1999 until the present, for the twelve past years, I have held the position of Special Agent. I am currently assigned to the Phoenix Field Division, Phoenix Group VII, an OCDETF Strike Force Group and have been assigned to that group from December 2009 to the present. Prior to this assignment, I worked in the Chicago Field Division, Chicago Group II, a Firearms Trafficking Group. I was assigned to that group from 2003 until 2009. Since being employed with ATF, I have been a case agent, co-case agent, and have participated in many firearms trafficking investigations, both domestic and international in scope. Needless to say, I feel I have extensive experience in regards to firearms trafficking investigations and my work has resulted in the successful prosecution of many individuals who have violated the law. Some of my training includes a four year criminal justice degree from Illinois State University and job specific training at the Federal Law Enforcement Training Center. In addition, while at the training center, I earned the award of Honor Graduate of my ATF Special Agent Training Course.

Upon arriving in Phoenix, AZ in December 2009, I was assigned to work full time (more or less) on an investigation, which later received OCDETF designation and funding. That investigation was titled Fast and Furious. The investigation was initiated before my arrival by a newly hired ATF Special Agent, Jose Medina, sometime in or around November 2009. Special Agent Medina's assigned training officer was ATF Special Agent Hope MacAllister. Shortly after Special Agent Medina opened the investigation, Special Agent MacAllister had the investigation reassigned to her. Based on my experiences in ATF, this type of reassignment is uncommon and unusual, especially in a trainer / trainee situation. As the investigation developed, ATF Special Agent Tonya English assumed the role of co-case agent and Special Agent Medina assumed a subordinate role in the investigation. The 1st line supervisor around the

time of the initiation of the investigation was ATF Phoenix Group VII Supervisor David Voth, a newly designated Group Supervisor with no previous ATF supervisory experience.

After I reported to Phoenix Group VII Office, I was briefed by group members on the investigation that later became titled Fast and Furious. Shortly after, I became aware of what I believed to be unusual and questionable investigative techniques. For instance, I became aware that certain suspected straw purchasers were purchasing numerous firearms from area firearm dealers. What I found concerning and alarming was more times than not, no law enforcement activity was planned to stop these suspected straw purchasers from purchasing firearms. The only law enforcement activity that was occasionally taken was to conduct a surveillance of the transaction, and nothing more. Most of the time, the firearm purchase forms (known as ATF Forms 4473) and receipts for those transactions were faxed to our office and group members, including myself, were instructed to write Reports of Investigations (ROIs) detailing the purchase of firearms by those aforementioned individuals.

As the investigation progressed over the next couple of months and additional suspected straw purchasers were identified, again with no obvious attempts to interdict the weapons or interview suspects. Around the same time, the Phoenix Group VII Office started to receive numerous firearm traces detailing recoveries of firearms in the Country of Mexico. Many of those traces disclosed that the aforementioned straw purchasers were responsible for purchasing those recovered firearms. Also around that period of time the investigation received OCDETF funding and was titled the Fast and Furious. At this time, several Special Agents in the group, including myself, became increasingly concerned and alarmed at Case Agent McAllister's and/or Group Supervisor Voth's refusal to address or stop the suspected straw purchaser from purchasing additional firearms. Special Agent John Dodson and I continually raised our concerns directly with Case Agent MacAllister, Co-Case Agent English, and Group Supervisor Voth, to no avail. In response to our increasingly voiced concerns, Group Supervisor Voth issued the infamous "Schism" e-mail to the group. In essence, the e-mail was a direct threat to the Special Agents who were not in agreement with how Case Agent MacAllister, Co-Case Agent English, or Group Supervisor Voth managed the investigation. Based on my eighteen years of experience with ATF, I did not think the e-mail was an empty threat and took it very

serious. It has become common practice for ATF Supervisors to retaliate against employees that do not blindly tow the company line, no matter what the consequences.

Sometime in March 2010, at the direction of Group Supervisor Voth and Case Agent MacAllister, daily surveillances of straw firearm purchasers started to be conducted by members of ATF Group VII as well as ATF Special Agents from other offices who were detailed to assist with Operation Fast and Furious. The surveillances were also supported by Immigration and Customs Enforcement (ICE) Special Agent Layne France and by members of the Phoenix Police Department. ATF Special Agent Lawrence Alt reported to the Phoenix Group VII Office around this period of time and like Special Agent Dodson and I, became alarmed of the direction of the investigation and spoke out against the practices that were being utilized. I would like to mention two other Phoenix Group VII members shared their concerns with me regarding the direction of investigation, but were not outspoken for their own various personal reasons.

My role during the daily surveillances was that of Shift Supervisor. As the Shift Supervisor my responsibility was to oversee the surveillance agents at the direction of Case Agent MacAllister, Co-Case Agent English, and/or Group Supervisor David Voth. In general, my fears were realized while out on the aforementioned surveillances. On numerous occasions the surveillance team followed straw purchasers to Phoenix area firearms dealers and would observe the straw purchasers buy and then depart with numerous firearms in hand. Those firearms included but were not limited to AK-47 variant rifles, .50 caliber rifles, and 5.7mm FN pistols, all of which are devastating weapons. On many of those occasions, the surveillance team would then follow the straw purchasers either to a residence, a public location, or until the surveillance team was spotted by the straw purchasers. But the end result was always the same – the surveillance was terminated by the Case Agent MacAllister, Co-Case Agent English or Supervisor Voth, without interdicting or seizing the firearms. On several occasions I personally requested to interdict or seize firearms in such a manner that would only further the investigation, but I was always order to stand down and not to seize the firearms. I made these requests "over the air" and have many law enforcement witnesses that can verify my assertions. I challenge anyone to disprove my statements.

Reflecting back to that period of time during the investigation, I thought the poor decisions were made due to incompetence and/or lack of experience, which would have made this situation bad enough. Unfortunately, in recent light of documents that have been released, especially the Briefing Paper dated January 8, 2010, it appears the investigation was conducted in a recklessly planned manner with a specific strategy in mind. Per the Briefing Paper, the strategy was to allow the transfer of firearms to take place in order to further the investigation and allow for the identification of additional co-conspirators who would continue to operate and illegally traffic firearms to Mexican DTOs. Special Agent Dodson, Special Agent Alt, and I, at times on a daily basis, had warned the Case Agent, Co-Case Agent, and Group Supervisor of the reckless course they were taking in regards to the investigation. We sternly warned them of the consequences of their actions (or lack thereof), but we were repeatedly ignored. In fact, on at least a couple of occasions that I witnessed, Special Agent Dodson asked both Special Agent MacAllister and Group Supervisor Voth if they were prepared to attend the funeral of slain agent or officer after he or she was killed with one of those straw purchased firearms. Neither one answered or even seemed concerned by the question posed to them.

To close, I would like to extend my heartfelt condolences to Border Patrol Officer Brian Terry's family. I am truly sorry for your loss and I hope someday you find peace.

Chairman ISSA. Thank you.
Special Agent Forcelli.

STATEMENT OF PETER J. FORCELLI

Mr. FORCELLI. Good morning, Chairman Issa, Ranking Member Cummings, and members of the committee. I thank you for the opportunity to appear before the committee today.

I am here to provide testimony that I hope will assist in your inquiry into the investigation that has come to be known as "Operation Fast and Furious." I believe that your inquiry is essential. There have been grave mistakes made in this case. And the committee, the American people, and the family of slain Border Patrol Agent Brian Terry deserve answers.

Please allow me to give you a little background information about myself. In 1987, I began my career with the New York City Police Department. I worked in Bronx County, often referred to as "The Bronx," as a uniformed police officer and then ultimately as a detective in the Bronx Homicide Task Force. In my career, I estimate that I have responded to approximately 600 homicide scenes. The vast majority were drug-related, committed by armed criminals. And these violent criminals were armed with illegal firearms, and they had little regard for human life.

I retired early from the NYPD in June 2001 to take a position with the Bureau of Alcohol, Tobacco, and Firearms, as we were then known, and I did this because I had the honor of working with ATF agents who were working and making great cases, working hand-in-hand with incredible prosecutors from the Southern and Eastern Districts of New York.

In working with these officers, one thing was very clear: Dedicated prosecutors worked hand-in-hand with dedicated ATF agents to make great cases that truly impacted the safety of the public. There was an absolute sense of teamwork and respect. Again, I am going to emphasize the words "teamwork and respect." Together with prosecutors from the U.S. attorneys' offices with whom I had worked, we had used confidential informants, proffers, cooperation agreements, waivers of speedy presentment, investigative grand juries and grand-jury subpoenas, and an abundance of other investigative tools to make successful cases as part of a team.

I left the New York Field Division in March 2007 to begin working in my current post of duty as a supervisor of the Phoenix I Field Office. Within weeks, I was surprised at what I had observed. In my opinion—in my professional opinion, dozens of firearms traffickers were given a pass by the U.S. attorney's office for the District of Arizona. Despite the existence of probable cause in many cases, there were no indictments, no prosecutions, and criminals were allowed to walk free. In short, their office policies, in my opinion, helped pave a dangerous path.

Fortunately, the same could not be said of the Arizona Attorney General's Office, State prosecutors, to which we agents were forced to turn for prosecution of firearms cases. Victor Varela and his associates, who trafficked .50-caliber rifles directly to Mexican drug cartels, one of which was used to kill a Mexican military commander, were successfully prosecuted by the Arizona Attorney General's Office. And this was after the case had been declined for Fed-

eral prosecution by Assistant U.S. Attorney Emory Hurley due to what he referred to as "corpus delecti" issues.

Mr. Varela, sadly, was released from prison last July because of the lesser sentencing guidelines that apply in State court.

But the alternative, no prosecution, in my eyes, was unacceptable.

Another case, which involved a corrupt Federal firearms licensee who was supplying several firearms-trafficking organizations, was declined by Mr. Hurley. This particular dealer in his post-arrest statement admitted that approximately 1,000 of his firearms were trafficked to Mexico. Over one-half dozen of that dealer's firearms were located around the body of Arturo Beltran Leyva, the head of the Beltran-Leyva Cartel, after he was killed in a gun battle with the Mexican Naval Infantry in Cuernavaca, Mexico.

Due to the recalcitrance of the U.S. attorney's office, cases such as these were presented for prosecution to the Arizona Attorney General's Office, where the State laws carried significantly lesser penalties than they did under the Federal statutes. And I believe that this situation, wherein the U.S. attorney's office for the District of Arizona in Phoenix, particularly, declined most of our firearms cases, was at least one factor which led to the debacle that is now known as Operation Fast and Furious.

And now I will fast forward to Operation Fast and Furious itself. ATF agents assigned to the Phoenix Field Division, with the concurrence of their chain of command, walked guns. ATF agents allowed weapons to be provided to individuals that they knew would traffic them to members of the Mexican drug-trafficking organizations. They did so by failing to lawfully interdict the weapons, and they did so by encouraging Federal firearms licensees to continue selling weapons in instances where they knew that no interdiction efforts would be planned.

When I voiced surprise and concern with this tactic to ASAC George Gillett and SAC William Newell, my concerns were dismissed. SAC Newell referred to the case as "groundbreaking" and bragged that we were the only people in the country doing this. My other ASAC, Jim Needles, merely said, "Pete, you know that if you or I were running the case, it wouldn't be getting run this way."

This operation, which, in my opinion, endangered the American public, was orchestrated in conjunction with Assistant U.S. Attorney Emory Hurley, the same assistant U.S. attorney who prevented us from using some of the common and accepted law enforcement techniques utilized elsewhere in the United States. I have read documents that indicate that his boss, U.S. Attorney Dennis Burke, also agreed with the direction of this case.

Allowing firearms to be trafficked to criminals is a dangerous and deadly strategy. The thought that the techniques used in the Fast and Furious investigation would result in "taking a down a cartel," given the toothless nature of the straw-purchasing law and the lack of a strong firearms-trafficking statute, is, in my opinion, delusional.

Based upon my conversations with agents who had assisted in this case, surveillance was often terminated on individuals far from the border, which means that, while the case agent believed that these weapons were destined for Mexico, the possibility exists that

they were trafficked, with cartel drugs, to other points within the United States of America.

As a career law enforcement officer who has had to investigate the deaths of police officers, children, and others at the hands of armed criminals, I was and continue to be horrified—truly horrified. I believe that these firearms will continue to turn up at crime scenes on both sides of the border for years to come.

In closing, I want members of the committee and all Americans to know that this is not how ATF agents conduct business. I am very proud of some of the incredible work done by ATF agents around the country every day. ATF agents have given their lives in the performance of duty.

On my last trip back to New York, sir, I had the privilege of being present for a homicide trial. In that same courthouse in the Southern District of New York, there were three other separate homicide trials going on, all from three separate ATF-initiated investigations. That is the type of work ATF agents do every day, and that is what I would like the committee to keep in mind as well.

I thank you for your time. And, again, my condolences to the Terry family.

[The prepared statement of Mr. Forcelli follows:]

Opening statement of Peter J. Forcelli, Supervisory Special Agent, ATF, June 15, 2011.

Good morning, Chairman Issa, Ranking Member Cummings and members of the committee. Thank you for the opportunity to appear before the committee today.

I am present here today, to provide truthful testimony before the committee, which I hope will assist your inquiry into the ATF investigation that has come to be known as "Operation Fast and Furious." I believe that your inquiry is essential. There have been grave mistakes made in this case. The committee, the American People, and the family of slain U.S. Border Patrol Agent Brian Terry deserve answers.

Please allow me to give you a little background information about myself. I have always found it best to start from the beginning when laying out facts. In 1987, I began my career in law enforcement with the New York City Police Department. I worked in Bronx County, often referred to as "The Bronx" as a uniformed police officer, and then ultimately as a detective in the Bronx Homicide Task Force. In my career, I estimate that I have responded to approximately 600 homicide scenes. The vast majority were drug related, and were committed by armed criminals. These violent criminals, armed with illegal firearms, had little regard for human life.

I retired early from the New York City Police Department in June of 2001 to take a position with the Bureau of Alcohol, Tobacco and Firearms (ATF), as it was then known. I did this because I had the honor of working hand in hand with ATF agents who were doing incredible work in investigating violations of the law with the assistance of the U.S. Attorney's Offices for the Southern District (SDNY) and Eastern District of New York (EDNY). In working with these offices, one thing was very clear. Dedicated prosecutors worked hand in hand with dedicated ATF agents to make cases that truly impacted the safety of the public. There was an absolute sense of teamwork and respect.

Some of the cases I had the honor of working on were the "Sex, Money, Murder Bloods" investigation, which involved multiple homicides, drug trafficking and racketeering. The "Neese Bello Organization" investigation, which involved over 100 Hobbs Act violations. "Operation Stadium Shadow", which solved six homicides, and resulted in the release of two men who were

wrongfully accused, and, in fact, one convicted of murder. These are just a few of my cases.

Again, I'll use the words *teamwork* and *respect*. Together with the prosecutors from the United States Attorney's Office with whom I had worked, we had used, confidential informants, proffers, cooperation agreements, "Writs of Habeas Corpus", "Waivers of Speedy Presentment", investigative grand juries, grand jury subpoenas and an abundance of other investigative tools to make successful cases as a part of a team.

I left the New York Field Division in March of 2007, to begin working in my current post of duty as the Group Supervisor of the Phoenix I Field Office. Within a matter of weeks, I was surprised at what I had observed. In my opinion, dozens of firearms traffickers were given a pass by the U.S. Attorney's Office for the District of Arizona. Despite the existence of "probable cause" in many cases, there were no indictments, no prosecutions, and criminals were allowed to walk free. In short, their office policies, in my opinion, helped pave a dangerous path.

Fortunately, the same could not be said of the Arizona Attorney General's Office to which we agents were forced to turn for prosecution of firearm cases. Victor Varela and his associates, who trafficked .50 caliber rifles to Mexican Drug Cartels, one of which was used to kill a Mexican military commander were successfully prosecuted by the Arizona Attorney General's Office, after the case was declined by Assistant U.S. Attorney Emory Hurley due to "*corpus delecti*" issues. Sadly, Mr. Varela was released from prison last July, due to the lesser sentencing guidelines for such offenses in state court, but the alternative- no prosecution- was unacceptable. Another case, which involved a corrupt federal firearms licensee, who was supplying guns to several firearms trafficking organizations, was declined by Mr. Hurley. This dealer, in his post-arrest statement, admitted that "approximately 1000 of his firearms" were trafficked to Mexico. Over one half -dozen of that dealer's firearms were found in the immediate area around the body of Arturo Beltran-Leyva. Mr. Beltran-Leyva, who was the head of Beltran-Leyva Cartel, was killed in a fierce gun battle with the Mexican Naval Infantry in Cuernavaca, Mexico.

Due the recalcitrance of the United States Attorneys Office in Arizona cases such as these were

presented to the Arizona Attorney General for prosecution under state statutes subject to lesser criminal penalty than Federal Statutes. I believe that this situation, wherein the United States Attorneys Office for Arizona in Phoenix declined most of our firearm cases, was at lest one factor which led to the debacle of "Operation Fast and Furious."

Fast forward to "Operation Fast and Furious" itself. ATF agents assigned to the Phoenix Field Division, with the concurrence of their local chain of command, "walked" guns. ATF agents allowed weapons to be provided to individuals whom they knew would traffic them to members of Mexican drug trafficking organizations (DTOs). They did so by failing to lawfully interdict weapons that they knew were going to be delivered to members of DTOs, and they did so by encouraging federal firearms licensees to continue selling weapons that were destined for delivery to members of the DTOs where no interdiction efforts were planned.

When I voiced surprise and concern with this tactic to SAC William Newell and ASAC George Gillett, my concerns were dismissed. SAC Newell referred to the case as "groundbreaking" and bragged that "we're the only people in the country doing this". My other ASAC, Jim Needles, merely said "Pete, You know that if you or I were running the case, it wouldn't be run this way"

This operation, which in my opinion endangered the American public, was orchestrated in conjunction with Assistant U.S. Attorney Emory Hurley. [Emory Hurley is the same Assistant U.S. Attorney who previously prevented agents from using some of the common and accepted law enforcement techniques that are employed elsewhere in the United States to investigate and prosecute gun crimes.] I have read documents that indicate that his boss, U.S. Attorney Dennis Burke, also agreed with the direction of the case.

Allowing firearms to be trafficked to criminals is a dangerous and deadly strategy. The thought that the techniques used in the "Fast and Furious" investigation would result in "taking down a cartel" given the toothless nature of the "straw purchasing law" and the lack of a "firearms trafficking statute" is, in my opinion, delusional.

Based upon my conversations with agents who assisted in this case, surveillance on individuals who had acquired weapons was often terminated far from the Mexican border. Therefore, while the case agents and others believed that the weapons were destined for Mexico, the potential exists that many were sent with cartel drugs to other points within the United States. As a career law enforcement officer, who has had to investigate the deaths of police officers, children and others at the hands of armed criminals, I was and continue to be horrified. I believe that these firearms will continue to turn up at crime scenes, on both sides of the border, for years to come.

In closing, I want the members of the committee and all Americans to know: This is not how ATF agents conduct business. I am very proud of some of the incredible work done by ATF agents around the country every day. Many ATF agents have given their lives in the performance of their duties. On my last trip to New York City, I participated in a homicide trial on a case that I initiated in the U.S District Court for the Southern District of New York. Three other separate homicide trials were also being conducted in that courthouse. Each was the result of work done by outstanding ATF case agents, who solved those murders through conducting complex criminal investigations, while working hand in hand with dedicated prosecutors. Like myself and the members of the Committee, they too want the truth to come out, and those who acted irresponsibly held accountable. They deserve it, the family of Border Patrol Agent Brian Terry deserves it, and the American people demand it.

I thank you for your time today, and wish you Godspeed in this endeavor. God Bless America.

Chairman ISSA. I thank you.

I thank all of our witnesses.

I will now recognize myself for the first round of questioning.

Mrs. Terry, I understand the U.S. attorney in Arizona visited you in December. Can you tell us in your own words what he had to say?

Mrs. TERRY. Which attorney are you talking about?

Chairman ISSA. This is the U.S. attorney from Arizona that came to visit you in December?

Mrs. TERRY. Was that—yes, that was Mr. Burke.

Chairman ISSA. And what did he have to say to you?

Mrs. TERRY. He was just trying to explain to us exactly what happened in a roundabout way. We really never got anything out of the visit that he did have.

Chairman ISSA. Now, if he didn't tell you at that time that the firearms that killed your son came from this operation, when did you learn about Fast and Furious and its connection to your son's death?

Mrs. TERRY. Most of it I have heard is from the media. We haven't really got anything direct, phone calls or nothing, from anybody.

Chairman ISSA. Well, hopefully, today will bring you some better answers on that.

Mr. Heyer, I understand recently you received a call from the U.S. attorney's office in Arizona. Could you please tell us the content of that call?

Mr. HEYER. The U.S. Attorney Dennis Burke has tried to keep us advised on the prosecution of the individuals believed to have a hand in Brian's death. So I received a telephone call whenever an indictment was going to be made, and also some information about where the investigation was going with respect to Brian's killers.

Chairman ISSA. Did he ever comment about your testimony here today?

Mr. HEYER. He did not.

Chairman ISSA. Okay.

Mr. Dodson, just yesterday, the Justice Department said the following. And I will make a supposition for the record that it is untimely and unseemly for this kind of thing to come out. But I am going to ask you to answer in regard to something Justice put out in the New York Times. An unnamed law enforcement source said to the New York Times, "Gun ownership was such an ingrained part of the culture in Arizona that it was difficult to tell straw purchasers from legal ones without"—blank, blank, blank.

Did you have trouble discerning that? Was it so difficult because of the culture that, in fact, any of you didn't know who the straw purchasers were?

Mr. DODSON. No, sir, not at all. I mean, first of all, I would question that unknown law enforcement source as to his background on these matters——

Chairman ISSA. Here we call it "Washington spin."

Mr. DODSON. Yes, sir.

Sir, I can tell you this. In my knowledge and experience, when I set ground in Phoenix, or when I got to Phoenix, the briefing that

I got initially and the 40-some suspects that were identified right off the bat, or they already had identified, those cases were made against those individuals, most of them, almost that day, if not all of them.

To identify a straw purchaser from a normal American citizen who just happens to reside in a State where gun culture is so prominent, you are—perhaps if a one-on-one scenario existed, or a one time. But to have an individual purchase hundreds of firearms over the course of an investigation while we are watching him, make no mistake, he was a straw purchaser or——

Chairman ISSA. So, I guess, Agent Casa, I think you would probably agree that when you see someone buy hundreds—dozens or hundreds and take them to a drop point, and even often more information, it is pretty obvious they are a straw purchaser; you have made your case under any kind of normal prosecution, wouldn't you?

Mr. CASA. Yes, sir, that is correct.

Chairman ISSA. Mr. Heyer, you are a Secret Service agent. That probably qualifies you as much as anyone that could be in this room to understand a question I am going to ask you, but you are also a family member.

To date, the straw purchasers that were part of the chain of weapons that led to the murder of your cousin, they haven't been charged with that crime. They have been charged with whatever it is called, buy and lie, basically signing a false affidavit that they were the actual buyer of a gun.

Do you believe that it is reasonable to be including them in their connection to the murder of Brian Terry?

Mr. HEYER. Congressman, again, I am here as strictly family today and not as a Secret Service agent.

Chairman ISSA. Well, then for Peter Forcelli, you have all mentioned about the prosecutions that you see, including in New York. You buy a gun, you knowingly sell it to a third party, you have lied about it, it leads to the murder. Isn't that how you get connected to that trial in addition to the trigger puller?

Mr. FORCELLI. Yes, sir. It would be a sequence of events that you would normally put together through interviews and other techniques.

Chairman ISSA. So it is pretty unusual to have a high-profile murder of a Border Patrol agent and you don't roll up everybody involved into the prosecution which is taking place practically today?

Mr. FORCELLI. In all fairness, sir, I don't know what steps the FBI has taken in their investigation because that information has not been relayed to me at any point.

Chairman ISSA. Well, Mrs. Terry, we are going to do everything we can to get full answers and full prosecution. We want whatever would be the greatest relief that we can give you to let you know that this won't happen again.

Mrs. TERRY. Thank you.

Chairman ISSA. Thank you.

We now recognize the ranking member for his questions.

Mr. CUMMINGS. I want to thank all of you for being here today.

And to the Terry family, we thank you for your sacrifice.

To Mrs. Terry, you raised an angel. When the description was made by—when I listened to that poem, that poem said it all.

And I want to say to the family, I understand your pain. And I promise you, we will not rest—and to the agents, we will not rest—we will not rest until every single person responsible for all of this, no matter where they are, are brought to justice.

And you said it best, Mr. Heyer, in your statement, the last thing you said. You said, "It is now up to all of us to put honor first and to remain always faithful in the quest for justice." And you are absolutely right. And I promise you, we will not fail you.

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

One of the most troubling allegations we have heard during this investigation was that the ATF agents Group VII were ordered to terminate surveillance and monitoring of suspected straw purchasers without seizing the firearms.

Special Agent Casa, in your written testimony you made this statement: "On numerous occasions, the surveillance team followed straw purchasers to Phoenix-area firearms dealers and would observe the straw purchasers buy and then depart with numerous firearms in hand. On many of these occasions, the surveillance team would then follow the straw purchasers either to a residence, a public location, or until the surveillance team was spotted by the straw purchasers. But the end result was always the same: The surveillance was terminated."

So my question is pretty basic. Do you know why the surveillance was terminated? Do you think it was a resource problem, or was it a strategy type of thing?

Mr. CASA. No, sir, we had plenty of resources. I believe it was a strategy. As I indicated later in my statement, I found out about the briefing papers. At the time this was going on, we had no idea why things were occurring. We were just told to fall in line and do what we were told.

Mr. CUMMINGS. And you stated that you raised those concerns with your group supervisor, was it Mr. Voth?

Mr. CASA. Yes, sir, Mr. Dave Voth.

Mr. CUMMINGS. And, Special Agent Dodson, you participated in a transcribed interview with the committee, and your account is quite similar. Let me read what you said from the transcript. You said, "Sometimes we would follow them back to their house, sometimes to, you know, a different house or a business or to meet another vehicle in a parking lot. And then we would have to come back to head to another FFL because one of the other suspects, they were buying 15 or 20 of his own."

Special Agent Dodson, again, I am trying to understand this. If you are following a suspected straw purchase and you start at the

gun store and you follow it to a house, why wouldn't you keep following that gun?

Mr. DODSON. Sir, that is the one question that I can't answer for you, is the why. It made no sense to us either. It is just what we were ordered to do, and every time we questioned that order, you know, there was punitive action against those of us that did so.

As to why we would let them go or just follow them in, tuck them in bed at home and, you know, us leave for the night, I can't tell you the why, sir. I can't. And that is what I am hopeful that this committee can find out.

Mr. CUMMINGS. Well, we are going to find out.

I understand there might be new suspected straw purchases happening back at the gun store, but if you keep leaving the guns you are following to start tracking new ones, you know, that doesn't seem to work. And I guess that is what all of you all are saying.

Did you also raise those concerns with Mr. Voth, your supervisor, I guess he was?

Mr. DODSON. Oh, yes, sir, many times.

Mr. CUMMINGS. Have either of you ever received a substantive explanation as to why this operation would voluntarily terminate surveillance of suspected weapons traffickers? Anybody?

Mr. DODSON. Sir, no. Most of the time when asked or pressed for an answer to that question, it was relayed to me that they didn't have to explain anything to me. I was to do as I was told. Or in times where I questioned that even further, our boss would have an ASAC come down and we would have a meeting, and he would explain to us in his way of how he was not obligated to explain it any further to us and we needed to follow orders.

Mr. CUMMINGS. Well, I think we are missing a piece of the puzzle here, and I think we must do more. It sounds like both of you raised concerns with your supervisor. And I don't want to reach any conclusions yet on this because I think we need to gather more information. I think it makes sense to talk to the supervisor and figure out what his answer to these allegations might be.

Thank you, Mr. Chairman. I yield back.

Chairman ISSA. Thank you. I am assuming that you now join me in ensuring that all of the other people above these gentlemen will be interviewed in a prompt fashion, including those here in Washington?

Mr. CUMMINGS. Mr. Chairman, absolutely no doubt about it. And, at the same time, I am glad you asked that question because we want to make sure, as I said, we want to make sure, in the words of Mr. Heyer, that everyone is brought to justice.

Now, let me abundantly clear since you asked the question. I want to make sure that there is no person—I don't care who they are—whose trial is jeopardized, that is able to get away, to get off of charges. I don't care how it is connected with this, I don't want their trials jeopardized. As an officer of the court and one who has practiced criminal law for many years, I am very concerned about that.

And so, I think that we can reach a balance. And I have urged the Justice Department to cooperate. They have expressed their concerns. But, again, as I said before, and I promise this family,

I promise you, I will do everything in my power. I will not rest until we bring everybody to justice.

Chairman ISSA. I thank the gentleman.

We now recognize the gentleman from Oklahoma, Mr. Lankford, for 5 minutes.

Mr. LANKFORD. Thank you.

And thank all of you for being here. This has to be a very difficult day, and not a day that you had ever hoped to be testifying in front of a congressional hearing, especially related to something like this. So we very much appreciate your time and for being here, as well.

Special Agent Dodson, let me ask you a series of questions. And these will be for several agents. Give me your best guess—and it is going to be just a guess on this—how many weapons do we have in the United States or in Mexico that are out there that are results of Fast and Furious that we do not know where they are?

Mr. DODSON. Well, sir, my best guess, estimate at that is—and remembering that Fast and Furious was one case from one group in one field division—is about 2,500 in total that we facilitated the sale of to these known straw purchasers. And I have heard numbers as many as 300 to 800 or so that we know to have been recovered. So, outstanding, you are looking in the ballpark of anywhere from 1,000 to 1,500, 1,800 guns still.

Mr. LANKFORD. What is your best guess on how many of those are in Mexico and how many of those are in the United States?

Mr. DODSON. I would say two to one, Mexico versus United States.

Mr. LANKFORD. Okay. Were there any other mechanisms discussed to trace these weapons that you knew were being sold to straw purchasers other than just serial numbers? Any other way to be able to track them, trace them at all?

Mr. DODSON. Yes, sir.

Mr. LANKFORD. How successful do you think that was?

Mr. DODSON. I can tell you that after a trip to RadioShack with ATF funds, I, myself, manufactured a GPS tracking device that would fit inside the handle of an AK-variant rifle. The problem with it was the limited battery life.

There were also attempts made through our tech departments and other tech departments to have a GPS system wired into one AK-variant rifle.

Mr. LANKFORD. And how was received by supervisors?

Mr. DODSON. Well, actually, the one that went through our tech section was initiated by them——

Mr. LANKFORD. Great.

Mr. DODSON [continuing]. After my attempt to manufacture one didn't work out so well.

The one that we got from our tech side did actually work. And, although it achieved its purpose, the last time I believe anyone knew its whereabouts was about 50 miles south of the U.S.-Mexican border.

Mr. LANKFORD. Special Agent Casa, do you know of any other offices of ATF that are using this type of strategy?

Mr. CASA. Not that I am aware of, no, sir.

Mr. LANKFORD. Would you consider this a common practice that is being contemplated in any other area?

Mr. CASA. No, sir. I definitely hope not. No, sir.

Mr. LANKFORD. Okay.

Let me follow up on a statement that you made that is a very, very serious statement. You made this statement in your opening statement: "It is a common practice for supervisors to retaliate on special agents who do not toe the company line."

Mr. CASA. Yes, sir.

Mr. LANKFORD. That is a pretty serious statement.

Mr. CASA. It is commonplace within ATF, sir.

Mr. LANKFORD. Is that unique to your area, or is that unique to multiple areas, do you think, of ATF?

Mr. CASA. In my experience, sir, it is unique to multiple areas within ATF. I have known multiple—dozens of agents that have been—received punitive punishments, whether they were justified or not.

Mr. LANKFORD. Okay.

Mr. Forcelli——

Mr. FORCELLI. Yes, sir.

Mr. LANKFORD [continuing]. Do we have a perfect storm here of a U.S. attorney who is unwilling to prosecute Federal gun laws and a group of supervisors in the ATF that are promoting a program to release weapons here? Is that just two errors here, or is it your sense there is something coordinated that is going on? And I understand that is a guess at this point.

Mr. FORCELLI. Sir, it is my belief that what we have here is actually a colossal failure in leadership from within ATF, within the chain of command involved in this case, within the U.S. attorney's office, and within DOJ as to the individuals who are aware of this strategy.

To walk a single gun is, in my opinion, an idiotic move. More families will suffer, like the Terrys and like Mr. Cummings, at the hands of armed criminals. We weren't giving guns to people who were hunting bear. We were giving guns to people who were killing other humans.

The assumption that all of these guns went to Mexico is apparently something that they believed in that group——

Mr. LANKFORD. But your assumption is, this was coordinated among all those individuals, that this plan would happen and it was going to be allowed to happen?

Mr. FORCELLI. It would be allowed to happen, and we would trace guns into Mexico, be able to identify a cartel, and take them down.

The problem that we have is that I know, based on what I heard from agents and what I heard over the radio, that surveillances would terminate often far from the border. Some of these guns could have been diverted with cartel drugs to New York, to Baltimore, to Oklahoma, to anywhere in the United States. This was a catastrophic disaster.

Mr. LANKFORD. Thank you.

With that, I yield back my time.

Chairman ISSA. I thank the gentleman.

We now recognize the gentlelady from New York, Mrs. McCarthy—Maloney. I am sorry.

Mrs. MALONEY. Thank you, Mr. Chairman.

Chairman ISSA. You are both New York, but I know the difference.

Mrs. MALONEY. Right, right—and ranking member, for calling this important hearing.

And I join my colleagues in expressing our condolences and support to the Terry family.

And I thank all of the professionals in law enforcement for your work and your bravery. And I especially want to welcome Special Agent Forcelli since I used to have the honor of representing the beautiful Bronx where you served, and I appreciate your statements in support of the ATF in New York and their fine work.

I would like to ask you, Special Agent Forcelli, about some of the specific statements in your testimony to try to get a better understanding of what evidence is necessary in order to get a conviction in these cases. And if I understand this correctly, there is no Federal statute that specifically prohibits straw purchases. Is that correct?

Mr. FORCELLI. No, ma'am. There is a statute, but the statute doesn't carry significant jail time.

And, candidly, I mean, I had great success working with Preet Bharara and several administrations before his with the U.S. attorney's office in New York. And we used basic techniques. You arrest the people who were the bottom feeders, the lower people in an organization, and then you proffer them, you gather information. Utilize waivers of speedy presentment, where you have somebody go do a delivery in the street to catch the next guy in the chain. Have the straw buyer perhaps deliver the firearms to the trafficker and then arrest the trafficker.

We didn't have those tools available to us in Arizona, because the U.S. attorney's office wouldn't allow us to utilize waivers of speedy presentment before a magistrate. Proffers almost never happened. The basic investigative techniques that I used with great success in the Southern District of New York, Eastern District of New York, and elsewhere weren't being deployed in the District of Arizona.

Mrs. MALONEY. Well, working with my staff, when we looked into it, straw purchases are typically charged under section 922 and 924 of the Criminal Code, and these sections make it a crime to knowingly make a false statement. And, in this case, the false statement would be when the straw purchaser lies on a Form 4473 when he or she makes a straw purchase. This was the way that they went after straw purchases in other States.

Are you aware of these two sections and knowingly making a false statement, are you aware of that particular——

Mr. FORCELLI. I am, ma'am. And, again, I will just state that, in many instances, these cases weren't prosecuted by the U.S. attorney's office——

Mrs. MALONEY. But I want to get back to the false statement. And what is the false statement they would make on such a form that they could use in prosecutions; are you aware?

Mr. FORCELLI. Well, the most blatant one is that there is a box that you check whether or not you are purchasing the firearm for yourself. A straw purchaser clearly is not. They are buying that gun merely to deliver it to another person.

The other lies would be sometimes people put false addresses——

Mrs. MALONEY. And getting back to your statement on the prosecutions, border-State U.S. attorneys have complained that district court judges view these prosecutions as mere paper violations. And have you heard this criticism before?

Mr. FORCELLI. I have, and I agree with it. I think perhaps a mandatory minimum of a 1-year sentence might deter an individual from buying a gun. Some people view this as no more consequential than doing 65 in a 55 zone.

Mrs. MALONEY. Yeah. And the Justice Department——

Chairman ISSA. If the gentlelady will suspend, I want to caution the witnesses that the scope of your testimony here is limited and that it is not about proposed legislation and the like and, under our House rules, would not fall within the scope of this. So, anecdotally, you can have opinions, but ultimately it would not be considered valid testimony.

Mr. CUMMINGS. Point of order, Mr. Chairman.

Chairman ISSA. The gentleman will state his point of order.

Mr. CUMMINGS. Let me just—Officer Forcelli, in his testimony, has a statement, Mr. Chairman, that I read, where he says that these firearms are ending up on both sides of the border. And I think it is only fair that, since it is his statement, that she—and that is basically what she is pretty much going to, but——

Chairman ISSA. The gentlelady can ask any question she wants within the scope of the hearing. Under Rule XI, clause 2(k)(8), it is the discretion of the committee as to the breadth of the testimony.

Any question related to the operations or the failures of Fast and Furious or factual indications of what occurred in Arizona or throughout the system are within the scope of the hearing. Proposed legislation at a Federal level and whether or not they should be changed are outside the scope of not only this hearing but would not ordinarily fall under the jurisdiction of this committee.

The gentlelady may continue——

Mr. CUMMINGS. Just a further point of order, Mr. Chairman.

It is my understanding of the rules that you can object to the question, but you can't tell the witness what to testify to.

Chairman ISSA. Under——

Mrs. MALONEY. Well, reclaiming my time, I appreciate the chairman's statement.

And I appreciate your statement earlier when you said you wanted full answers and full prosecution. And I think it is certainly within the scope of this hearing to understand why we are not getting a full prosecution. And the allegation that they call them paper excuses, as opposed to a valid, concrete way to react I think is a valid way to go forward.

Chairman ISSA. Will the gentlelady——

Mrs. MALONEY. I am supporting your statements.

Chairman ISSA. If the gentlelady would suspend for just a moment.

The gentlelady's questions and whether or not the gentleman believes that law enforcement was doing its job or that the courts were properly enforcing and whether that may have led to actions is fully within the scope. Anything that these individuals witnessed in or around Fast and Furious is certainly within the scope.

I only caution, we are not here to talk about proposed gun legislation. It would be outside the scope of this hearing.

Mrs. MALONEY. Well, I wasn't discussing that. I was trying to figure out why the Justice Department and the IG found that prosecutors often decline these gun cases. I want to know why they are declining them.

And, to quote from the testimony, one of you said, "because they believe it is difficult to obtain convictions on these violations and because they believe it is difficult to obtain paperwork from Mexico."

My question is, are these valid excuses not to bring these cases? I think that is a valid question to get to why we are not getting prosecutions in these cases. Are these valid excuses, to say they are paper excuses, not to bring it?

Mr. FORCELLI. I believe not, ma'am.

And, again, to go after the mid-level and upper-level members of a cartel, you need to start, unless you have evidence on them immediately, with the people at the bottom of the food chain.

When straw-buyer cases are dismissed because of excuses made up by the U.S. attorney's office, as opposed to when you have factual evidence that shows that person has committed a crime, then you can't prosecute that bottom feeder to move up to the next level.

Mrs. MALONEY. One of you, in your testimony, called these laws to prosecute "toothless." And could you explain to me, why are existing straw-purchase laws toothless?

Mr. FORCELLI. My opinion, ma'am, is that, with these types of cases, for somebody to testify against members of a cartel, where the alternative is seeing a probation officer once a month, they are going to opt toward, you know, not cooperating with the law enforcement authorities.

Mrs. MALONEY. And what would help your interactions with the U.S. attorney's office? Mr. Casa, Mr. Forcelli, or others, what would help you be able to be part of getting convictions and bringing those to justice that are part of these straw purchases that led to the death of Mrs. Terry's son?

Chairman ISSA. The gentlelady's time has expired, but you certainly can answer that.

Mr. FORCELLI. Well, I believe, first and foremost, they probably need more resources at the U.S. attorney's office in Arizona. There are overwhelming numbers of gun crimes occurring there, and if they don't have the resources to prosecute them, then I would imagine that they would need some assistance in those regards.

Chairman ISSA. We now recognize the gentleman from Idaho, Mr. Labrador, for 5 minutes.

Mr. LABRADOR. Thank you, Mr. Chairman.

Terry family, thank you for being here. I will always remember the poem. And I think I am going to put this on my wall: "I do not fear death, but I do fear the loss of my honor." I think that is something that hopefully every Member of Congress can somehow re-

member. I think sometimes we worry too much about death—and, in our case, death is, you know, the next election—and too many of us forget that what we should be worried about is our honor and the honor of this Nation.

So, thank you, Mrs. Terry, for raising such a great son. I have five children, and I cannot even imagine what you are going through.

When did you, Mrs. Terry, when did you first hear that—I think you said you first heard about the weapons being purchased through Operation Fast and Furious, you heard that through the media, or did you hear that from any of the agencies?

Mrs. TERRY. No. It was mostly on TV, the media, newspapers. I never really got a call about anything like that until it was brought out in the newspapers.

Mr. LABRADOR. And how did you feel when you heard about that?

Mrs. TERRY. I was—just was flabbergasted. I just—I didn't believe it at first.

Mr. LABRADOR. Did you have any questions? Did any questions come to your mind when you started learning that maybe there was something? Because I heard about this when I was first elected—I am a freshman here—and I was just first elected. And right after my election, I started hearing from people in my district about this. And we, in fact, were some of the first to call for a hearing here in Congress about this, in the House.

And what went through your mind? What were some of the thoughts that you had?

Mrs. TERRY. Well, I did ask a lot about how it happened, when it happen, why it happened, but never got no answers because nobody wanted to say anything.

Mr. LABRADOR. So did you address these questions with the Department of Justice or any members of the Attorney General's——

Mrs. TERRY. Oh, yes. Yes.

Mr. LABRADOR. And no one has answered those questions?

Mrs. TERRY. We got a lot of different answers.

Mr. LABRADOR. Okay. To whom did you speak, specifically? Do you remember?

Mrs. TERRY. Well, we have been to so many memorials and I have talked to so many people. But I talked to a lot of his BORTAC friends that were on the unit that was with him. And they were, like, on a gag order, so they couldn't tell us nothing. It was like they didn't even want to talk to us.

Mr. LABRADOR. Are you satisfied with the answers you are getting?

Mrs. TERRY. No.

Mr. LABRADOR. No.

Any of the members of the family, are you satisfied with the answers you are getting? Mr. Heyer.

Mr. HEYER. I think I can speak for the family, Congressman, that there is a level of frustration for the family.

I want to make it clear that our number-one goal is to pursue the prosecution of all the killers of Brian. That is our number-one goal. And, you know, the U.S. attorney's office in Tucson and the FBI is working very hard to do that.

But I also think that I can speak for the family—we have talked about this this morning—that there seems to be a separation, a distinct separation, between Brian's murder investigation and the ATF Operation Gunrunner, Fast and Furious Operation. There seems to be a hesitancy to connect the two. So that part is very frustrating.

Mr. LABRADOR. Can you tell me, Special Agent Casa or any of the special agents—that is a great point. Why do you think there is this separation? Why are they making the separation between the murder of the agent and the Operation Gunrunner?

Mr. CASA. Simply put, just to reduce their liability and our ATF's role in this murder. It started with the straw purchase that wasn't interdicted; it ends up in the murder of a law enforcement officer—by the sounds of it, a very honorable law enforcement officer.

Mr. LABRADOR. Thank you.

I have no further questions.

Chairman ISSA. Would the gentleman yield?

Mr. LABRADOR. Absolutely.

Chairman ISSA. Well, following up on that, the two serial numbers that were used and found at the scene, to your knowledge, aren't those serial numbers not the first, the second, or the third purchases—meaning, there already was a case made against a potential defendant, and he could have been arrested and even turned as an informant, potentially, prior to the sale of those two weapons?

Mr. CASA. My understanding is, yes.

Chairman ISSA. Thank you.

We now recognize the gentleman from Massachusetts, Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

First of all, Mrs. Terry and Mr. Heyer, my prayers and condolences go to your son, your cousin, and your family.

Special Agent Forcelli, in your statement, you expressed extreme frustration with the U.S. attorney's office in Phoenix. You said that they gave dozens of firearms traffickers a pass. You also testified that they allowed criminals to walk free. And you indicated that they declined most of the cases—most of your cases. And this was at least one factor which led to the debacle and perhaps the necessity of Operation Fast and Furious. Is that correct?

Mr. FORCELLI. Yes, sir. I strongly believe that.

Mr. LYNCH. Those are very strong allegations, so I want to ask you about the specific cases that you cite.

First, you talk about the 2007 case of Victor Varela, who trafficked, I think, .50-caliber rifles to the Mexican drug cartels, one of which was used to kill a Mexican military commander. The U.S. Marshal David Gonzalez said at the time, "This case was made one of our highest priorities because of the nature of the crime." But you say that the assistant U.S. attorney in Phoenix wouldn't prosecute.

Do you believe, in that case, that we had sufficient evidence——

Mr. FORCELLI. Absolutely.

Mr. LYNCH [continuing]. To move forward with the prosecution?

Mr. FORCELLI. Absolutely. In fact, sir, that case was prosecuted by the Arizona Attorney General's Office, where they had to utilize

statutes that aren't normally utilized in gun cases. They had to charge them with fraud schemes for falsifying the Form 4473s.

Mr. Hurley, the assistant U.S. attorney who declined the case, stated that, because the gun was in Mexico, the body of the crime was in Mexico, we have no case, and just outright declined prosecution for that reason.

We had identified additional straw buyers in Mr. Varela's network. We had gotten cooperating statements from them. They also went to jail.

This could have been a very good Federal case. But, again, the U.S. attorney's office declined it because, in their opinion, the gun being in Mexico meant that the evidence of the crime was in Mexico.

Mr. LYNCH. Do you know any other office or region that applies that type of standard to go forward with prosecutions?

Mr. FORCELLI. Sir, I was told this was a Ninth Circuit issue, but I have had discussions with prosecutors in Los Angeles, which is also in the Ninth Circuit, that say that they didn't carry it to that extreme.

And what I will say for the record, sir, is, since then, since Mr. Hurley is no longer running the firearms unit—he has been replaced, or now answers to another supervisor—they have now amended that to say that if we can go down and physically examine the weapon or have one of our assets in Mexico examine the weapon, that they will now charge those crimes. But for 2 years where I was in charge of the firearms-trafficking unit, if the gun went to Mexico, that case was dead.

Mr. LYNCH. Okay.

You also testified regarding the Excalibur gun store case in 2008. You said the dealer in that case admitted that about a thousand firearms were trafficked to Mexico, and half a dozen of them were found around the dead body of cartel leader Beltran Leyva, who was killed by the Mexican Naval Infantry.Is that correct?

Mr. FORCELLI. Yes, sir.

For the record, though, I would like to point out that that case was brought to trial by the Arizona Attorney General's Office. However, the case was dismissed by the judge.

Mr. LYNCH. Right.

Mr. FORCELLI. So that case was dismissed.

What I will say in regards to that case is, I did, after that case was declined by the U.S. attorney's office, present that case to the Southern District of New York for prosecution, because they were doing a lot of international narcotics-trafficking case. And that office had told me, if we could have shown one wire transfer, one banking transaction through their district, they would have been interested in taking that case. Meanwhile, the State where all these crimes took place, they were readily willing to just dismiss prosecution efforts.

Mr. LYNCH. Right.

Both The Washington Post and PBS "Frontline" support your version, I guess, and concluded that, "If there were ever a good case against a set of rogue gun traffickers, the case against the owner of Excalibur gun store was it."

And I will read excerpts from The Washington Post here. It says, "This was a case that seemingly had everything in its favor. In this case, the agents had tons of evidence—surveillance, recorded phone calls, confidential informants and undercover agents posing as straw buyers."

But this case was also denied, as you say, by the assistant U.S. attorney in Phoenix. Is that correct?

Mr. FORCELLI. Yes, sir. The same assistant U.S. attorney who was the prosecutor in the Fast and Furious investigation, as a matter of fact.

Mr. LYNCH. Okay. And then, in 2009 and 2010—I am running out of time—you also say the same assistant U.S. attorney declined dozens of other cases. Is that correct?

Mr. FORCELLI. After 2009, sir, my duties were changed to home invasion investigations, so I am not certain what happened with the firearms-trafficking investigation.

Mr. LYNCH. Okay. What is your assessment of why this specific U.S. attorney repeatedly refused to take the gun cases?

Mr. FORCELLI. Sir, I don't know. I couldn't give you a reason as to why.

Mr. LYNCH. Okay. Maybe we should have him in for questioning.

Mr. FORCELLI. That would be great.

Mr. LYNCH. All right.

Mr. Chairman, I have run out of time. I yield——

Chairman ISSA. Would the gentleman like an additional 30 seconds?

Mr. LYNCH. Please. Yeah, that would be great.

Chairman ISSA. Without objection.

Mr. LYNCH. Thank you.

I just want to note that your testimony, which is very good—and, look, it takes a lot of courage to do what you gentlemen are doing—it goes back to 2007.

Mr. FORCELLI. It does.

Mr. LYNCH. So, you know, this isn't a political issue because, obviously, you know, we are talking about career prosecutors who have been there since the Bush administration. And, as you cite, going back to 2007, you are not alone in your assessment. We have heard other complaints from other witnesses.

So I just want to thank you for your willingness to come forward and help the committee with its work.

And I want to thank the chairman for the extra 30 seconds. Thank you.

Mr. FORCELLI. Thank you, sir.

Chairman ISSA. I thank the gentleman.

We now recognize the gentleman from Utah, Mr. Chaffetz, for 5 minutes.

Mr. CHAFFETZ. Thank you.

First, to the Terry family, thank you for your son's service, your relative's service. He is a hero. You know, we got a lot of people on the front line doing tough things. And there will be nights ahead—I just want you to know and express, given an opportunity, know how much we appreciate his service and will remember him.

And to the agents who are brave enough to step forward and tell it like it is, we thank you. It takes a lot of bravery to step forward

and do the right thing. I know you probably had sleepless nights and will have some others moving forward, but you are doing the right thing. And we want to thank you for your service and for your bravery in sharing your personal perspective in this situation.

Mr. Dodson, let's start with you for a second. At what point did you come to where you just had to come forward, you had to actually say something? Because usually these things sort of build up or something big happens. Explain to me what happened, where you thought, "Enough is enough."

Mr. DODSON. Do you mean outside of ATF, sir, or——

Mr. CHAFFETZ. In this particular case. I mean, why did you get to this point where you are sharing this information?

Mr. DODSON. Well, I questioned my supervisors almost immediately, once we realized—you know, once we had relocated to Phoenix and got briefed in and then actually started operationally, that we were allowing all these guns to go.

Then, as the case agent and my supervisor and ultimately my chain of command had all informed me that I was wrong and they were right and this, you know, was a righteous operation, it wasn't until December 15, 2010, when I read what—we have a SIR report, a significant incident report, detailing ATF's preliminary investigation into the trace and weapons purchased by Jaime Avila.

And after reading that and then speaking with my FBI counterparts and learning that they were unaware of all of the events surrounding the purchase and trace of those firearms is when I had to go outside of ATF. And I attempted to contact, originally, our chief counsel's office, our ethics section. I made several attempts to contact the OIG's office. And, ultimately, I was able to speak to someone at Senator Grassley's office.

Mr. CHAFFETZ. Do you think that there is a conflict between the OIG, given that maybe this started as a result of a recommendation? Or do you see any sort of conflict that the investigator general has in this case?

Mr. DODSON. Well, I can see a conflict between the office of the OIG, yes, sir. The actual individuals that are working the case, my interaction with them, since I have been interviewed by them, is that I think that they get it.

However, those two offices, being what they are and how they are aligned, there is inherently a conflict of interest there. If, in fact, someone at DOJ authorized this, knows about it, is as well-versed in it as everyone at ATF, that thereby creates the conflict with OIG.

Mr. CHAFFETZ. Give me an idea of the size and scope. I mean, we are talking about thousands of guns knowingly going south, so to speak. In your normal course of business, if you thought that there was a straw purchase happening, how many guns would kind of push you over the threshold to say, "We better stop that?"

Mr. DODSON. Well, sir, I can tell you this. Prior to my arriving in Phoenix in December 2009, my entire career, we have never walked a firearm. And, as a matter of fact, even if one had gotten away from us, if it was only a prop which had been mechanically engineered so that it could not effectively fire a round, even if that got away from us, no one went home until we got it back.

Mr. CHAFFETZ. Even just one gun?

Mr. DODSON. Yes, sir.

Mr. CHAFFETZ. And, in this case, we have thousands of guns.

Now, what was the goal here? I mean——

Mr. DODSON. Sir, I can tell you what I was told. I was told that the goal was to ultimately target and bring an entire cartel to prosecution.

Mr. CHAFFETZ. But how were they going to do that? I mean, the suspected cartels were in Mexico, were they not?

Mr. DODSON. Yes, sir, they were. And I have no idea how they planned to do that by this operation or how it was designed to function.

Mr. CHAFFETZ. So was it the goal to knowingly and intentionally allow these guns to go into Mexico?

Mr. DODSON. Was that the ultimate goal? Not as explained to me. Was that part of, was that the rules in play to achieve the goal that they had explained? Yes. We were mandated, let these guns go.

Make no mistake, there was not a time we were out there on surveillance where we didn't have the forethought that these were going to be recovered in crimes. The next time we became aware of these guns would be when they were recovered at their final crime. Not whatever crime they might have done. It was the last crime that they commit that they—not "they" commit, but the person who has them commits—that they are recovered in. There may be 9 or 10 that the cartels have perpetrated with those firearms prior to that date, but that recovery date is when we will learn about it.

So, ultimately, what was the main goal, as explained to me, was to get a cartel. The mission, what we were doing, what we were ordered to do every day was watch these—the same guys buy the same guns from the same dealers who we told to make the sales, and then we would sit back and wait for the traces.

And when they came through from places in Mexico where it was definitively related to cartels, they were giddy. They thought that that justified—that created their nexus from this straw purchaser to the cartel. However, there is not a rookie police officer in this country that can explain to you how we are going to make a case on them with that information.

Mr. CHAFFETZ. My time has expired. I yield back.

Chairman ISSA. I thank the gentleman.

We now yield 5 minutes to the gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

And let me first join my colleagues in expressing my profound sympathy to the Terry family for your loss and the country's loss. And it maybe sounds hollow to say thank you for his service. We are in a terrible battle in the southwest of our country and on the border with Mexico and in northern Mexico. Sadly, he is another victim of that terrible battle, but his memory and his contribution are something that will long be remembered and appreciated. And our thoughts and prayers go out to you and the family.

I want to thank our three agents for being here, for your courage and for your testimony. I want to respectfully suggest, however, that I think that—you know, we urged you to speak freely at some

risk. And that means answering questions freely without interference from any other member of this committee. And we don't sensor content here. The hearing has a scope, but if you feel an answer to a question requires amplification, you don't need to be mindful of the scope. And an individual member of this committee has an individual right to ask questions and to solicit answers without censorship.

So I want you to have that confidence, just as we began this hearing urging you to speak freely. So you can speak freely in answering questions, including questions put by this Member.

Let me ask you, Special Agent Forcelli—I read your testimony about the U.S. attorney in Phoenix, and I want to explore with you just a little bit, to what do you attribute the seeming reluctance to prosecute aggressively obvious illegal behavior that has a direct impact on your mission and that of the U.S. attorney's office?

Mr. FORCELLI. Sir, I can't say for sure.

And, again, I don't want to paint the entire U.S. attorney's office with a broad brush. We had a very successful program that took place two summers ago where we arrested 70 home invaders, violent criminals who were doing drug robberies, and prosecuted them and went to trial.

For some reason, the firearms unit, which was at first when I first arrived in Phoenix was run by Rachel Hernandez and then subsequently run by Emory Hurley, consistently had issues with prosecuting our cases.

One example, we had an informant that they dismissed outright. This informant had provided truthful testimony, had provided accurate information, everything that met all the standards that we look for in law enforcement. They dismissed every case that this informant had anything to do with. When I questioned them as to why are we no longer using this informant, they said that his information was inaccurate and he lied.

Well, I was upset, because I had such a good relationship with the prosecutors in New York, that my agents would bring a substandard product to the U.S. attorney's office, so I went back and questioned them and looked at that document. And that informant's information was dead-on.

I then re-engaged Ms. Hernandez and asked why were not using this informant, and she stated, "Well, he was moved with EWAP funds," Emergency Witness Assistance Program funds, "and DOJ policy says we can't do that." Well, having worked with the Southern District of New York and having contacted main Justice, I found out that that wasn't true. The only disclosure would be, at trial, you may have to articulate that that informant was paid those funds.

When I approached her again about this particular situation, because dozens of cases hung in the balance, she finally conceded, "Well, he wore a lot of jewelry, he doesn't have jury appeal. My final answer is, no, we won't use him."

I know, I have used murderers, I have used robbers, I have used all sorts of people to put on the witness stand to make cases as part of cooperation agreements. Part of a lawyer's job is to prep a witness. If this guy wore too much gold chain or didn't have jury

appeal, it is incumbent on the prosecutor to help get him ready for testimony.

So I found it was either laziness or arrogance that really terminated many of our cases.

Mr. CONNOLLY. And when you compare that experience to your experience in New York, this was unusual?

Mr. FORCELLI. Sir, I can say that I worked at the U.S. attorney's office, mostly for the Southern District, through Mary Jo White's tenure there, through Dave Kelley, James Comey, even currently with Preet Bharara—consistently outstanding.

I can tell you that in the U.S. attorney's office from Arizona—when I got there, Daniel Canales was acting because the U.S. attorney had been fired—it was bad doing gun cases. And it continued to be. It has improved slightly since this flare-up, but it has been consistently bad.

Mr. CONNOLLY. Thank you.

One final question. I wish I had more time, but we talked about resources. There are 8,500 licensed gun dealers in the four southwestern States. You have 224 ATF agents assigned to Project Gunrunner. Do you really have the resources you need to do your job?

Mr. FORCELLI. It is amazing, sir, that you ask me that because I just had contact last week with a friend of mine who works in the 46th Precinct where I worked as a New York police officer. It is one square mile. There are 355 police officers assigned to the 46th Precinct—one square mile. I have less than 100 agents assigned to the entire State of Arizona that is 114,006 square miles.

So do we have the resources? No, we don't. We desperately need them. Does that justify us not stopping——

Mr. CONNOLLY. No, no.

Mr. FORCELLI. No.

Mr. CONNOLLY. Different issue.

Mr. CONNOLLY. Thank you, Special Agent.

[The prepared statement of Hon. Gerald E. Connolly follows:]

Statement of Congressman Gerald E. Connolly

Committee on Oversight and Government Reform

June 15th, 2011

Chairman Issa, even feigned interest in the danger posed by guns and narco-terrorists is welcome from the Republican Party. For many years gun control advocates have noted that federal law permits criminals and terrorists to purchase and traffic guns with impunity. They can buy guns without undergoing a background check at gun shows or through personal sales.

Fortunately, President Obama and the Attorney General have placed renewed focus on apprehending criminals engaged in gun trafficking, despite predictable resistance from the usual suspects. The NRA has opposed regulations which would require tracking of multiple gun sales of guns that are "semi automatic; a caliber greater than .22; and the ability to accept a detachable magazine." In other words, the gun lobby is against regulating precisely those weapons which narco-terrorists have used in drug wars and the kind of gun that was used to attack our colleague, Congresswoman Gabriel Giffords. Not surprisingly, the NRA also has organized opposition to Project Gunrunner, including its Fast and Furious component. Apparently they are willing to overlook the fact that of the 35,000 drug related killings in Mexico since 2006 more than 70% of all Mexican guns recovered at crime scenes came from America.

Sadly, House Republican leaders have joined in their defense of anyone's ability to purchase guns. During the House Judiciary Committee markup of the PATRIOT Act, for example, Mr. Issa joined all other Republicans present to defeat an amendment which would have prevented terrorists from buying guns. Without objection, I will insert for the record the transcript from that hearing, at which Republican Committee members defend the "rights" of individuals, even those who are on the terrorist watch list, to purchase assault rifles and other guns.

But more outrages follow. The gun lobby and its advocates in Congress are even trying to pass legislation to eviscerate the ATF's authority to stop criminals. Chairman Issa, for example, is one of the cosponsors of this legislation, the so-called "Bureau of Alcohol, Tobacco, and Firearms, and Explosives Reform Act." According to the Congressional Research Service, this bill:

- "Declares that repetition of a recordkeeping violation, regardless of frequency, shall not be considered evidence that the licensee committed the violation knowingly and in intentional disregard of a legal duty."
- "Permits an owner of a firearms business whose license is expired, surrendered, or revoked 60 days to liquidate inventory."
- "Revises firearms licensee recordkeeping requirements, including by prohibiting: (1) the Attorney General from electronically recording firearms transaction information of a

> discontinued firearms or ammunition business by name or personal identification code; and (2) any rule or regulation or administration action from establishing any comprehensive or partial system of registration of firearms, firearms owners, or firearms transactions or dispositions."

This legislation would even weaken civil penalties for violations of gun control laws, effectively tying the hands of the ATF at precisely the time this agency needs more authority to stop narco-terrorists. According to the GAO, 247 people on the terrorist watch list purchased guns from federally-licensed firearms dealers in 2010, yet the BATFE Reform Act would actually weaken penalties against negligent firearms dealers which sell guns to terrorists. Not surprisingly, the NRA is lobbying for this legislation while lobbying to stop Project Gunrunner and Fast and Furious. Piling outrage upon outrage, the same critics of ATF have blocked appointment of a director for six years, impairing the agency's ability to do its job.

Most incredibly, Chairman Issa's "oversight," including this hearing, may even endanger a criminal investigation of narco-terrorists. The Justice Department stated, "This manner of oversight risks compromising the investigation and prosecution of alleged firearms traffickers, drug dealers, and money launders." It is no longer surprising that the Republican majority supports gun policies which arm Al Qaeda and Mexican drug lords, but endangering a criminal investigation of gun criminals is a new low for the gun industry's Congressional loyalists.

In a rational world this committee could engage in constructive oversight designed to strengthen gun control programs aimed at narco-terrorists. That oversight could include improvements to ATF programs designed to break up cartels, such as the Fast and Furious program. Instead, this investigation endangers a criminal investigation against narco-terrorists. Moreover, the majority's sanctimony about keeping guns out of the hands of terrorists rings hollow in the context of its support for legislation to gut ATF's ability to prosecute gun criminals and its failure to act on legislation to close the gun show loophole and terror gap. Chairman Issa, I share your view that gun control is an appropriate topic for this committee's consideration, and I would suggest that we hold a subsequent hearing on how our inadequate gun control statutes led directly to the massacre at Virginia Tech, the sniper attacks in Northern Virginia, the domestic terrorist attack at Fort Hood, the attempted murder of Congresswoman Gabriel Giffords, and the ongoing violence in Northern Mexico.

Chairman ISSA. Thank you.

We now go to the gentleman from South Carolina, Mr. Gowdy, for 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman. Thank you for your leadership on this issue.

And to the family of Agent Terry, let me say on behalf of the people from the upstate of South Carolina, we offer our condolences, and we thank you for the service and, ultimately, the sacrifice of your son, your brother, your friend.

To ATF, I worked with ATF for 16 years, and I find this hearing to be bitterly disappointing. This is not reflective of the ATF agents that I worked with for 16 years.

And this panel is perhaps not the best panel for me to express my displeasure, but, nonetheless, let me ask you this: When did ATF have either constructive or actual knowledge that guns were going to Mexico?

Mr. FORCELLI. Sir, it is my understanding that in 2009, when Operation Fast and Furious was initiated, they were not interdicting firearms and they had knowledge that those guns were being trafficked to Mexico.

Mr. GOWDY. Now, when you say interdicting firearms, you mean something as simple as a traffic stop several miles away from where the purchase was made, pretextual if it need be, but a traffic stop so you don't blow your informant, that easily could have been done, right?

Mr. FORCELLI. Absolutely.

In fact, let me point out something, sir. We say an "informant." A lot of the information that came into ATF came in from gun dealers who didn't like the fact that they are portrayed as this nefarious, gray market. The gun dealers were our friends. They helped us make a lot of these cases. And we had some successful cases. This is an anomaly, this Fast and Furious investigation. But the problem is, then, by getting them mixed up in this thing and encouraging them to sell guns when they decided to stop did not help our reputation with the gun industry.

The other thing is, if our job is to stem the flow of firearms into Mexico, and certain gun dealers realize there is a straw-purchasing problem and they are willing to—forgive me for using an analogy—turn off the faucets, well, we could have diverted our assets elsewhere and looked at other gun dealers where we thought the straw purchasers were going to. Instead, we just encouraged them to continue selling guns. It made no sense.

Mr. GOWDY. But even for this investigation, as half-baked as it was, to ever have worked, you would have had to have extradited folks from Mexico back for prosecution in a lying-and-buying case with a statutory maximum of what, 10 years? What are the guidelines in a typical lying-and-buying case?

Mr. FORCELLI. Generally speaking, people with—well, because they don't have a criminal history, which is why they can fill out the form—they get probation. But, again, that is if they are prosecuted at all.

Mr. GOWDY. They could have done car stops. They could have done search warrants. They already had a Title III up, from what I understand. Correct?

Mr. FORCELLI. Yes.

Mr. GOWDY. All right. So, even if it had worked, I don't understand how it ever would have worked.

Mr. FORCELLI. Sir, let's say, for example, that we wouldn't get as far as to be able to extradite the heads of the cartel. Perhaps, by going out there, doing interdictions, we could have deterred some of these guns from being purchased. Second, had we been able to go out there and stop a straw buyer and then perhaps go do a controlled delivery, we would have made it up to the next level in the organization.

Mr. GOWDY. You could have flipped them, though. You don't have to let the guns walk. Flip them.

Mr. FORCELLI. Absolutely. I agree.

Mr. GOWDY. How does your U.S. attorney not do proffers?

Mr. FORCELLI. That shocks me, sir. They do them very sparingly. Seventy home-invasion defendants we arrested, as I pointed out earlier. We proffered one. We could have solved unsolved robberies. We could have solved unsolved homicides. We could have solved an untold number of crimes had we had access to those defendants.

Mr. GOWDY. Now, this was an OCDETF case, right?

Mr. FORCELLI. Yes, sir.

Mr. GOWDY. Fast and Furious was an OCDETF case.

Mr. FORCELLI. Yes, sir.

Mr. DODSON. Yes, sir.

Mr. GOWDY. What other Federal agencies were involved, and what complaints did they lodge?

Mr. DODSON. Well, sir, I can tell you, from almost the genesis of the case, we had an agent with Immigration and Customs Enforcement embedded in Group VII acting on a co-case-agent status. So ICE was well-aware of it.

Mr. GOWDY. Was the Bureau involved?

Mr. DODSON. I am sorry?

Mr. GOWDY. The Bureau, FBI?

Mr. DODSON. You got to understand, ATF Group VII is the Phoenix Strike Force Group. The DOJ strike force consists of entities from DEA, FBI, ATF, and ICE.

Mr. GOWDY. What I am trying get a sense of—and I have less than a minute—I want to know how many different law enforcement officers and agencies told the U.S. attorney's office, "This is a dreadful idea." How many different people and agencies said, "This is unprecedented, it is a dreadful law enforcement idea, and it needs to stop?" How many people told Ms. MacAllister and Ms. English, "This is a horrible idea?"

Mr. DODSON. As for agencies that expressed that to the U.S. attorney's office, sir, none that I am aware of.

As for individuals that expressed it to Ms. MacAllister: myself——

Mr. CASA. Many.

Mr. DODSON [continuing]. Special Agent Casa, Special Agent Alt, Special Agent Medina voiced his concern.

Mr. CASA. So, countless detailees that came through.

Mr. DODSON. Yes.

Mr. CASA. Almost every person that came though that group, that saw what was going on——

Mr. DODSON. Every agent from outside of the Phoenix Field Division, sir, as well as many in it. But, specifically, those that came in from the outside were appalled as soon as they learned.

Mr. CASA. Shocked and appalled.

Mr. GOWDY. I am out of time, but I would like to ask one more question.

When the supervisors realized that guns were making it into Mexico, acknowledging the fact that we do not have much success extraditing people from Mexico for lying-and-buying cases, were the Mexico authorities warned, "Hey, something bad has happened, and firearms are in your country because we turned an eye to it?"

Mr. FORCELLI. Sir, I can say, having had conversations with our staff in Mexico City—this is ATF personnel assigned to Mexico City—that they were not fully briefed on this. They were very upset about it. This is something that was contained within the ATF Group VII.

Mr. GOWDY. So we are going to ask for extradition cooperation from a country that doesn't even know what we are doing, that doesn't even know that we are letting guns go into their country that murders their citizens as well as our agents.

Mr. DODSON. No, sir. Because, actually, the way this case is designed, we don't even have a lying-and-buying charge on the individual that committed the crime in Mexico with these firearms. They are not the ones that lied on the form.

Mr. GOWDY. You would have to have a conspiracy case, which—I am sorry. I am out of time.

Mr. DODSON. We never took the steps to develop that conspiracy, sir.

Mr. GOWDY. Thank you, Mr. Chairman.

Chairman ISSA. And I thank the gentleman.

We now recognize the gentleman from Massachusetts, Mr. Tierney.

Mr. TIERNEY. Thank you very much.

And my condolences to the family, as well, and friends. And I am not going to be asking you any questions, but I don't want you to interpret that as being unmindful of your pain and your sacrifice on that. I hope you accept it as such.

But I would like to talk to the three special agents on this a little bit and go back.

First of all, I do suspect that the Mexican Government understands that there are guns coming from the United States into Mexico. I mean, Mexico's Ambassador, Arturo Sarukhan, has stated pretty clearly that he thinks guns from the United States have been feeding violence, and overwhelming firepower is being unleashed by drug traffickers. So I think they are quite aware of that.

But before this Fast and Furious became the policy that we are all seriously questioning now, was it the Project Gunrunner, was that the policy of the government from 2006 to 2009?

Mr. FORCELLI. Sir, if I may, Project Gunrunner was a funding source that led to staffing many groups along the southwest border, you know, offices with agents.

Project Gunrunner was preceded by something that they referred to as "Operation Southbound." And what that did was, we identified straw buyers through the cooperation of gun dealers or

through reviewing documents of past firearms purchases, and then we would go out and do car stops and do interdictions. In many of those interdictions, there were no prosecutions, for the reasons I stated earlier. But the point was that we lawfully seized the weapons based on probable cause, and those weapons wouldn't hurt anybody.

Now, there were plenty of times where, if a gun dealer was suspicious of a person and we would stop them and that person was a law-abiding citizen, they went on their way with their lawfully purchased firearm and our apology. But if they were criminals, those guns were in our custody whether they went to jail or not, and they never hurt a soul.

Mr. TIERNEY. Were there any appreciable amount of weapons, do you think, getting through that system, still making it to Mexico?

Mr. FORCELLI. Oh, absolutely. And it is the nature of the straw purchasing. I mean, a straw purchaser is somebody who is legitimate. If the gun dealer isn't suspicious and he makes that sale, and then that person then hands it off to somebody who is going to bring it down to Mexico, we are going to have no way of knowing that until the gun is recovered in Mexico.

Mr. TIERNEY. All right.

So, in fact, you are familiar with the Iknadosian case?

Mr. FORCELLI. I was the supervisor of that investigation, sir.

Mr. TIERNEY. Well, I assume you were unhappy with that result.

Mr. FORCELLI. Extremely.

Mr. TIERNEY. And, in that case, didn't the judge make a determination that—essentially, he threw the case out after about 8 days of trial on the premise that there was no proof that the ultimate person that got that gun was a person not allowed or not lawfully in possession?

Mr. FORCELLI. Correct. What he was stating was that we couldn't prove that he was supplying prohibited persons. That wasn't the allegation or the nature of the case.

And, again, that is why, after that happened, I tried to present this case to the U.S. attorney's office in New York, which is just incredible at doing international narcotics cases. And had we had one wire transfer or one banking transaction occur in that district, I am convinced we would have had a successful prosecution there.

Mr. TIERNEY. Do you think there is any hesitation on Federal prosecutors—and I ask this of all of you agents because you have been so candid—any hesitation on the part of Federal prosecutors because they think, somehow, pursuing these cases is going interpreted as violating or looking to violate somebody's Second Amendment rights?

Mr. FORCELLI. No, sir. I honestly don't think so, from my perspective, having——

Mr. TIERNEY. That is not what is causing the inertia on the part of the prosecutors?

Mr. FORCELLI. I can't say for sure, sir.

Mr. CASA. I would have to agree with Agent Forcelli that, no.

Mr. TIERNEY. So if a person goes into a store, a gun store, and buys two or three or four handguns, does Federal law require them to report that?

Mr. FORCELLI. Yes, sir.

Mr. TIERNEY. Okay. And if I were a person who went into a store and I bought four or five long guns——

Mr. FORCELLI. No such requirement, sir.

Mr. TIERNEY. What if I went in—and you are familiar with the Romanian AKs?

Mr. FORCELLI. Yes.

Mr. TIERNEY. All right. And it is fair to say that a high amount or a large proportion of the guns that are going to Mexico constitute the AKs, the Romanian AKs?

Mr. FORCELLI. Absolutely.

Mr. TIERNEY. All right. So they are coming from Romania to this country, they get doctored up and changed, and then they move on down to Mexico?

Mr. FORCELLI. Yes, sir.

Mr. TIERNEY. All right. So if I went into a store and bought any number of those, the store owner doesn't have to report that?

Mr. FORCELLI. No.

Mr. TIERNEY. All right. If it was reported to you, would that give you some indication that here is something you ought to investigate?

Mr. FORCELLI. Sir, it is my opinion, just like we monitor moneys wired to the Middle East and we monitor how much Sudafed somebody buys in a pharmacy nowadays because that is what is utilized to make methamphetamine, it would be similar to that. Not everybody who buys more than one gun is a criminal, but it would give us an indicator that, hey, why is this person buying seven AKs? Maybe that is somebody we want to speak to.

Now we are not aware of those multiple sales unless one of two things happens. A is that we have a cooperative gun dealer who calls us and says, hey, something is not right here; or, B, that weapon is—one of those weapons is found at a crime scene and traced back to that individual. And then we go pull the paperwork manually from the gun dealer.

Mr. TIERNEY. Is there any law enforcement reason or rationale that you can think of why we would not want to have that information reported? Multiple sales of long arms, like Romanian AKs or something?

Mr. FORCELLI. I can only give you my personal opinion, sir. It would be a good indicator for us, a good starting point, much like it is with handguns.

Mr. TIERNEY. But no reasons you can think of why you wouldn't want to have it reported. It wouldn't interfere with law enforcement efforts if it was reported.

Mr. FORCELLI. In my opinion, it would help our efforts, sir.

Mr. TIERNEY. Okay. Thank you.

Chairman ISSA. The gentleman's time has expired.

The gentleman from Texas, Mr. Farenthold, is recognized for 5 minutes.

Mr. FARENTHOLD. Thank you very much, Mr. Chairman.

I, too, would like to express my condolences to the Terry family. The district I represent includes Brownsville, where the family of Special Agent Jaime Zapata reside, as well. And they are going through some pain similar to what you guys are going through, very possibly as a result of ill-conceived policies by the ATF.

I did have a couple of questions for the gentlemen here from the agency. And we appreciate your courage in testifying and want to assure you that—I think I speak for the bulk of this committee—that we really appreciate your courage in coming out. It certainly would be a bad thing if there were to be any repercussions.

My question to you is, in your testimony, you were talking about, you had followed the straw buyer from the gun store, and it would stop. Did you all ever go beyond the first handoff of that weapon, to trace them to where they were going?

Mr. DODSON. Sir, not really, no. Many a times, what we would do is, we would have the information beforehand, where they would call the FFL and say, "Hey, we are coming by to pick up 10 or 15 of these AK-variant rifles," at which time the FFL would notify the case agent and we would begin the surveillance. We would often go to the straw purchaser's house and catch him before he leaves there, catch him as he meets an individual, you know, at a carwash or a gas station——

Mr. FARENTHOLD. But you didn't follow that individual to move it up the chain.

Mr. DODSON. No.

Mr. FARENTHOLD. So if you were out to make a case against people higher up in the chain, wouldn't the next logical step have been following the gun the next step?

Mr. DODSON. That would be very logical, sir.

After he purchased the firearms and delivered them to another parking lot, and Special Agent Casa and I took pictures of them taking them out of one vehicle and putting them in another, yet we had to follow the straw purchaser back to his house, while we knew the guns were headed the other way on the highway. I cannot tell you the logic behind that either.

Mr. FARENTHOLD. Did you have something to add?

Mr. CASA. Yes, sir. We were given direction by either the case agent or the group supervisor—we were literally pulled off of surveillances. When we would make requests. After a straw-purchase exchange had taken place, we requested, hey, this is a good opportunity to seize the firearms from an unknown person, plus we get to identify that unknown person, plus we might be able to move up the chain. And we were told point-blank, time and time again, absolutely not, no.

Mr. FARENTHOLD. All right. All right.

I apologize for going so fast. I have limited time.

You say, at one time, you built a tracking device from stuff you bought at RadioShack, and then you had one, out of the thousands of weapons, you had one that the agency provided for you that ran out of battery. Is that correct?

Mr. DODSON. To my knowledge, there was just the one, yes, sir.

Mr. FARENTHOLD. So if you were trying to track guns, wouldn't the logical way to do that be to embed some type of tracking device either in the gun or its packaging?

Mr. DODSON. Sir, when the statement was made that we were trying to track these firearms, what that means is we were tracing them once they were recovered in the last crime they were utilized in.

Mr. FARENTHOLD. Right. But if you were trying to make a case that this is going up to the Mexican drug cartels and is involved in multiple murders and, you know, potentially bringing bigger charges against these straw men for being part of a conspiracy, you would want to see, you know, everybody involved in that conspiracy, wouldn't you?

Mr. DODSON. Oh, most definitely, sir. And what I would have done, I would have landed on these straw purchasers, and, before long, I would have had that information for you.

Mr. FARENTHOLD. All right. So let me ask you this. The policy we had of just following them and then quitting, do you see any rationale behind that? Could you come up with any reason we were stopping when we were stopping? Any theory at all?

Mr. FORCELLI. Sir, I will say this. For years, when I first got to Phoenix, I was supervising firearms-trafficking investigations, and we utilized trackers, and we did what you just pointed out. We would make a car stop at the hand-to-hand exchange, or we would seize the weapon if it got to a reasonable point where we thought it might go to Mexico.

To answer your question, I have sat down many times to try to figure out what the logic would be to let these firearms go to Mexico, and I can't think of a single logical reason why this strategy would work.

Mr. FARENTHOLD. And you are not aware of any cooperation with the Mexican authorities or any of our intelligence agencies that might be tracking these beyond Mexico or anything?

Mr. FORCELLI. I think if we were tracking them, we wouldn't see the tragic results we see when these guns get traced back from murder scenes.

Mr. FARENTHOLD. And were you doing anything to identify these weapons, other than recording the serial numbers? For instance, test-firing them and gathering ballistics information or anything else?

Mr. FORCELLI. Sir, no. The firearms were being sold and, like I said, in most instances taken out of the country. I know that once the Mexican Government takes possession of them, our assets in Mexico go examine them. And I am not exactly sure what——

Mr. FARENTHOLD. And, I mean, you work on the border. You realize Mexico takes bringing guns into their country pretty seriously. I, mean just taking a shotgun to Mexico to go bird hunting is an experience.

Mr. FORCELLI. Yes, sir.

Mr. FARENTHOLD. So this is something our friends, our allies, and our neighbors would be very concerned about, and we didn't bother to inform them.

Mr. FORCELLI. We did not.

Mr. FARENTHOLD. Thank you very much.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Pennsylvania, Mr. Kelly, for 5 minutes.

Mr. KELLY. Thank you, Mr. Chairman.

And I want to thank you, special agents, for appearing. I think like everybody on this panel, we admire your courage and your patriotism for doing that.

But my questions really are to the Terry family. And, Mr. Heyer, I know how difficult it was for your opening statement. And I will tell you now that, as I am in the autumn of my life, being the father of four and the grandfather of five, I think the unintended consequences of poor policies and procedures and failed strategies—at some point, somebody has to be held accountable for these things.

And as difficult as it may be for yourself and the Terry family, if the person responsible were in the room right now for Operation Fast and Furious, what might you want to say to them?

And, please, I think it is so important for the public to understand the purpose of these hearings. While we are very upset with the policies, it is important that people understand that there is a loss of human life here. So it is more than just a strategy that has failed, it is more than a filled policy and procedure. It is the loss of someone which is so near and dear to you.

So, your opportunity to do that. I would appreciate it.

Mr. HEYER. Well, it is tough. Brian was an amazing kid, an amazingly brave kid that was willing to put his life on the line.

If that person were in the room, obviously we would want him or her to accept responsibility.

Right now, looking back at this operation, it appears that it has cost the life of our Brian. We hope and pray that it is not going to result in any additional lives of U.S. law enforcement. But I don't know if we can truly—if that is truly going to happen. Those guns are out there.

So, beyond accepting responsibility for these decisions, we would be curious to hear, why did you feel that this was within that risk? You know, I have heard from the ATF agents here that even a mockup weapon normally would not have been allowed to walk during these operations. And, you know, an awful lot of weapons walked, and we would be curious to find out why.

Mr. KELLY. Ms. Balogh or Ms. Terry, anything you have to add?

Mrs. TERRY. I don't know what I would say to them, but I would like to know what they would say to me. That is all I would say.

Mr. KELLY. Well, I know it is difficult, and I don't want to put you through any of this. But I think it is incredibly important, because the fabric of your family has been irreparably torn; it can never be put back together again. And so the purpose of these hearings really is to make sure that nobody else has to go through the same things that you have gone through. So I appreciate you being here.

And, with that, Mr. Chairman——

Chairman ISSA. Would the gentleman yield?

Mr. KELLY. I will yield back.

Chairman ISSA. Would the gentleman yield to the chair?

Mr. KELLY. Yes, sir.

[The prepared statement of Hon. Mike Kelly follows:]

Opening Statement
Congressman Mike Kelly
Oversight and Government Reform Committee
"Operation Fast and Furious: Reckless Decisions, Tragic Outcomes"

Mr. Chairman, thank you for holding this critical investigation hearing. The American people have the right to know what sort of misguided thinking led to the tragic slaying of border patrol agent Brian Terry at the hands of Mexican drug cartel members. This barbaric act of violence against one of our nation's finest could have been easily prevented had the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) used common sense in the planning of its operations.

Under the reckless and irresponsible "Operation Fast and Furious," the ATF knowingly let more than 2,000 guns "walk" across the US-Mexico border in the hands of Mexican drug cartel members. Not only was this program ill-advised, it was conducted in spite of numerous protests and warnings from ATF agents involved in the operation and from gun dealers tasked with selling their guns to these criminals.

I am here at this hearing of the House Oversight and Government Reform Committee (OGR) to demand answers for the American people, and to bring to light the circumstances that led to the murder of Brian Terry. It is the role of the committee to bring those responsible to justice, both for the people of this proud nation and for the family of Agent Terry, some of whom join here today – his mother Josephine Terry, sister Michelle Terry Balogh, and cousin Robert Heyer.

I would also like to note the presence of three ATF agents from the Phoenix Field Division – Special Agent John Dodson, Special Agent Olindo Casa, and Special Agent Peter Forcelli, all of whom so honorably chose to blow the whistle on the outrageous operations in which they were asked to be complicit. These brave men chose to come forward today to testify before us about what they saw in "Operation Fast and Furious," and we thank them for their distinguished service to our nation, and the strong commitment to duty that led them here today. It needs to be clear that no action should be taken against these agents as a result of their testimony, and that they should be applauded for their dedication to truth and justice.

I strongly disapprove of the behavior of the ATF in conducting this operation, and of the Department of Justice (DOJ)in disingenuously failing to furnish this committee with sufficient information for us to conduct our duty of congressional oversight.

The American people have the right to know who authorized this operation, and why they persisted in running it in the face of repeated protests. It is also our duty to find out who was aware of the operation and why they failed to take action to stop it. It was a grave mistake to ever embark on this dangerous program, and this is no time to try to conceal evidence from us.

I wish to once again affirm my, and the OGR's, dedication to the Terry family so that Agent Terry's death may not be in vain. I also want to once again commend the three special agents joining us here today, and restate that no action is to be taken against them as a result of their testimony here today. Finally, I give my harsh reproach to the ATF for their poor decision-

making, and to the DOJ for their lack of cooperation with this committee in our investigation of this most serious issue.

Chairman ISSA. Thank you.

I am going to follow a line of questioning that I think I have been seeing develop throughout here with the four law enforcement experts.

You have two points. You know, the old expression, you know, you connect the dots. The first point is the straw buyer. The last point is the scene of the crime. You have said, each of you special agents, that in this case, as soon as you got to the next point of connect the dots, you were generally sent the other direction. You were not allowed to go beyond that next point. You weren't even allowed to follow that next point even when they headed north with the weapons.

Now, if an operation like Fast and Furious seems to have a pattern, a consistent pattern, that you are only looking for two points, the beginning and the end, it is not a criminal prosecution, it is not an effective one. Plus, of course, if you take the logic that you can't prosecute a straw purchaser if the gun is in Mexico, if you take that point, then that part of it was frivolous from the start, even though, today, every one of those straw purchasers has been charged, oddly enough, with the evidence that was available before that gun ever walked beyond the first step.

So let me just ask a question for your supposition, but I think it is a very well-educated one. If you only look at the beginning and the end of the dot, isn't the only thing you have proven is that guns in America go to Mexico?

Now, could that be a political decision? Could that be a decision that, basically, we just want to substantiate that guns in America go to Mexico—something we all knew, but would have considerable political impact as Mexico began complaining about these, and they could say, "Well, yeah, we were even rolling up the straw purchasers." It wouldn't change the fact that Mexicans were dying at the bequest of the United States, but wouldn't it ultimately meet a political goal?

Mr. FORCELLI. I imagine, sir, that it is possible. In this instance, I think it is more just, as I said earlier, a case agent that had a bad idea, a group supervisor who failed to rein her in, an ASAC who failed to rein in—the chain of command, all the way up, failed.

Chairman ISSA. But you would agree that it doesn't meet any criminal goal of prosecuting, the way it was handled?

Mr. FORCELLI. No, because you can't show the chain of how those pieces of evidence went from point A to point B, which you would need to prove at a trial.

Chairman ISSA. I hope it was just a terrible mistake.

Mr. Clay, you are recognized for 5 minutes.

Mr. CLAY. Mr. Chairman, at this time, I have no questions for this panel in the interests of——

Chairman ISSA. You yield to the ranking member then?

Mr. CLAY. I yield to Mr. Cummings.

Mr. CUMMINGS. Thank you very much.

It seems to me that we do have a—there are some serious disconnects. And why that is, you know, I cannot imagine. And I want to say to you all, your testimony has been abundantly clear.

But I want to, for a moment, go back to Mrs. Terry.

Ms. Terry, you know, I often say—right now I am preparing to do a eulogy on Saturday. And one of the things that I thought about as I am sitting here is, I do believe that part of life is death, but, also, part of death is life.

And what I mean by that is that, you know, we can't fully understand why somebody would leave us so young, particularly somebody like your son and your relative, who was so full of courage, in the fact that he was willing to basically die for his country. And we cannot always understand it. And I think we all struggle, we struggle with it, particularly when it is a young person.

But I can say this, that I believe deep in my heart that, some kind of way, out of his death will come life. In other words, the mere fact that we are here right now, Mr. Heyer, talking about this, the mere fact that this was not something that was just shoved under the rug and just moving on, the mere fact that there are probably already changes being made to this program—and I think it was you that said it, that you wished you could say that this was the end of it, but there are guns still out there. But at least—and to the agents I say this too—at least we are now moving in a direction where hopefully we reverse this and save some lives.

That is why I said, Ms. Terry, sometimes out of death comes life. And it is not—nothing, nothing, nothing, nothing can—I am not trying to—you know, nothing can bring a person back. But, you know—because I have wrestled with the question, I wrestle with it all the time, of, why do so many of our best die young?

And so that is why I said to you before—Chairman Issa asked me a question a moment ago about cooperation with the Justice Department. And I wanted to make it clear that I fought all my adult life trying to take guns, illegal guns, out of hands of folks, period. It was you, Mr. Forcelli—and all of your testimony was absolutely brilliant. It was straightforward, no frill, just straight testimony. And that is what I appreciated so much about it.

But what you said, I don't want us to lose sight of it. And even the chairman just talked about it, to a degree. These guns don't just end up in Mexico. They end up in the United States, too. And they are not just killing people—used to kill people in Mexico. It is happening everywhere in our streets.

And some kind of way, some kind of way, and as I listened to Senator Grassley, he is right, we do need to leave the political piece at the door and try to figure out, how do we address this problem?

We got to keep in mind, too, Mexico is right next-door. So, basically, in a sense, in a sense, if these guns are flowing to Mexico, basically what we are doing is turning a gun on ourselves, or guns on ourselves. And this case is a prime example of that.

And so, you know, I just believe that we have to take this moment and make it bring life, bring life, out of this very horrific and terrible death.

And, with that, I yield back.

Chairman ISSA. I thank the gentleman for his comments.

We now go to the gentleman from Florida, Mr. Ross, for 5 minutes.

Mr. ROSS. Thank you, Mr. Chairman.

And to the Terry family, I cannot imagine the emotional roller coaster that you have gone through and what today's testimony

does for you. But I can appreciate that you are here, and I am grateful for that.

To our agents that are here, you know, this investigation, as you well know, relies intensely on your testimony, not only in whole but, quite frankly, in hope so that we find an answer at the result of this investigation to see that this never happens again.

And to that end, I want to ask a couple of questions, and specifically to you, Mr. Casa, because I was here for your opening testimony and had to leave for some votes. But you mentioned that it was the rule, rather than the exception, I think, to have the surveillance without the interdiction or the arrests. Did I get the gist of it?

Mr. CASA. For this investigation, yes, it was.

Mr. ROSS. And then you stated in your testimony, "It has become common practice for ATF supervisors to retaliate against employees that do not blindly toe the company line, no matter what the consequences."

Can you describe what any of that retaliation may have been?

Mr. CASA. I would just say, refer back to OIG investigations over the countless years: FLEOA attorneys that have represented ATF employees for all types of retaliation for whistleblowing; punitive actions, whether that agent or inspector deserved the punitive actions for——

Mr. ROSS. You mentioned that the email that you received, you felt that was threatening.

Mr. CASA. Oh, yes.

Mr. ROSS. And were you personally threatened by MacAllister or English or anybody else?

Mr. CASA. No. They are my equal, or, you know, they——

Mr. ROSS. Right.

Mr. CASA. But my supervisor put in there, "Hey, if you don't like what we are telling you to do, go work for Maricopa County Sheriff's Department." First of all, it was in horrible taste.

Mr. ROSS. Yeah, I agree.

Mr. CASA. Second of all, because they are our brave men and women of law enforcement side-by-side with us in the fight against violent crime in the Phoenix area.

Mr. ROSS. What has happened to your supervisor since then?

Mr. CASA. I have no idea.

Mr. ROSS. Were there any repercussions as a result of his actions?

Mr. CASA. Not as of yet. My understanding——

Mr. ROSS. So he is still in the same position, his supervisory capacity?

Mr. CASA. Yes, I still understand he is a group supervisor. I believe he is in Minneapolis-St. Paul, currently still a GS–14 group supervisor.

Mr. ROSS. Now, you mentioned that they would stop you from arresting straw purchasers and interdicting their weapons. Were there other occasions when your case agent told you to stand down and not make such arrests?

Mr. CASA. I mean, in this investigation?

Mr. ROSS. Yes, in this investigation.

Mr. CASA. Again, it was common. It was more than on one occasion. It was a few occasions.

Mr. ROSS. Was there one where you watched them come out with a bag of guns, I guess, and——

Mr. CASA. Yes. On one specific occasion—I wish I had more time; I will try and be as brief as possible—we observed—and, in fact, I was with Special Agent Dodson, and we observed an individual do a straw purchase, I believe on that day it is 10 FN pistols, which, by the way, they penetrate law enforcement vests. They are called "cop killers."

Mr. ROSS. And that had to be particularly painful.

Mr. CASA. Yes.

Mr. ROSS. And you saw this happen and you were ordered to stand down?

Mr. CASA. We followed it, we followed the straw purchaser. We saw him transfer the guns to an unknown individual—unknown. And I said, okay—since I was the shift supervisor, I called the case agent and said, we need to interdict these firearms.

Mr. ROSS. And who was the case agent? Was that——

Mr. CASA. MacAllister.

Mr. ROSS. MacAllister. Okay.

Mr. CASA. And I was told, no, stand down, do not interdict. I was given no explanation why, other than to keep on following the unknown individual with firearms.

Well, he is street-savvy. He makes our—a 10-person surveillance, each car over and over again, to the point where he stops in the middle of a small subdivision in front of Special Agent Dodson and I. And he is a lot higher up in a jacked-up pickup truck; we are down here. And we know he has at least 10 FN 5.7-millimeter pistols.

And then I say, we need to engage. I call back in. Unfortunately, the group supervisor, who should have been there during the operation, or the case agent, who should have been there during the operation, they were gone for the day. They left.

Mr. ROSS. And there was no way to get in touch with them?

Mr. CASA. Well, I was told the point of contact at that point was a probationary employee named Tonya English, who wasn't even a tenured ATF special agent. And I had to take my instruction from her, who told me, no, fall back, just resurveil.

Mr. ROSS. That fallback, that resurveillance, isn't that contrary to what ATF policy should be?

Mr. CASA. Yes.

Mr. ROSS. I mean, shouldn't the policy have been, go in and make the arrest or the interdiction?

Mr. CASA. I am sorry to cut you off. Yes, sir, most definitely. Furthermore, it created a very serious officer safety issue.

Mr. ROSS. Yes.

Mr. CASA. The guy knew he was being followed, but he didn't know by who. For all he knew, we could have been cartel members trying to rob him of those 10 guns, or we could have been law enforcement. We don't know what he thought. But it caused a very serious officer safety issue.

Mr. ROSS. So but for the grace of God, there could have been more than Brian Terry lost as a result of this.

Mr. CASA. Yes, sir.

Mr. ROSS. Ms. Balogh, just briefly—I have just a couple of seconds—is there anything that you think that your brother would want this committee to know about his life and about his service?

Ms. BALOGH. Brian was about making a difference and justice. And I just feel that this country owes it to him, because he spent his whole life fighting for this country some way or another.

Mr. ROSS. I agree, and he is a hero.

I yield back.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Arizona, Mr. Gosar, for 5 minutes.

Mr. GOSAR. Mrs. Terry and the family, I am deeply sorry. As a father, I don't know—I can just feel that pain. And I hope what I am going to say next does not aggravate that in advance, okay?

For the law enforcement folks, when you first heard about the shootings of Congressman Gabby Giffords, was there a level of anxiety from the ATF fearing that one of the weapons might trace back to the operations of Fast and Furious?

Mr. CASA. Yes, sir.

Mr. FORCELLI. Yes, sir.

Mr. DODSON. Yes, sir.

Mr. GOSAR. Where did this anxiety come from and from whom specifically?

Mr. FORCELLI. Sir, I received a phone call from my public information officer, who is a friend of mine, who said that there was concern from the chain of command that the gun was hopefully not a Fast and Furious gun.

Mr. CASA. Sir, I would like to also add, every time there is a shooting, whether it was Mrs. Giffords or anybody, any time there is a shooting in the general Phoenix area or even in, you know, Arizona, we are fearful that it might be one of these firearms.

Mr. DODSON. And this happened time and time again. When there was U.S. Embassy personnel killed in Juarez, Mexico, the fear spread through the division.

Mr. GOSAR. Well, there is a reason I am asking, because I am feeling like—I mean, I am a dentist. I didn't participate in the military. But I understand that there is a chain of command. And I feel like I am watching the movie "A Few Good Men."

And, you know, this wasn't done—from what I am gathering, you know, we have talked about—Special Agent Forcelli, you were talking about trying to get a jurisdiction in the New York courts. We are talking about the drug cartels. So we are not talking about something really simple here.

So I guess my point is, if an issue is this great, typically, before this one, if you have been involved in one, how far did it go up that people knew about something like that?

Mr. FORCELLI. Sir, I know I have had discussions with SAC William Newell, who is the special agent in charge—well, former special agent in charge of the Phoenix Field Division. The assistant special agent in charge who was involved in this case when it first started was George Gillett. He and I had discussions where he pretty much just rolled his eyes when you voiced opposition to this.

David Voth and I hadn't conversed much. He is in a different building.

But I know from the review of a briefing paper that went up that was prepared by either SAC Newell or vetted through SAC Newell by Mr. Gillett that this was briefed at the highest levels of ATF. I have heard that Mr. Melson, our director, was aware of it.

And what I find most appalling, sir, is that nobody has stepped up and had a statement beyond the Phoenix Field Division. I mean, there were tragic errors made here, and nobody has shown the decency and leadership to step up and say, hey, we made a mistake and we shouldn't have done something wrong. That is what I find as appalling as anything else in this case, short of, of course, the tragedy that happened to the Terry family.

Mr. DODSON. That is absolutely right, sir. No one in ATF involved in this, up to Acting Director Melson, has shown any significant leadership in this matter. And I can tell you, I know that our former group supervisor, Dave Voth, had to come to D.C. to brief our headquarters, DEA Special Operations Division in Chantilly, Virginia, and that he briefed EPIC on it. And, obviously, OCDETF was briefed because we secured the funding from OCDETF.

I recall in March 2010, when Acting Director Melson came to the Phoenix Field Division, spoke about the case, he knew the case agent by name, the group supervisor by name, and, I believe, even some of the defendants or would-be defendants in the case.

Mr. GOSAR. Well, boy, this is going in the right way here. You know I am from Arizona.

Mr. CASA. Yes, sir.

Mr. FORCELLI. Yes, sir.

Mr. GOSAR. You are currently aware, and have for some time, that Department of Justice has had lawsuits against Arizona. Were you aware of any biases within your scope at ATF or comments versus Arizona by the ATF or by the DOJ in regards to those?

Mr. FORCELLI. No, sir.

Mr. DODSON. No, sir.

Mr. GOSAR. You are sure?

Mr. FORCELLI. I don't recall any.

Mr. GOSAR. It just seems like just this whole lax attitude, I mean, from jurisdiction, from timely and aggressive law enforcement that would create this. I am getting this opinion, because you said it, that you couldn't get a jurisdictional aspect of oversight in Arizona, and you took it to New York, did you not, sir?

Mr. FORCELLI. Yes, sir, I did.

Mr. GOSAR. Okay. So it seems like a continued dismissal of actually trumping charges. And we have a problem in Arizona. And, you know, we have seen a concerted effort that we have called out law enforcement on the border, I think it is specifically Sheriff Dever, as lying. I just see a lack of cooperation all the way across, and so does Arizona. And we see a very defunct cooperative type of format that is trying to be uniform in adjudicating these laws. And we see it—I can tell you from Arizona, we see a very organized, orchestrated plan—lack of a plan from the DOJ, particularly with Arizona.

Mr. FORCELLI. Well, it is interesting, sir. And what I will add is that, the one thing I will say emphatically is that I have had lim-

ited dealings with the Tucson office of the U.S. attorney's office. I have had extensive dealing with the Phoenix office. And, again, in the Phoenix office there are some good people, and I apologize that I have had to speak ill of that office. But there is a distinct difference in attitude between the Tucson and Phoenix offices.

The U.S. attorney's office in Tucson seems to be more amenable to working on cases with ATF, amenable to finding justice than the U.S. attorney's office in Phoenix. And it is ironic, because the U.S. attorney, himself, and his immediate chain of command are based in Phoenix.

That is all I can really add.

Mr. GOSAR. Thank you.

[The prepared statement of Hon. Paul A. Gosar follows:]

Congressman Paul Gosar
Opening Statement
Committee on Oversight and Government Reform
"Operation Fast and Furious: Reckless Decisions, Tragic Outcomes"
June 15, 2011

Chairman Issa and Ranking Member Cummings, I would like to thank you for taking the time to hold an important hearing this morning. While the Oversight and Government Reform Committee does important work every day, it is no stretch to say that today we are investigating a life and death matter. We have before us the distinguished senator from Iowa, who was approached by law enforcement officers concerned enough to come forward and tell a story of severe misjudgment at the highest levels of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). We have additional law enforcement officers before us, who testify that they were compelled to participate in an operation which they knew in their hearts was likely to result in the unnecessary loss of life. Today before us, we have a grieving family, who lost one of their own in the prime of his life, in the defense of his country which he loved. And most critical of all, we have a representative from the Department of Justice, and it is their testimony to which we need to pay the most attention. The top officials at the Department of Justice (DOJ) and ATF must come forward and answer to Congress, and the American people, about the ill fated history and terrible misjudgment of Operation Fast and Furious.

This Committee must continue to investigate the decisions and conversations made by senior level officials at both DOJ and ATF with respect to ATF activity in the state of Arizona. The American people want, and have a right to be told here today, who knew what and when they knew it. It is clear that Operation Fast and Furious was a case of serious misjudgment, which repeatedly and consistently violated a basic law enforcement principle that is simply common sense. Namely: when law enforcement is aware of a suspicious firearm purchase, law enforcement has probable cause to investigate and possibly detain the person in question.

And yet, multiple accounts confirm for us that beginning in the fall of 2009, ATF agents at the Phoenix field office were instructed not to arrest individuals that they knew for a fact were making bulk purchases of assault weapons such as AK-47s, Colt .38's, and .50 Barrett rifles. While I am second to no one in my support of Second Amendment rights, it is simply bad law enforcement and playing with fire for federal agents to be aware of these repeated purchases and do nothing.

Agents who expressed concerns about this policy were ignored and made to feel marginalized by their supervisors. Law abiding gun dealers who expressed concerns about this policy were led to believe by ATF that surveillance was being done, when in fact up to 2,000 guns were shuttled across the border, into the hands of cold blooded murderers. Stop and think for just a moment: we STILL do not know where all these illegally purchased guns are. I think it's safe to say, however, that they are in the hands of bad guys. Regretfully, it took the senseless murder of Border Patrol agent Brian Terry on December 14, 2010 to finally stop the madness. However, this story is not over. This Committee would be neglecting its own duty if we failed to investigate what clearly seems to be grave wrongdoing at senior levels of both ATF and DOJ. We need to know: how high in the chain of command did this poor

decision making go? We know that the acting ATF Director was fully briefed on the ongoing progress of Fast and Furious. But even Acting Director Melson could not have acted alone, without the advice and consent of someone at the Department of Justice. And so I am asking Attorney General Holder, Deputy Attorney General Weich, and all DOJ officials involved to stop burying their head in the sand, comply with Congressional subpoena, and work with us to craft a better policy for the future. With the volatile situation on the southern border, we can't afford the continued path of avoidance, denial, and non compliance with the law.

In the southern part of my home state of Arizona, drug cartels and violent criminals are terrorizing innocent citizens, ruining precious federal land, and moving millions of dollars worth of contraband into the United States. I have long believed that the federal government has neglected its duty to secure our southern border, not only to prevent illegal immigration but to protect our citizens from those seeking to commit crimes or do us harm. Don't take my word for it – ask the cotton farmer from Casa Grande who can no longer go out to dinner or church with his family without leaving a family member behind to protect the family property from looters. Ask the woman from Douglas whose husband was murdered on his own ranch for the offense of being in the wrong place at the wrong time. Ask the sheriffs of border counties who are working diligently, fighting a multi front war trying to keep their communities safe.

It is of the utmost importance that we receive answers to these questions today. Thank you, and I look forward to hearing witness testimony.

Chairman ISSA. I thank the gentleman.

We now recognized gentlelady from New York, Ms. Buerkle, for 5 minutes.

Ms. BUERKLE. Thank you, Mr. Chairman.

I want to begin by saying to the mother of Brian Terry, Ms. Terry, I have six children, and my heart is broken for you because your life is irreparably changed. And I want you to know that what Mr. Heyer said about having someone step up and accept responsibility, that will be the charge of this committee, and that is what we will do for you because of the loss that you all have sustained. You have my deepest sympathy.

To the agents, thank you. Thanks for your courage for being here today and for your forthrightness in standing up and doing the right thing. We appreciate that very much.

I want to begin with Ms. Terry. If there is a question that you would like us to ask or find out, can you share that with us? Is there something that is nagging you and you would like the answer to?

Mrs. TERRY. Well, most of my questions and answers are done by my nephew Bob. And if I have anything to ask, I usually ask him and he gets me my right answers.

Ms. BUERKLE. Well, then I would ask Mr. Heyer, is there a question that you would like us to ask?

Mr. HEYER. I think we would want to know if the dragnet that is set to find everyone involved in Brian's murder will be set deep enough and wide enough to encompass anyone involved in Operation Fast and Furious. If the guns used in Brian's murder were part of this operation, then we would want to know, will everyone in that operation that had to deal with those specific weapons be brought up on charges of facilitating the murder of Brian Terry?

Ms. BUERKLE. Thank you. We will ask that question on your behalf.

There was a press conference held shortly after Agent Terry's murder, and during that press conference Special Agent William Newell vehemently denied that guns were walked.

This question is for Mr. Forcelli, if you could. Were you at that press conference?

Mr. FORCELLI. No, ma'am, I was not, but I watched it on TV.

Ms. BUERKLE. Okay. And did you hear him, when he was asked regarding guns walking, did you hear his response to that?

Mr. FORCELLI. The "Hell, no" response?

Ms. BUERKLE. Yes, sir.

Mr. FORCELLI. I did, ma'am.

Ms. BUERKLE. Okay. And what was your reaction to that?

Mr. FORCELLI. I was appalled, because it was a blatant lie.

Ms. BUERKLE. He was aware that guns were being walked?

Mr. FORCELLI. Yes, ma'am. In fact, as I stated earlier, there was a briefing paper that was forwarded up to headquarters. Mr. Newell, if not the author, would have had his ASAC prepare it, and it would have been forwarded through Mr. Newell.

And I can tell that you Mr. Newell, as recently as 2 months ago, was stating that the case agent in this case should be getting an award. He still thinks this is an outstanding investigation, and I find it personally appalling.

Ms. BUERKLE. My colleague Dr. Gosar brought up—he made an analogy between "A Few Good Men" and this situation and the reminder. But with "A Few Good Men" there was an order in place. This was a, "This was what everyone followed. This was the policy."

But my sense is, and I would like to ask the three agents today, that what happened in this situation was not the ordinary course of business. And so, if you could each comment on that.

Mr. FORCELLI. Ma'am, I can tell you, as recently as 3 weeks ago we conducted an interdiction of a .50-caliber belt-fed rifle through a cooperative gun dealer. That individual showed up to pick up the rifle with cash, probably drug money. He was not a resident of the United States, but he had false ID. We had three trackers—well, two on the gun, one in the package. And we had air support, the whole nine yards.

And once we got to a point where we realized we could not safely monitor that weapon, that individual was immediately stopped and that weapon seized and he was arrested. That is how we normally do business. And I can tell you, as a supervisor, no agents under my watch would have ever let a gun walk. I wouldn't have allowed it.

Ms. BUERKLE. Special Agent Casa, did you want to comment on that?

Mr. CASA. Yes, ma'am. Thank you.

I would have to back exactly what Pete said. I am working a number of investigations throughout what we are going through now. I am still juggling them with everything else. And I would never let one firearm walk.

I work with—I am working a number of OCDETF cases with other agencies, and I have to assure them—and they know who I am—that we will not let one firearm walk. We will stop that firearm at all costs. Because one firearm on the street is one too many. That firearm could kill any one of us at this table.

That is what I would like to add, ma'am. Thank you.

Ms. BUERKLE. Thank you.

Special Agent Dodson.

Mr. DODSON. Yes, ma'am. Prior to my involvement in Phoenix with the Fast and Furious investigation, in all of my ATF experience and my experience in local law enforcement, ma'am, I can tell you this, that we have never let a gun walk. I have never seen it authorized or allowed to let a gun walk. And if one even got away from us, like I stated earlier, nobody went home until we found it.

Ms. BUERKLE. Thank you all very much. Again, thank you for your service, for being here today.

And to Brian's family, again, our deepest sympathy.

I yield back.

Chairman ISSA. I thank the gentlelady.

I thank our witnesses for their testimony. It is not a normal practice to have government witnesses along with a family or what are sometimes called civilians. But in this case, I thought it was appropriate that you all be there together. I appreciate all that you have done for us today to have us better understand the situation.

And, Mrs. Terry, although I can never guarantee the outcome, about 2 years ago we were able to name a Border Patrol station

after three fallen Border Patrol agents several decades after they were killed. I have instructed my staff to work with the Border Patrol to find a mutually acceptable-to-you-and-the-family location to name after Brian. And I will author that bill as soon as a location is determined by the family.

You have my promise that we will do the other things that you asked for here today, that we will keep this from being political until we get to the full truth of everything surrounding this tragic incident that we know clearly could have been avoided.

I thank you.

And we will take a short recess before the next panel.

[Recess.]

Chairman ISSA. The hearing will now come back to order.

We will now recognize our third panel. Mr. Ronald Weich is Assistant Attorney General, U.S. Department of Justice.

Pursuant to the rules, would you please rise and take the oath?

[Witness sworn.]

Chairman ISSA. Let the record indicate the witness answered in the affirmative.

I note that you sat patiently through all of the previous testimony. So not only do you understand the red-light/green-light, but you will be the final witness. And I appreciate your patience and your being here to hear everything that came before.

You are now recognized.

STATEMENT OF RONALD WEICH, ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. WEICH. Thank you very much, Mr. Chairman. And I would ask that my full statement be included in the record.

Chairman ISSA. Without objection, so ordered.

Mr. WEICH. Mr. Chairman, Ranking Member Cummings, members of the committee, I am very pleased to be here today to discuss the Justice Department's continuing efforts to respond to the committee's subpoena concerning ongoing criminal investigations on the southwest border and pending indictments in the U.S. District Court for the District of Arizona.

I want to say at the outset that the Department is fully committed to working with you in good faith to accommodate the committee's legitimate oversight interests. We hope the committee will similarly engage in good faith with the Department in a manner that recognizes the important confidentiality interests presented when congressional oversight involves open criminal investigations. It is difficult when the interests and principled exercise of the prerogatives of the legislative and executive branches come into potential conflict. The Constitution envisions that the branches will engage in a process of cooperation and accommodation to avoid such conflicts. And we look forward to engaging in that process with you.

As the committee is aware, many of the subpoenaed documents concern an open criminal investigation conducted by the Bureau of Alcohol, Tobacco, and Firearms known as "Operation Fast and Furious." Other subpoenaed documents concern the open investigation and pending prosecution regarding the shooting death of Agent Brian Terry.

Let me just say here that the death of Agent Terry was a tragic loss, and the Justice Department extends its deepest sympathies to his family. They testified courageously here a moment ago. We were very pleased to hear on Monday of the committee's commitment not to compromise the investigation into Agent Terry's murder or the broader gun-trafficking investigation. And we are fully committed to bringing to justice those who are responsible for Agent Terry's death.

The Department recognizes the important role of congressional oversight, including oversight of the Department's activities. It is the policy of the executive branch, at the instruction of the President, to comply with congressional requests for information to the fullest extent, consistent with the constitutional and statutory obligations of the executive branch.

At the same time, attempts to conduct congressional oversight of ongoing criminal investigations are highly unusual and present serious issues. As the Department's Office of Legal Counsel under President Reagan explained in 1986, "The policy of the executive branch throughout our Nation's history has generally been to decline to provide committees of Congress with access to, or copies of, open law enforcement files except in extraordinary circumstances." The policy is designed to fulfill the Department's obligations to preserve the independence, integrity, and effectiveness of law enforcement investigations and the criminal justice process generally.

And I want to say, this policy is completely nonpartisan. It has been relied on by administrations of both parties for decades.

So, in response to your subpoena, this department has been striving to reconcile the two principles by accommodating the committee's oversight interests while protecting our confidentiality interests. Striking this balance can take time and effort. It is not the case that the Department is refusing to comply with the committee's subpoena. In fact, we are working diligently to satisfy the committee's core oversight interests without compromising the important purposes underlying the Department's policy that I have described.

The starting point for our approach is an agreement by the Department that this committee has a legitimate oversight interest in information shedding light on the genesis and strategy of the Fast and Furious operation. We have focused on identifying documents responsive to those needs.

We have already made a good deal of information available. In total, the Department has physically produced more than 675 pages of documents to the committee, made available more than 900 additional pages for review. In addition, we have made one ATF official available for an interview with the committee staff, and we hope we will be able to schedule more interviews in the upcoming weeks. The committee has requested briefings on specific topics, and we have agreed to provide those.

The Department has taken the extraordinary step of retaining an outside consultant, a contractor, at substantial cost, to assist us in building a data base of the emails of the 19 individuals at ATF whom the committee has indicated a primary interest in. We have engaged in a search of great magnitude to ensure that we get the documents that you have asked for to the best of our ability.

The individuals, the 19 selected user accounts that you have focused on, they contain over 724,000 emails and attachments. In addition, the Department has collected thousands of documents flagged to us by ATF as potentially responsive. Over two dozen lawyers at ATF and the Department are reviewing those documents, and we have been able to provide documents to the committee each of the last 3 working days—yesterday, Monday, and the Friday before.

The Department will not be able to make available all of the documents encompassed by the subpoena because of the law enforcement confidentiality interests that I have already identified. We cannot provide certain core investigative and prosecutorial documents. But we will work with the committee to identify and make available documents responsive to your core request.

Let me conclude by emphasizing that the Department recognizes that congressional oversight is an important part of our system of government. At the same time, congressional oversight that implicates ongoing congressional investigations present sensitivities not raised in ordinary cases. Despite the unique challenges posed by oversight of open criminal matters, we remain optimistic that the Department will be able to satisfy the committee's core oversight interests while safeguarding the integrity, independence, and effectiveness of the Department's ongoing criminal investigations.

Thank you for inviting me to testify, and I would be pleased to answer your questions.

[The prepared statement of Mr. Weich follows:]

STATEMENT FOR THE RECORD OF
RONALD WEICH
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COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

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Introduction

Good morning, Mr. Chairman and Members of the Committee. I am pleased to be here today to discuss the Department's continuing efforts to respond to the Committee's subpoena concerning ongoing criminal investigations by the Department's Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") and the Federal Bureau of Investigations ("FBI"), and pending criminal prosecutions brought by the Office of the U.S. Attorney for the District of Arizona.

Let me say at the outset that the Department is fully committed to working in good faith with you to accommodate the Committee's legitimate oversight interests in this matter, and I hope that the Committee will similarly continue to engage in good faith with the Department in a manner that recognizes the challenges and important confidentiality interests presented where congressional oversight involves open criminal investigations. It is always difficult when the interests and principled exercise of the prerogatives of the Legislative and Executive branches come into potential conflict. That is why the Constitution envisions, as the Court of Appeals for the D.C. Circuit has recognized, that the branches will engage in a process of accommodation to avoid such conflicts. As Attorney General William French Smith has said, the accommodation process is not, and must not be, simply an exchange of concessions or a test of political strength, but rather it is the obligation of each branch to make a principled effort to acknowledge and, if possible, to meet the legitimate needs of the other branch. It is in this spirit of principled engagement that I come before you today.

As the Committee is aware, many of the subpoenaed documents concern an open criminal investigation conducted by the Department named Operation Fast and Furious, as well as the open investigation and pending prosecution in connection with the shooting death of Customs and Border Protection ("CBP") Agent Brian Terry. Operation Fast and Furious is a criminal investigation—led by U.S. Attorney's Office prosecutors and ATF agents—aimed at dismantling a significant transnational gun-trafficking enterprise and the network of those who support the enterprise's criminal efforts, an investigation which has led already to the indictment of 20 defendants. CBP Agent Terry was shot and killed on December 14, 2010, while on duty near Rio Rico, Arizona. The death of CBP Agent Brian Terry was a tragic loss and our prayers go out to his family, his friends, and his colleagues in law enforcement. The Department, in an effort led by the FBI and the U.S. Attorney's Office, already has indicted at least one of the people involved in his murder, and that suspect remains in federal custody. The investigation

actively continues into others who were involved and the Department has been in frequent contact with members of the Terry family as well as the CBP agents who were at the scene of this tragic murder. We understand and were pleased to hear at the hearing Monday the Committee's commitment not to compromising the investigation of Agent Terry's murder, or the broader gun trafficking investigation, through its oversight activities.

The purpose of my testimony today is to describe the Department's continuing efforts to respond to the Committee's subpoena in a manner that satisfies the Committee's core oversight interests in this matter while also safeguarding the important interests of the Department and the criminal justice system that are implicated by oversight of open criminal investigations.

Accommodating the Needs of Coordinate Branches

Let me start by making clear that the Department recognizes the important role of congressional oversight, including oversight of the Department's activities. The Department appreciates that oversight is a necessary underpinning of the legislative process. Congressional committees, such as this one, need to gather information about how statutes are applied and funds are spent so that they can assess whether additional legislation is necessary either to rectify practical problems in current law or to address problems not covered by current law. We have found that oversight can shed valuable light on the Department's operations and in that way assist our leadership in addressing problems that might not otherwise have been clear.

At the same time, it bears emphasis that attempts to conduct congressional oversight of ongoing criminal investigations are highly unusual. Our policy with respect to all congressional oversight is uniform: it is the policy of the Executive Branch, at the instruction of the President, to comply with congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch. However, as the Department's Office of Legal Counsel under President Reagan explained in 1986, "the policy of the Executive Branch throughout our Nation's history has generally been to decline to provide committees of Congress with access to, or copies of, open law enforcement files except in extraordinary circumstances." *Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act*, 10 Op. O.L.C. 68, 76 (1986) ("*Congressional Requests*"). This policy, as I will describe in more detail, is vital to the Department's law enforcement mission, as it is designed to fulfill the Department's constitutional and statutory obligations to preserve the independence, integrity, and effectiveness of law enforcement investigations and the criminal justice process more generally. I should add that this policy is nonpartisan: administrations of both parties have relied upon it for decades and it has been supported by top Department officials, both Democrats and Republicans alike.

In response to your subpoena, the Department has been striving to reconcile these dual principles by accommodating the Committee's oversight interests while protecting important law enforcement confidentiality interests. Striking this delicate balance takes time and effort. It is most certainly not the case, as some have suggested, that the Department is refusing to comply with the Committee's subpoena. To the contrary, the Department has been working diligently to satisfy the Committee's core oversight interests, without compromising the important purposes underlying the Department's policy against the disclosure of open criminal investigative files.

This approach to responding to the Committee's subpoena, which attempts to balance and accommodate the respective interests of the coordinate branches, is in no sense shirking the Department's duty to respond to Congress, but is precisely part of the give and take that the Constitution demands, as the Court of Appeals for the District of Columbia Circuit explained decades ago in the seminal oversight case of *United States v. AT&T Co.*, 567 F.2d 121 (D.C. Cir. 1977).

The Department's Accommodation of the Committee's Subpoena

With that basic framework of the accommodation process in mind, I want to speak more directly about how the Department has been working in good faith to accommodate the Committee's oversight interests with respect to the specific open criminal matters that are the subject of the subpoena. The starting point for our approach to accommodation in this matter is an agreement by the Department that the Committee has a reasonable and legitimate oversight interest in information shedding light on the genesis and strategy of the Fast and Furious operation. The Department agrees with the Committee that documents explaining, at a broad level, the inception of the operation may be made available to the Committee. The Department also agrees with the Committee that it has a reasonable and legitimate oversight interest in certain information relating to the basic strategies underlying the operation—namely, the decisionmaking and responsibility for strategic decisions, if any, regarding the timing of arrests in connection with the alleged sale of firearms to individuals suspected of being straw purchasers, the legal basis to seize such firearms, and any efforts to track the firearms to those higher up the chain of command in firearms and drug trafficking enterprises. It is our understanding that these topics lie at the core of the Committee's oversight interests.

I should pause at this point to emphasize that it is a crucial mission of the Department to stop the flow of firearms into Mexico, a task that presents challenges under existing federal gun statutes. We continue to work with our law enforcement counterparts here and in Mexico to stem the flow of weapons, cash, and drugs across our borders and to interdict people whose only goal is to evade law enforcement. The Attorney General accordingly has taken very seriously allegations that firearms sold to suspected straw purchasers by Federal Firearms Licensees were intentionally allowed "to walk" into Mexico. He has referred this matter to the Department's Office of the Inspector General, an independent and nonpartisan office that is examining the facts and will report its findings. The Attorney General also has reiterated to Department law enforcement personnel that they are not knowingly to allow any firearms to be illegally transported into Mexico for any reason. Although the Department is in the process of fully investigating and addressing these matters internally, we recognize that the Committee also has a legitimate oversight interest in understanding the genesis and inception of the Fast and Furious operation, as well as the basic strategies driving that operation. We fully share the Committee's stated interest in getting to the bottom of the allegations.

With that description of the core oversight interests of the Committee in mind, the Department to date has been focused on identifying documents responsive to those needs. Although the breadth of the Committee's subpoena (which includes the entire nationwide program, Project Gunrunner, of which Operation Fast and Furious is just one part), the nature of the relevant record-keeping systems, and the inherent sensitivities relating to open criminal

investigations and pending prosecutions have presented considerable challenges to the Department in responding to the subpoena as promptly as we would hope in the ordinary case, the Department has made and will continue to make a substantial amount of pertinent information available to the Committee. Indeed, given the breadth of the subpoena, we were pleased to hear the Chairman state at Monday's hearing that the Committee would like to hear from the Department regarding our concerns. We would like to continue to work with the Committee to discuss these concerns and to narrow the subpoena as appropriate.

As I have stated, however, the Department has made a good deal of information available to the Committee already notwithstanding the challenges posed by the subpoena. For example, in early May 2011, after an initial document review, the Department provided the Committee with 92 pages of documents responsive to the subpoena, and also made available more than 450 pages of documents for review by Committee staff. At that time, the Department also briefed Committee staff regarding the Fast and Furious operation, and the Department was able to learn more about what particular information the Committee seeks.

Since that briefing, ATF has collected and has been in the process of reviewing the emails of three key officials at ATF's field office in Phoenix. The Department produced last week to the Committee an additional 69 pages of documents and made available for review another 88 pages, a clear sign that the accommodation process is ongoing. Beyond that category of documents, the Department is continuing a broader search for responsive documents at both ATF headquarters and its field offices. Recognizing the Committee's keen interest in this matter, in order to expedite that review, the Department has taken the extraordinary step of retaining an outside contractor, at a substantial cost, to assist us in building a database of the emails of 19 individuals at ATF in whom the Committee has indicated a primary interest. This database includes the emails of the three key ATF officials referenced above. The Department worked with Committee staff regarding search terms that will likely identify documents responsive to the Committee's needs. The outside contractor just recently completed loading the emails into its system and ATF attorneys have now begun the review process. Searches of this magnitude take a lot of time and require diverting officials from performing their core law enforcement duties. Indeed, just the 19 selected user accounts contain over 724,000 e-mails and attachments. I am confident, however, that further information will be made available to the Committee resulting from these efforts as expeditiously as possible. Finally, the Department has also collected thousands of documents flagged as potentially responsive to the subpoena by various officials within ATF. Over two dozen lawyers at ATF and the Department are currently reviewing those documents, and, as a result of this separate review, the Department produced or made available an additional 169 pages of documents to the Committee this week. I expect that such rolling productions will continue.

I should emphasize that, although the accommodation process is still ongoing, the Department's response to the subpoena to date has been significant, especially in view of the unusual nature of—and serious challenges presented by—congressional oversight of open criminal investigations. In total, the Department has physically produced more than 580 pages of documents to the Committee and has made available more than 900 additional pages for review. In addition, the Department made one ATF official available for an interview with Committee staff, and we hope we will be able to schedule more interviews in the upcoming weeks. In

addition, Committee staff has requested—and the Department has agreed to provide—additional briefings on three specific topics of interest to the Committee. The Department, of course, always stands ready to explore other alternatives for satisfying the Committee's legitimate oversight needs.

I understand that concerns have been raised that many of the documents that the Department has made available to the Committee to date have been made available only for review by Committee staff, without copies of the documents also being provided. Let me explain our practice in that regard. The documents that are made available for review contain law enforcement sensitive material, and the Department needs to take steps to prevent their public disclosure. For that reason, it is necessary and appropriate to make them available only for review by Committee staff at this time. The inadvertent disclosure of these documents at this time could, for the reasons I explain below, compromise the independence, integrity, or effectiveness of open criminal investigations or other law enforcement interests. I should be clear, however, that this process of review is without prejudice to the Committee's prerogative to request copies of specific documents that it deems particularly pertinent to its oversight interests. If the Committee does so, the Department will promptly and in good faith consider whether it can provide copies of such documents to the Committee, consistent with vital law enforcement interests.

The Department's Compelling Need to Withhold Core Investigative Documents

I must stress that the Department will not be able to make available to the Committee all documents encompassed by the subpoena. In the course of locating documents responsive to the Committee's subpoena, we have identified certain confidential, core investigative and prosecutorial documents, the disclosure of which, in the Department's judgment, would compromise the independence, integrity, or effectiveness of the open criminal investigations and would undermine the Department's ability to discharge its responsibilities for the fair administration of justice. The Department, consistent with its longstanding policy, is not in a position to make such documents available to the Committee. Seventy years ago, Attorney General Robert H. Jackson, relying on positions taken by his predecessors, informed Congress that:

> It is the position of the Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution 'to take care that the Laws be faithfully executed,' and that congressional or public access to them would not be in the public interest.

Position of the Executive Department Regarding Investigative Reports, 40 Op. Att'y Gen. 45, 46 (1941) ("*Investigative Reports*").

I hope that an explanation of the reasons for this policy will underscore for the Committee why the policy is so central to the Department's law enforcement mission. The most basic justification for the policy follows from the Constitution's careful separation of legislative and executive powers, the purpose of which is to protect individual liberty. As Charles J.

Cooper, the Assistant Attorney General heading the Department's Office of Legal Counsel during the Reagan Administration, explained in 1986, providing a congressional committee with sensitive, Executive Branch information about an ongoing law enforcement investigation would put Congress in an inappropriate position of exercising influence over or pressure on the investigation or possible prosecution. *See Congressional Requests*, 10 Op. O.L.C. at 76. Such congressional influence—and, indeed, the mere public perception of such influence—could significantly damage law enforcement efforts and, in criminal matters, shake public and judicial confidence in the criminal justice system. Congressional oversight of open investigations risks compromising the core principle that decisions about criminal investigations and prosecutions must be made without reference to political considerations.

Equally important, the Department's policy reflects the reality that the disclosure of information regarding open law enforcement investigations risks compromising the effectiveness of such investigations themselves by, among other things, providing a "road map" of the investigation to subjects and targets of the investigation and discouraging the cooperation of existing and potential witnesses, informants, or other cooperators. Disclosure of information regarding open criminal investigations could disclose the identity of individuals assisting in the investigation, as well as the investigative techniques being employed and evidence that has been gathered. Such disclosures could inform subjects and targets about investigations in a manner that permits them to evade and obstruct the Department's investigative and prosecutorial efforts. As Attorney General Jackson warned, disclosure of open investigative files could "seriously prejudice law enforcement," as "[c]ounsel for a defendant or a prospective defendant [] could have no greater help than to know how much or how little information the Government has, and what witnesses or sources of information it can rely upon." *Investigative Reports*, 40 Op. Att'y Gen. at 46.

These concerns, unfortunately, are not merely theoretical. The Committee's oversight activities in this matter has already risked undermining, albeit unintentionally, the independence, integrity, and effectiveness of the Department's criminal investigations. In connection with its oversight of the Fast and Furious operation, the Committee issued a subpoena for documents and testimony at a public hearing to a cooperating witness who was, at the time, scheduled to be a witness in a trial scheduled for this month involving 20 defendants charged with an array of firearms, drug, and money laundering offenses. At the time of the subpoena, neither the individual's cooperation with the investigation nor his identity as a trial witness had been disclosed in the judicial proceedings. This manner of oversight risks compromising the investigation and prosecution of alleged firearms traffickers, drug dealers, and money launders by deterring current and potential cooperators. One defendant, in declining the opportunity to participate in a proffer session with the United States Attorney's Office, specifically advised the prosecutors through his lawyer that he was declining the opportunity because he feared that any investigative report written about his proffer session would be made public. The Department has grave concerns about this approach to oversight, and I wish respectfully to repeat our request that the Committee refrain from contacting or subpoenaing witnesses and cooperators involved in either the indicted criminal case or continuing criminal investigations while these matters remain pending.

Having set forth the justifications for the Department's policy regarding the disclosure of open criminal investigate files, I should add an important point regarding the doctrine and the practice of executive privilege. I am aware that witnesses at the Committee's hearing on Monday raised a question about why the Department has not requested that the President assert executive privilege in response to the Committee's subpoena. To be sure, executive privilege is available to safeguard open law enforcement investigations. *See* Letter for the President from Michael B. Mukasey, Attorney General, *Assertion of Executive Privilege Concerning the Special Counsel's Interviews of the Vice President and Senior White House Staff* (July 15, 2008) *available at* http://www.justice.gov/olc/2008/agletterepclaim07-15-08final.pdf ("The President may invoke executive privilege to preserve the integrity and independence of criminal investigations and prosecutions."). Consistent with the Constitution's implied mandate that Congress and the Executive Branch work to accommodate the needs of the other in these situations, however, it is the typical practice of the Executive Branch to avail itself of every opportunity to accommodate Congress's needs to the fullest extent possible consistent with the confidentiality interests that are protected by executive privilege before asking the President to invoke the privilege, which is a last resort. This practice of accommodation does not in any way mean that the Department cannot or should not rely upon the interests protected by executive privilege when making judgments about appropriate disclosures during the process of accommodation. Any other approach would rapidly and prematurely escalate most oversight disagreements into constitutional confrontations, countermanding the teaching of the Court of Appeals for the District of Columbia Circuit in *AT&T*. Here the Department's efforts to gather and process potentially responsive documents are not complete, and the accommodation process is ongoing. In that context, it would not be responsible to escalate prospective disagreements into constitutional confrontations without first fully engaging in the process of accommodation.

Finally, let me say a few words about the testimony the Committee received on Monday from Professor Charles Tiefer, Mr. Morton Rosenberg, Mr. Todd Tatelman, and Mr. Louis Fisher. The upshot of that testimony was that Congress has a legitimate oversight interest over the Department, even with respect to ongoing investigations, and that the Department has on certain occasions provided Congress with law enforcement materials. Although I will not engage here in a detailed assessment of these assertions, I wish to make three general observations in response. First, in both their written and oral testimony, the witnesses acknowledged that disagreements between Congress and the Executive Branch should be resolved through a process of accommodation, which often involves balancing the competing interests of each branch and a good deal of give and take. We agree. As I have explained, the Department to date has made substantial efforts at accommodation, but the voluminous and sensitive character of many of the documents has impacted the substantial review process necessary to respond to the subpoena consistent with the Department's constitutional and statutory mandates.

Second, the Department acknowledges as a general matter that Congress's oversight authority with respect to the Department may, in certain circumstances, implicate open matters. That congressional oversight authority, however, must also account for, and in some cases yield to, the legitimate confidentiality interests of the Department and the criminal justice system, especially in circumstances in which oversight relates to open criminal investigations. The D.C. Circuit's decision in *AT&T* drives home the point that our coordinate branches must work to

accommodate the legitimate interests of the other. That process of accommodation, as I have emphasized, is ongoing, making clear that the Department understands that the Committee has some legitimate interests regarding the Department's basic policy and strategy decisions here, even though that oversight may touch upon open investigations.

Lastly, the historical precedents discussed by the witnesses, as I understand them, simply did not involve disclosure by the Department of sensitive information relating to active, ongoing criminal investigations of the type directly sought by the subpoena here. Those precedents therefore supply no reasonable basis for insisting that the Department disavow its longstanding policy—a policy applied across the political administrations of each party—in this matter. *See generally* Todd David Peterson, *Congressional Oversight of Open Criminal Investigations*, 77 Notre Dame L. Rev. 1373, 1388-1410 (2002) (discussing the limited utility of the precedents relied upon by in Congressional Research Service reports).

Conclusion

In concluding my testimony, I would like to emphasize again that the Department recognizes that the process of congressional oversight is an important part of our system of government. At the same time, congressional oversight that implicates ongoing criminal investigations is highly unusual, and presents sensitivities not raised in the ordinary case of oversight of the Executive Branch. Despite the unique challenges posed by oversight of open criminal matters, I remain optimistic that the Department, working closely with and in consultation with this Committee, will be able to satisfy the Committee's core oversight interests in this matter, while also safeguarding the independence, integrity, and effectiveness of the Department's ongoing criminal investigations. The Department stands ready to continue to work diligently with the Committee toward satisfying the respective interests of our coordinate branches.

Thank you again for inviting me here today to testify. I would be happy to answer your questions.

Chairman ISSA. I certainly hope so.

I would recognize myself.

Sir, if you are going to count pages like this as discovery, you should be ashamed of yourself. The only thing that this says is, "Internal use only. Not for dissemination outside the ATF." That is not discovery. That is saying that nothing within the document requested, under any circumstances, are we going to be shown.

It doesn't take so long if you don't spend your life redacting. The pages go on like this forever. You have given us black paper instead of white paper. You might as well have given us a ream still in its original binder.

How dare you make an opening statement—how dare you make an opening statement of cooperation. We have had to subpoena again and again. Your representatives of your organization, of the executive branch, have discouraged witnesses from coming forward. It has only been the courage of whistleblowers like the ones you saw here today that have caused us to have more documents on this case than you have ever suggested turning over.

And how dare you talk about 900 pages, all of which were available on the Internet. Your first discovery that you ever turned over, you gave us already-available-on-a-Google-search documents only.

So, sir, what executive privilege are you claiming? Sensitivity is not envisioned. On Monday we held a hearing here, and I hope you had plenty of people watching it. And if you didn't, get it on YouTube. Not one witness, not on direct or on cross, talked in terms of the kind of unique sensitivity. Instead, they gave us caselaw and cases involving Justice that say just the opposite of what you are saying.

Sir, you heard from the family and you heard from the whistleblowers. They have concerns about whether you are charging everybody in Brian Terry's murder. And, yes, I am deeply concerned, and we promised to get to the bottom of it. And if somebody wants to call that political interference, so be it. You should be held to a standard of why everybody, including the people who lie, buy and lie, those weapons, why they are not being charged if there is any chance they can be properly linked to his murder.

But let's move on. Understand, that is for the family. For this committee, we are investigating you, your organization. The executive branch above the Phoenix office is who we are investigating. We want to know what felony, stupid, bad judgment led to allowing this program at the highest levels.

When you have the head of Alcohol, Tobacco, and Firearms on basically his computer screen watching these things, don't tell me you didn't know what it was doing. It appears to us on this side of the aisle, and I believe on the other side, that you thought this was a good idea.

Today, are you prepared to tell us that this program was, in fact, necessary and a good idea? And are you prepared to tell us who authorized it, who was the greatest, highest-ranking person who authorized any part of it?

Mr. WEICH. Mr. Chairman, you have raised a number of issues. Let me try to——

Chairman ISSA. Do the last ones first. Who authorized this program that was so felony stupid that it got people killed?

Mr. WEICH. The Attorney General has said that he wants to get to the bottom of this. He has directed the Office of the Inspector General at the Justice Department to review this matter in order to answer questions like the ones——

Chairman ISSA. And if that is the case, then why are we any burden at all? Isn't every one of our requests consistent with what the inspector general and the Attorney General should be looking at in this case?

Mr. WEICH. I don't know for a fact that everything you have asked for is what they are looking at——

Chairman ISSA. I hope you came here to answer questions like that. We are asking for things related to the above-the-field level almost exclusively. Our questions are about, who authorized this? Why did it happen? Why did it continue?

Our question to you today is—the President said he didn't authorize it. He said the Attorney General didn't authorize it. He didn't say he didn't know about it. He said he didn't authorize it.

Who at Justice authorized this program?

Mr. WEICH. As I have said, Mr. Chairman, the Office of the Inspector General——

Chairman ISSA. Who at Justice—if you know, I ask you to answer, who do you know was involved in the authorization of this, today? Do you know?

Mr. WEICH. We——

Chairman ISSA. Do you know?

Mr. WEICH. Well, Mr. Chairman, if you will permit me to answer the question. We sent a letter to Chairman Smith, who asked a question like that. We pointed out that this operation, as with other law enforcement operations, originated in the ATF's Phoenix office——

Chairman ISSA. That is not authorization. Who authorized it at the highest level?

Mr. WEICH. Again, Mr. Chairman, please, if you will permit me——

Chairman ISSA. Do you know who authorized it at the highest level? And don't answer Phoenix or Tucson or any part of Arizona, if you please.

Mr. WEICH. Well, Mr. Chairman, it is difficult to answer your questions if you won't permit me to answer them.

Chairman ISSA. I want the answer to my question, which was, who here in Washington authorized it? We know who looked at it on video. We know who authorized it effectively, at least by acquiescence. Who authorized this at Justice?

Mr. WEICH. Mr. Chairman, I do not know the answer to that question. And the inspector general is reviewing the matter.

Chairman ISSA. Then we will have somebody back who does.

The ranking member is recognized.

Mr. CUMMINGS. Mr. Weich, let me apologize for that. You don't deserve that. Perhaps somebody else in the Department does.

What is your role? What is your job?

Mr. WEICH. I am the Assistant Attorney General for the Office of Legislative Affairs, Congressman.

Mr. CUMMINGS. And these are not decisions that you make, are they, the questions that he was just asking about, the chairman was just asking about?

Mr. WEICH. That is correct.

Mr. CUMMINGS. And, as I have said many times, there is a certain level of integrity that we must maintain in this committee. I see this committee as just lower than a court. And I know, and I have said it to the chairman and I will say it over and over again, you have to go home to your family; you have colleagues who are watching this. And for you to be hollered at and treated that way I just think is unfair. And so, on behalf of the committee, I apologize.

Chairman ISSA. Would you gentleman yield?

Mr. CUMMINGS. No, I will not yield. I am trying to talk to the witness. I didn't interrupt you.

Chairman ISSA. No, and you didn't—I didn't——

Mr. CUMMINGS. But I will yield——

Chairman ISSA [continuing]. Say things on behalf of the——

Mr. CUMMINGS. I will yield as long as I keep the time.

Chairman ISSA. Hold the time.

Would the gentleman please note, you may apologize on behalf of something you say. I am not apologetic——

Mr. CUMMINGS. Fine.

Chairman ISSA [continuing]. And you may not apologize on behalf of the committee.

Mr. CUMMINGS. Thank you. I——

Chairman ISSA. The gentleman may resume.

Mr. CUMMINGS. Let me say this: I apologize. Because we are better than that. We are better than that. And I do hope that we bring the appropriate people who can answer those questions. And even when they come, they should not be treated that way.

On April 13th, you wrote to the committee to explain the extreme sensitivity of some of the documents covered by your committee's subpoena of, you know, open law enforcement files. You explained that the subpoena, "encompasses records that would identify individuals who are assisting in the investigation and sources and investigative techniques that have not yet been disclosed."

But this is not all of the records, right? And I assume that it is just a small subset of subpoenaed documents and that you can redact such sensitive information; isn't that correct?

Mr. WEICH. That is correct, Congressman, and that is what we are trying to do.

Mr. CUMMINGS. Now, I can understand the chairman being upset, because I would be upset—but I wouldn't treat you like that—about somebody submitting to me some blanks pages. Can you explain that to me?

Mr. WEICH. Well, one thing that I want to make clear, Congressman, is that the number of pages that I cited in my testimony as having been produced or made available does not include such pages. Where those pages are redacted, it is part of a document showing where there was law-enforcement-sensitive information that we were unable to provide. But that is not included in the total.

Mr. CUMMINGS. And what were the total pages that you submitted?

Mr. WEICH. I will get you the exact numbers.

Mr. CUMMINGS. Well, while your staff is assisting you on that, let me get going.

Mr. WEICH. I have it.

Mr. CUMMINGS. Okay.

Mr. WEICH. We have physically produced more than 675 pages of documents and made available more than 900 additional pages for review.

And I should say, this production is ongoing. We have made documents available and physically produced documents in each of the last 3 business days, and I expect the document production to continue.

Mr. CUMMINGS. The purpose of our investigation is to understand what occurred and who is responsible. Do you think that you will be able to provide sufficient documents to answer those core questions without disclosing highly sensitive records?

Mr. WEICH. I am sorry, Congressman. Could you——

Mr. CUMMINGS. In other words, you said that there are some confidentiality issues. And I am trying to get to—and you said that this certain policy spans over various administrations; it wasn't just Democratic administrations or Republican administrations.

I am just asking you, is there a way that we can get—what I have often said, and I have said it before the hearing that the chairman referred to the other day, I said, we need to do two things—we have two things going on here. We are trying to look to see how far this thing went up, but at the same time we have these criminal prosecutions. And I am saying, is there a way that we can resolve those issues? Is that within your purview?

Mr. WEICH. Yes, it is. And I believe that we can do so. We are doing that by providing documents, by briefing the committee, by making documents available, and by facilitating witness interviews.

We share the committee's goal in getting to the bottom of these questions. And we are assisting the committee at the same time that the Department, itself, has a review by the Office of Inspector General.

Mr. CUMMINGS. Now, you further explained that it is the public release of this information that presents the most risk to ongoing criminal investigations and prosecutions. You stated, "Disclosure of these types of information may present risks to individuals' safety in the violent environment of firearms-trafficking activities. Disclosure may also prematurely inform subjects and targets about our investigation in a manner that permits them to evade and obstruct our prosecutorial efforts."

Even if we are not so upset about—and I am always concerned about prosecutions—the fact that somebody's life might be in danger gives me great concern, because I see it, living where I live, almost every day.

So tell me something, what is the—can you give me a response to that?

Mr. WEICH. Yes. Congressman, some of these documents identify cooperating witnesses, they identify confidential informants. They

describe a strategy as to specific cases, ongoing cases, and revealing that strategy could inform potential targets of the investigation of law enforcement activities. And it seems unwise.

You, yourself, Ranking Member Cummings, highlighted a number of ways in which the committee investigation has already inadvertently overstepped the line and, for example, made public a sealed document.

So we are concerned about this. We really think that, if we work cooperatively, we can help the committee avoid such missteps, help satisfy the committee's oversight interest, and get to the bottom of these questions.

Mr. CUMMINGS. Thank you very much.

Chairman ISSA. The gentleman's time has expired.

The gentleman from Oklahoma is recognized. Would you yield to me for 30 seconds?

Mr. LANKFORD. Absolutely.

Chairman ISSA. Did you provide those documents you say were released—that were sealed? The documents you are saying were prematurely released, were they provided by you under any kind of request?

Mr. WEICH. You know, I am not certain. If you will permit me to consult with my staff, I will be able to answer that question.

Chairman ISSA. Okay. Go ahead.

Mr. WEICH. I have the answer, Mr. Chairman. And the answer is, no, those were not documents we provided. Those were documents that your investigators obtained and then made public in spite of the court order that they not be made public.

Chairman ISSA. So you are saying that if we get documents that we have no idea, because you are not providing documents, that we are responsible?

Mr. WEICH. Yes. Mr. Chairman, it seems to me that you should ask the Justice Department whether sensitive documents should be made public. That particular document related to a wiretap, which is always a sensitive law enforcement step. And if the committee would consult with us, we would help the committee avoid——

Chairman ISSA. If you had given us those documents with appropriate guidance, that obviously wouldn't have happened. You didn't do it, and you had plenty of time to do it.

I yield back to the gentleman.

Mr. LANKFORD. Thank you.

As I try to follow through this whole day and try to process what has been going on—February the 4th, there is a letter from Senator Grassley, back and forth with you, stating, "The allegation that ATF sanctioned or otherwise knowingly allowed the sale of assault weapons to straw purchasers who transported them to Mexico is false."

On May the 2nd, you wrote again to Senator Grassley, reiterating, "It remains our understanding that ATF's Operation Fast and Furious did not knowingly permit straw buyers to take guns into Mexico."

Yet I just asked some agents about that, and their statement was they think about 1,500 weapons are still out there, and probably two to one of those are in Mexico.

Would you like to change your statement at all on that, or have anything that you would want to shift on your previous statements from February or May?

Mr. WEICH. Thank you, Congressman.

The statements that you referred to are—let me say this. Every time the Justice Department sends a letter to Congress, it is true to the best of our knowledge at the time that we send it.

Those particular statements remain true, for the technical reason that the committee's report, issued last night, described. The straw purchasers don't take guns to Mexico. And, in any event, ATF doesn't sanction or approve of the transfer of weapons to Mexico. That is obviously a crime.

Mr. LANKFORD. But ATF did permit those knowingly, understanding they were headed toward the border, and that was well-known, apparently, among the Phoenix office and, as we can tell, going up the food chain, that these purchases were not being purchased by someone out, as was stated, bear hunting. These were straw purchasers buying in large quantities and headed toward Mexico.

So how can we make a statement, we are not sanctioning that, but we are also not interdicting, we are not trying to stop it either.

Mr. WEICH. Right. So, obviously, allegations from the ATF agents you have heard from today and from others have given rise to serious questions about how ATF conducted its operation. And that is why the Attorney General instituted an investigation, and it is why we are cooperating in this committee's investigation.

Mr. LANKFORD. Was there any communication with leadership in Mexico, so that if these weapons showed up in Mexico, we were actually doing a law enforcement process here to make sure they were both aware that these guns might be headed that way or that we had a working relationship when arrests were made, we would cooperate with them dealing with these arrests?

Mr. WEICH. Congressman, from my position in the Office of Legislative Affairs, I don't have personal knowledge of the kind of communication. My understanding is that, in general, there are close ties between U.S. law enforcement and Mexican law enforcement, including on gun investigations.

So, as a general matter, the answer to your question is "yes." As to specific cases, I am not in a position to say.

Mr. LANKFORD. So are you saying they were aware that this Fast and Furious was going on and that guns were headed in their direction and they were involved in that process? Or there is just, we know their phone numbers and we occasionally call each other? This specific program is what I am talking about.

Mr. WEICH. Congressman, I am not in a position to answer that question with specificity.

Mr. LANKFORD. Do you know who might be a good person that we could contact to get that kind of specific information?

Mr. WEICH. The committee has already interviewed one ATF agent, and, as I said, we are prepared to make other agents available. And these include high-ranking ATF officials. I would think that those individuals can speak with specificity to the question that you are asking.

Mr. LANKFORD. Terrific.

What other office besides the Phoenix office was doing this type of program?

Mr. WEICH. Congressman, I am not in a position to answer. I don't know the answer to that question.

Mr. LANKFORD. Okay.

Do know how many offices that DOJ has a relationship with that were informed about this operation as it was ongoing that might be engaged, at least have a—not necessarily approval, but at least acknowledgment, this is going on, just be aware, the Phoenix office is tracking straw buyers and they are out there, there may be as many as 1,500 guns, just be aware of that? Do we know how many other offices or agencies were aware of that?

Mr. WEICH. Are you saying offices or agencies of the Justice Department?

Mr. LANKFORD. Well, agencies within Justice, yeah, that it has a relationship with.

Mr. WEICH. I don't know. There is close communication among the various U.S. attorney's offices and the law enforcement components. There are, you know, crosscutting meetings and task forces and so forth, including OCDETF. But I can't speak with specificity as to this operation.

Mr. LANKFORD. Okay. Thank you.

I yield back.

Chairman ISSA. I thank the gentleman.

The gentleman from Missouri, Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

And, Mr. Weich, from what I can see, the Department of Justice has worked hard to comply with the committee's very large document request. Not only have you gone to considerable lengths and cost, you have worked with majority committee staff to prioritize documents of great interest. You have briefed the committee not only on your ongoing processing of documents but on the case itself. On top of delivering many documents, you have made the most sensitive documents available for review by committee staff in ways that protect the documents' integrity.

It seems to me that the Department is cooperating with the committee's extraordinary request. And I say "extraordinary" because not only is the scope of the request very large but because of its timing—during ongoing criminal investigations as well as an ongoing IG investigation.

Flashing back to when the committee was investigating Blackwater during the previous administration, a member of this committee, now in the majority, said that, "We are supposed to allow the administration to do its investigation, and then we do oversight."

Now, I believe we have a legitimate interest in conducting oversight of the administration, but we should not jeopardize ongoing criminal cases or IG investigations just because a different party now holds the White House.

Mr. Weich, in your statement, you explain that the Department has made certain documents available to committee staff for their review, but without providing copies. This is because the documents contain sensitive law enforcement material, and the Department needs to prevent their public disclosure.

Mr. WEICH. That is absolutely right, yes.

Mr. CLAY. And is this a common practice?

Mr. WEICH. Yes, it is a very common practice, as I detail in my written statement. For many years, the Department has used this process of making documents available. In order to maximize the number of documents that a committee can have access to, chairmen for many years have accepted this practice.

And we do it because the rules of the House do not easily permit a committee to keep documents confidential. And, indeed, this committee has declined to provide any such assurances. So this is what we do. We make documents available physically that we are prepared to see be made public, and those that are not we make available to the committee investigators.

Mr. CLAY. And it is obvious that it is very disturbing to you and the Department, to the fact that, despite your procedures and clear warnings, the majority and Senator Grassley have inappropriately released sensitive documents?

Mr. WEICH. Let me say this, Congressman. I have, as the chairman noted, I have been here all morning, and I listened to Senator Grassley as well as to the Terry family and to the ATF agents who testified. The common view of all of the witnesses and the members of the committee is that it is vital that these prosecutions, most notably the prosecution of Agent Terry's alleged killers, be successful, that we not do anything to harm those prosecutions.

Our effort to preserve confidentiality of certain law-enforcement-sensitive documents is in furtherance of that goal.

Mr. CLAY. And you wrote on Monday that you heard, during the hearing on Monday, that the committee is committed to not compromising the murder investigation or the broader gun-trafficking investigation through its oversight activities.

Given what we found out about improper disclosures and improper contact with witnesses and the way that these hearings have been structured and conducted, I am not sure I agree with your assessment. I think that the majority's actions have come very close to compromising the investigations and prosecution, if they already have not done so.

Do you still believe in the majority's commitment to not compromise these investigations?

Mr. WEICH. Congressman Clay, we want to work with the committee. We have an ongoing relationship with the committee staff. I think it is important for us to flag these warnings and maintain appropriate boundaries. But we share the committee's interest in getting to the bottom of these allegations, and so we will work with the committee.

Mr. CLAY. I thank the witness.

Mr. Chairman, I yield back.

Chairman ISSA. I thank the gentleman.

We now recognize the gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. When did you first talk to Attorney General Holder about this issue?

Mr. WEICH. As best as I can recall, it came up in preparation for his oversight hearings in May. He was asked about it, I think, by Chairman Issa——

Mr. CHAFFETZ. Do you still hold tight to the—so you are suggesting that the letters that you sent on February 4, 2011, to Senator Grassley and, again, another letter on May 2, 2011, to Senator Grassley, that the content of those two letters is complete and accurate, as best you know?

Mr. WEICH. Congressman, I have said——

Mr. CHAFFETZ. That is a "yes" or "no" question. Is it complete and accurate?

Mr. WEICH. Congressman——

Mr. CHAFFETZ. "Yes" or "no?"

Mr. WEICH. Well, respectfully, that is not susceptible to a "yes" or "no" answer.

Mr. CHAFFETZ. Go ahead.

Mr. WEICH. Thank you.

As the committee's report pointed out, there is a technical explanation for why the allegation that ATF sanctioned the sale of guns to straw purchasers who then transported them to Mexico is not an accurate statement, and so we said that that was false.

However, serious allegations have come to light, including the testimony of the agents today, that cause Attorney General Holder to want there to be an independent review of this matter, and he has initiated that review.

So we are not clinging to the statements in those letters. We are saying——

Mr. CHAFFETZ. So if I said that I think somebody knowingly and willfully actually misled and lied to Congress, would I be off-base?

Mr. WEICH. Respectfully, Congressman, you would be, in that we make every effort to provide truthful information to Congress. I know that is something that I take very seriously——

Mr. CHAFFETZ. I would like to highlight—on January 8th—remember, these letters came out February 4th and May 2nd. But on January 8th—and I will quote from this internal document here from the Phoenix Field Division that indicated, on page 4, "Currently, our strategy is to allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow for the identification of co-conspirators who would continue to operate and illegally traffic firearms to Mexican drug-trafficking organizations," and it goes on there.

The administration knew in January before these letters came out that it was on purpose. It would continue to operate and illegally traffic firearms to Mexico.

How can that stand? And how can you and the Department of Justice and people who take responsibility for this allow the lies to continue to come to Congress? Why did this Obama administration purposely allow the illegal transfer of more than 2,000 weapons that they knew, according to this memo, were going to go to Mexico?

Mr. WEICH. Congressman, you have asked questions that the Office of the Inspector General is looking at, that this committee is looking at, and we——

Mr. CHAFFETZ. I want answers from you. That is why you are here. You have this document. You know that this is true.

This memo goes on to say—and, again, in January: "To date, there have been five notable seizure events connected with the

group. Approximately 53 firearms originally purchased by this group have been recovered. Three of these seizures have been in the country of Mexico."

We knew that these were going south. And yet, in your letter, you state, "It remains our understanding that ATF's Operation Fast and Furious did not knowingly permit straw-purchase buyers to take guns into Mexico." That is patently and totally false. How do you do that?

When this comes out in January and again in May, you write and you tell this Congress that they did not knowingly permit straw purchasers to take guns into Mexico, in total contradiction of the memo of January 8th. How does that happen?

Mr. WEICH. Congressman, I have explained to you that we do our best to provide the information to Congress as we know it. As allegations have come to light, we have initiated an investigation and are cooperating with this committee's investigation.

Mr. CHAFFETZ. Is Fast and Furious still ongoing?

Mr. WEICH. I don't believe so, Congressman. I am——

Mr. CHAFFETZ. At what time did the Attorney General—did he order that it be taken down? Did we stop doing it? At what point did they actually say, all right, enough is enough?

Mr. WEICH. The Attorney General made very clear, as this matter came to light, that guns should never be walked to Mexico——

Mr. CHAFFETZ. I know. I want to know when the Attorney General actually got engaged in this. Why didn't he know about it? When did he know about it? Or was he just oblivious to it?

Mr. WEICH. No, Congressman. He answered Chairman Issa's question on the House Judiciary Committee. The question was, when——

Mr. CHAFFETZ. But I questioned him, also, on the House Judiciary Committee, if you remember. You were sitting in the row right behind him.

Mr. WEICH. I was.

Mr. CHAFFETZ. And he said he didn't know when he first knew about it.

So I am trying to figure out, when did he know about it? And then what did he do about it?

Mr. WEICH. He told Congressman Issa that he first learned about it several weeks before the hearing in connection with a press report.

Mr. CHAFFETZ. And what I don't understand is, when you go back and look at the record, President Obama knew about it back in March. If the President knew about it, why didn't the Attorney General know about it? And why are you issuing a memo in May, when the President of the United States, in an interview with, I believe, Univision, is saying we know that there were some mistakes made? How does that happen?

The President makes this comment, and then, still, months later, you have the gall to issue a memo to this Congress saying, that is just false, it is not true.

That does not add up, and that is what this investigation is going to continue to pursue.

I yield back.

Chairman ISSA. I thank the gentleman.

If I may grant myself time for a colloquy because the gentleman does seem to be rather upset.

I have read the statement. And if you were to parse words and determine the meaning of "is," then you probably could say that, because the straw purchasers, the original buyers, did not take them to Mexico but, rather, transferred them to intermediaries, that, in fact, they did not knowingly take them into Mexico. I would not call it to whole truth, but I certainly understand why if someone is trying to deceive and mislead, that they could, in fact, write a letter like that and think that they technically didn't lie, and they would be correct.

With that, we recognize next—oh, you haven't done yours?

We recognize the gentleman from South Carolina, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Sir, I know that you were here this morning while the members of the committee were—and I will say this with all the civility that I can muster. I think it is bitterly ironic that you would refer to committee missteps before you referred to ATF or DOJ missteps. In response to questioning from Mr. Issa, you used the phrase "committee missteps." I think the purpose of this hearing is not so much our missteps, real or perceived, but the missteps of ATF and DOJ.

So let me start by asking: When did anyone at DOJ know that firearms, in connection with this investigation, were going to Mexico?

Mr. WEICH. Congressman, that is not a question that I am equipped to answer. As I have said, the inspector general is looking at it, and we are cooperating in this committee's investigation.

Mr. GOWDY. Well——

Mr. WEICH. And may I just say, Congressman, I didn't start out my testimony by talking about committee missteps. I didn't talk about it in my opening statement. I——

Mr. GOWDY. No, sir, you did not. But it is bitterly ironic that the first criticism you would have or the first use of the word "overstep" would be of this committee and not of ATF and not of the U.S. attorney's office in Arizona.

And I, frankly, am shocked at the relationship between ATF and that particular U.S. attorney's office. It is untenable and unworkable. And I would hope that someone at DOJ would ask some questions of the U.S. attorney's office in Arizona. I cannot imagine that kind of working relationship, where proffers are not allowed and subpoenas take 6 weeks to be approved. And I would be hopeful that you would ask that.

So, you do not know when DOJ knew that firearms were going to Mexico?

Mr. WEICH. No, sir, I personally do not.

Mr. GOWDY. All right. What is DOJ's policy on guns walking?

Mr. WEICH. The Attorney General has made very clear that guns cannot walk to Mexico. That is to say, it is a, per se, violation of law for guns to be transported across the border to Mexico.

Mr. GOWDY. What is your definition of "walking?"

Mr. WEICH. That, as the committee's report made clear, is the subject of much discussion within ATF. And——

Mr. GOWDY. I am asking about DOJ.

Mr. WEICH. I am afraid I am not in a position to answer that question. I will say that it is——

Mr. GOWDY. But you would agree that me physically handing someone who is a prohibited person a gun, that cannot be the only definition of "walking?" Having knowledge that a gun is leaving your area of surveillance or jurisdiction is "walking," correct?

Mr. WEICH. I can't define "walking." What I can say, Congressman, is that it is—this is a challenging enforcement environment, as I think you know as a former Federal prosecutor——

Mr. GOWDY. I do. But I also have to tell you as a former Federal prosecutor, this is unprecedented. I have never heard—would you ever allow or sanction controlled substances—if it were controlled substances and not firearms, would you have ever allowed or sanctioned or permitted them to walk?

Mr. WEICH. First of all, there is a big difference. Drugs are per se illegal, and guns are not. The sale of a firearm or multiple firearms to an individual who is not a prohibited person is not illegal, of course.

Mr. GOWDY. I am aware of that. Would you have allowed controlled substances to skip surveillance and go to Mexico?

Mr. WEICH. That is a question that is well beyond my area of responsibility or expertise. I will note that, of course, there are controlled buys in narcotics cases in order to pursue a drug conspiracy and pursue the highest levels of a drug conspiracy. I know that from my personal experience as a prosecutor.

Mr. GOWDY. Who can we ask, who can we invite before this committee that can tell us definitively when the Department of Justice knew that guns were going into Mexico? Who would you invite us to invite?

Mr. WEICH. I think you are pursuing the right track, if I could be so presumptuous. You are obtaining documents, you are interviewing witnesses. You interviewed Agent Newell, who is one of the individuals mentioned in the testimony today as having been very involved in this. There are other agents and ATF officials who we are ready to provide for interviews——

Mr. GOWDY. What about the U.S. attorney in Arizona? When did the U.S. attorney know that guns that were part of this—this was an OCDETF investigation, so it is impossible to argue the U.S. attorney's office wasn't part and parcel to it.

When did the U.S. attorney in Arizona know that firearms were leaving the United States and going to Mexico?

Mr. WEICH. I don't know the answer to that question, Congressman Gowdy.

But could I just say, I know Dennis Burke, the U.S. attorney there. He is a very hardworking, dedicated public servant. And what obviously happened here is there was a serious, profound disagreement about strategy. But the common goal of the U.S. attorney's office and all of the ATF agents is to interdict guns, to stop the gun trafficking to Mexico. So Mr. Burke, I am sure, was dedicated to that purpose.

Mr. GOWDY. Sir, with respect, given the fact that you know Mr. Burke and I do not, would you share with him what was said this morning about the dissatisfaction with Federal law enforcement in

Arizona and the relationship that they have with the U.S. attorney's office?

Mr. WEICH. Yes.

Mr. GOWDY. Because that has not been my experience, certainly not in South Carolina and not in other jurisdictions. The level of animosity and the fighting between law enforcement and Federal prosecutors over something as simple as a proffer—are you aware of any U.S. attorney's office that doesn't engage or allow the use of proffers?

Mr. WEICH. It is obviously a common technique.

Mr. GOWDY. Of course it is. There is no way to build a historical case without proffers.

Since you know Mr. Burke and I do not, would you ask him to do what we can to repair his relationship with law enforcement? Because it appears to be fractured, from this vantage point.

Mr. WEICH. I would be happy to talk to him, but I am sure he is monitoring this hearing closely.

Mr. GOWDY. Thank you.

Chairman ISSA. I thank the gentleman.

We recognize the gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

Just briefly, following up on that point, it would seem that the approach of at least the assistant U.S. attorney down there was to require corpus delicti, the body of the crime, to actually have the guns in order to proceed with the prosecution. If that is the case, I believe it is an improper application of the law.

And since this committee is involved in overseeing that our laws, once passed by Congress, are indeed enforced, it would serve us all, I think, if we review that, the application of the law, if that indeed is the approach of the office down there.

Mr. WEICH. Congressman Lynch, if I may, one thing that has been brought to my attention is that the U.S. attorney's office has brought cases involving large numbers of guns—straw purchasers, individuals alleged to have trafficked guns without a license—and that those prosecutions have sometimes resulted in hung juries or directed verdicts of acquittal because of the high standard of proof, especially in the Ninth Circuit.

So there may be something for Congress to look at in its legislative arena, as well.

Mr. LYNCH. Okay.

With that, I will yield the balance of my time to the gentleman from Maryland, Mr. Cummings.

Mr. CUMMINGS. Thank you very much.

Mr. Chairman, I want to submit our letter for the record requesting the minority day of hearings. It is dated June 15th, today.

Chairman ISSA. Thank you. I am in receipt of your request.

Mr. CUMMINGS. Well, I am asking that it be admitted into the record, Mr. Chairman. It is signed by the members of the——

Chairman ISSA. Certainly. Without objection, so ordered.

Mr. CUMMINGS. Thank you very much.

[The information referred to follows:]

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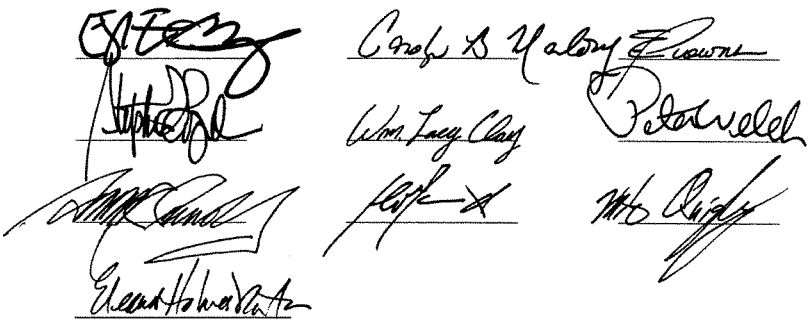
June 15, 2011

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

Dear Mr. Chairman:

Pursuant to House rule XI, clause 2(j)(1), we, the undersigned majority of the Minority members of the Oversight and Government Reform Committee, request a hearing to call witnesses selected by the Minority to testify with respect to today's hearing entitled, "Operation Fast and Furious: Reckless Decisions, Tragic Outcomes." Specifically, the Minority will request expert testimony regarding illegal gun trafficking to Mexico and the fact that "roughly 90% of the weapons seized in Mexico originated in the United States."[1]

Sincerely,



[1] Majority Staff of the Committee on Oversight and Government Reform, *Memorandum for Full Committee Hearing: "Operation Fast and Furious: Reckless Decisions, Tragic Outcomes"* (June 12, 2011).

The Honorable Darrell E. Issa
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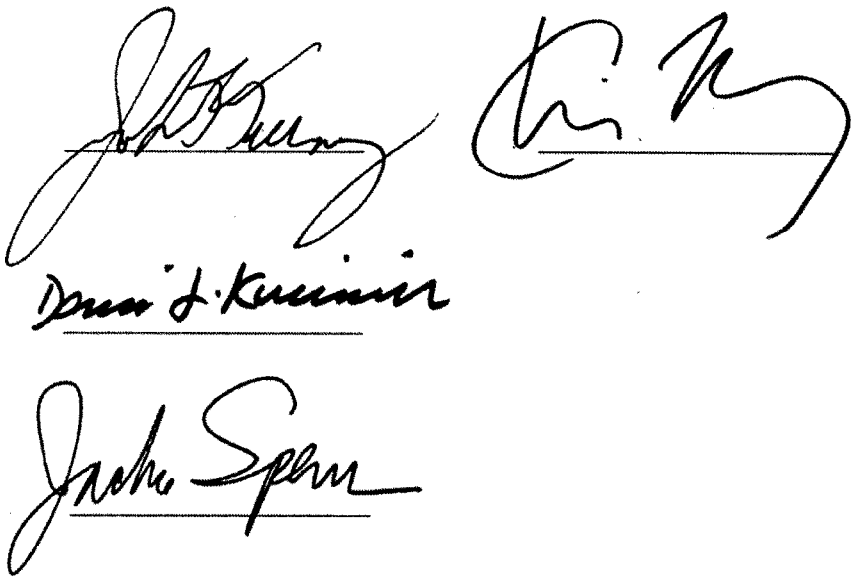

Mr. CUMMINGS. I want to say this to you, Mr. Weich. I am sitting here and listening to all of this, and I want you to take a message back.

Some kind of way, we have to establish—you know, the majority has some concerns, and I think many of them probably quite legitimate. And there has to be a balance here.

I am always concerned about people possibly dying as a result of something we might do in this committee. I am concerned about murderers getting off. I have spent a phenomenal amount of time trying to protect witnesses. I have submitted legislation that has been held up on the Senate side by the other side trying to protect witnesses. I believe in ultimate cooperation between law enforcement and the public. I have a record of it for years. You know why? Because I go to the funerals, I see the deaths, I hear the cries, and I experience the pain.

And some kind of way, we have to make sure that we strike the balance that I was just talking about. And I am not sure, I am just not sure, whether that balance has been struck the way it ought to be.

This committee has a job to do. The Justice Department has a job to do. And some kind of way, we have to find a way, as the adults in all of this, to make that happen and make it work.

And I am very serious about that. You know, life is short. And I tell my staff that every day I look in the mirror and I face my own mortality. And the question is, how can I be most effective and efficient? And when we do this ring-around-the-rosy stuff, what happens is that none of us are effective.

And you heard me make a commitment to that lady, Ms. Terry, I shall not rest until everybody involved in this process—and I mean that—I shall not rest until all of that is addressed.

Now, the chairman said something that was very interesting. He, a moment ago, spoke about all of this transparency and we need to read the whole document, and I appreciate that. But the one thing he did not say about this memo on January 5th, he didn't read this piece. You remember, Mr. Chaffetz mentioned this memo. So they read a piece of the memo, but they didn't read all of it.

And let me just read this line so that the record will be clear. This is on January 5, 2010. It says, "Investigative and prosecution strategies were discussed, and a determination was made that there was minimal evidence at this time to support any type of prosecution."

I just wanted to finish that, because I think it is important, particularly in the light of the chairman saying that we needed to have the whole statement.

And, with that, I will yield back.

Chairman ISSA. I thank the gentleman.

We now go to the gentlelady from New York, Ms. Buerkle.

Ms. BUERKLE. Thank you, Mr. Chairman.

And thank you, Mr. Weich, for being here today.

I have a couple questions. You keep alluding to the inquiry and the investigation that the IG is going to conduct at the request of——

Mr. WEICH. That office is currently conducting that investigation.

Ms. BUERKLE. Okay. All right. So are you concerned that their investigation is going to conflict or interfere with DOJ's investigation?

Mr. WEICH. Oh, you mean the criminal investigation?

Ms. BUERKLE. Yes, the IG——

Mr. WEICH. The inspector general has a good deal of experience in avoiding those kinds of conflicts. And, of course, their work is strictly confidential. Any report that they would issue publicly would be carefully vetted to avoid those kinds of concerns.

Ms. BUERKLE. And so, you are not concerned that that will interfere with the DOJ's investigation, just to be clear?

Mr. WEICH. We are not concerned.

Ms. BUERKLE. Okay. Then why are you concerned with this investigation? That is continually what we hear; "Well, there is an ongoing investigation." And so we feel we are not getting the answers we need, because you are concerned about compromising this other investigation.

So I would like you to differentiate for this committee.

Mr. WEICH. Sure.

Well, first of all, Congresswoman, we are not saying that this committee should not investigate. To the contrary, we recognize the legitimate oversight interest, and we are cooperating with the committee as it pursues this. So we are not in any way saying, don't do this.

Ms. BUERKLE. But if I could interrupt for a minute, there is a de facto—if you don't provide what is being asked or you provide what we see here, all those redacted sheets, whether or not you agree we have legitimate oversight, the fact that you are not complying with our request is a de facto, well, you are not going to comply.

Mr. WEICH. We have provided almost 2,000 documents in different forms.

The redacted documents that the chairman showed, it is a little bit of a red herring, I say with respect, because those were multi-subject documents, I am informed. And where the subject wasn't the subject, you know, that portion of the memo wasn't responsive to the subpoena, it was blacked out because we are obviously not producing nonresponsive material.

We are not redacting heavily the material that the committee is seeking and that is within its core oversight arena.

Ms. BUERKLE. Well, with all due respect, I think this committee would disagree with your assessment. We feel like we have been stonewalled and we have not gotten the information that we have requested from DOJ. But I don't want to take up all my time on that line of questioning.

You sat here this morning during the second panel with the three special agents. Did you hear them say that this was the first time, and perhaps the only time, they had seen such an operation as this one exist?

Mr. WEICH. I did hear them say that.

Ms. BUERKLE. Okay. And is that of any concern to you, that, out of nowhere, there is this Fast and Furious program that results in the death of Brian Terry?

Mr. WEICH. It is obviously—some of the testimony that was provided today is of great concern to the Justice Department. And that is why we are investigating it through the Office of the Inspector General and cooperating with this committee's investigation.

Ms. BUERKLE. Is this the first time you have heard any of that testimony?

Mr. WEICH. I have been generally aware of it. In my role as the head of the Office of Legislative Affairs, I have obviously been aware of this for a number of months.

Ms. BUERKLE. And when you say you are generally aware, what does that mean?

Mr. WEICH. I have been involved in producing responses to letters. I have been in discussions about how to comply with the committee's subpoena. So I have been aware.

I must say, I was very pleased to be here today to hear personally all of the testimony that was provided.

Ms. BUERKLE. And before I get on to my last question, did you hear the issue they raised regarding retaliation?

Mr. WEICH. I did. And I thank you, Congresswoman. I want to assure the committee—I think a number of Members raised this—that the Department of Justice will not, would never, retaliate against whistleblowers.

Ms. BUERKLE. Last, I asked the family of Brian Terry, if they had the ability to ask a question, what they would like to know. So I am going to read the question that Mr. Heyer gave us to ask you, and I would like you, to the best of your ability, to answer this question.

"I think that we would want to know if the dragnet that is set to find everyone involved in Brian's murder will be set deep enough and wide enough to encompass anyone involved in Operation Fast and Furious."

Mr. WEICH. The answer to that question is unequivocally "yes." There is a firm commitment in the Department of Justice to bring everyone responsible for Agent Terry's death to justice.

Ms. BUERKLE. And the second part of his question: "If the guns used in Brian's murder were a part of this operation, then we would want to know, will everyone in the operation that had to deal with those specific weapons be brought up on charges of facilitating the murder of Brian Terry?"

Mr. WEICH. Obviously, the whole purpose of the investigations that are ongoing, both in the Office of the Inspector General and here, is to ensure that there is accountability for the decisions that have been made, and, most importantly, to improve, to strengthen our law enforcement efforts. If there were flawed strategies, if there was an insufficient surveillance of weapons, obviously that is something that the Justice Department wants to rectify.

Ms. BUERKLE. Thank you.

I yield back, Mr. Chairman.

Chairman ISSA. I thank the gentlelady.

We now recognize the gentleman from Texas, Mr. Farenthold, for 5 minutes.

Mr. FARENTHOLD. Thank you, Mr. Chairman.

I assume you all are investigating various crimes that were associated with these guns. Aside from the tragic murder of Agent

Terry, are there any other American law enforcement officers or citizens who have died as a result of this program?

Mr. WEICH. Congressman, I can't accept the premise of the question. I don't know that any particular murder can be attributed to this program. I think that assumes a lot of facts, and I am just not equipped to deal with that. So I can't answer the question because I can't accept the premise.

Mr. FARENTHOLD. All right. Let's talk about—you heard the testimony this morning of the agents this morning saying that there was some sort of strategy, that we would allow these guns to move up the chain of command with the rather nebulous goal of snaring a drug cartel.

Are you aware, is this the strategy? And if so, can you tell me on any rational basis how the means that we used justified the ends, when we quit following the guns as soon as they changed hands the first time? There was no cooperation with the Mexican authorities, and it just seems like once they did the first hop, we just went away.

Mr. WEICH. Congressman, one thing I heard loud and clear from the ATF testimony today, from those agents, was that the people with whom they disagreed on the strategic questions told them and believed that they were engaged in a strategy to topple a significant transnational gun-trafficking operation.

If the strategy was flawed, then individuals should be held to account and the strategies should be improved. But I did hear that everybody had the goal of stopping illegal gun trafficking to Mexico.

Mr. FARENTHOLD. To me, it seems like the next step is you follow the guns all the way. The actions that appear to have been taken don't seem to have any relationship to the strategy at all. But I have a couple other questions, so we are going to leave that.

You have been reluctant to provide information and answer questions, continually citing ongoing criminal investigations and not wanting criminals to go free or jeopardize these investigations. But my understanding—and I am a lawyer—my understanding of our justice system is that the defendant is entitled to all exculpatory evidence. So if we have something that will help the defense, we are obliged to turn it over.

So it seems like you ought to go ahead and turn it over to us so we can finish our investigation and meet your legal obligation to any defendants in this case for full disclosure.

Mr. WEICH. Congressman, we are certainly going to meet our constitutional obligations to the defendants.

I would note that when the committee interviews potential trial witnesses, you are creating material that wouldn't otherwise exist that may be used to impeach witnesses at trial.

Mr. FARENTHOLD. I mean, we are after the truth. And regardless of whether it comes out in front of this committee or comes out in front of a trial shouldn't matter.

Let me go on. You also say that there are some concerns with releasing information to us that would jeopardize other investigations and other strategies and programs.Is that correct?

Mr. WEICH. Yes.

Mr. FARENTHOLD. Would you be willing to provide a briefing to all or some of this committee on a classified basis about that?

I think you have sensed a lot of anger—I would go so far as to say anger—from this committee that our government is engaged in what we perceive to be a reckless operation. Even if in a classified manner you could assure us you guys aren't so far off the reservation that there is a problem, I think it would go a long way to stemming some of the, for lack of a better word, adversarial conversations that are going on here.

Mr. WEICH. I hear you, Congressman. First of all, we would be pleased to brief the committee. We have briefed the committee and will continue to do so.

It should not be adversarial. I want to emphasize this. We share the committee's concern about the matters that you heard about this morning. We are not adversarial to you in this. We are trying to get to the bottom of this, ourselves.

Mr. FARENTHOLD. And I will yield my remaining 30 seconds to the chair.

Chairman ISSA. I thank the gentleman.

You made a statement in that letter that you signed on the 4th that said, "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."

Who prepared that line in your letter?

Mr. WEICH. Chairman Issa, the——

Chairman ISSA. You signed it. Who prepared it? Was it you?

Mr. WEICH. These letters are the product of the Justice Department——

Chairman ISSA. So your signature on that letter doesn't mean that you know it to be true; is that correct?

Mr. WEICH. I take ultimate responsibility——

Chairman ISSA. Okay. Isn't that statement false now, with what you know?

Mr. WEICH. Obviously, there have been allegations that call into serious question that particular——

Chairman ISSA. Weren't there documents that now have been provided and made public that let you know that that statement was false?

Mr. WEICH. And that is why you are investigating, and that is why we are investigating.

Chairman ISSA. I will just take your agreement that those documents indicate that that statement that you signed that someone prepared for signature were false.

Mr. WEICH. Congressman, I am not prepared to say that at this time. Everything that we say is true to the best of our knowledge at the time we say it. As more facts come out, obviously our understanding of the situation is enhanced.

Chairman ISSA. Just for the record, we will be posting online the 20-some pages that were made available, since, out of the 20-some pages, the only thing that is not redacted, other than "internal use only" statements, is, "Kevin Simpson, Acting Division Operations Officer, U.S. Department of Justice, ATF, 201 East Washington Street, Suite 940, Phoenix, Arizona," and the ZIP. The phone numbers are redacted. That is 100 percent of what you call "discovery."

Would the ranking member like a second round?

Mr. CUMMINGS. I just have one question.

Chairman ISSA. The gentleman is recognized.

Mr. CUMMINGS. It is just following up on what you just were talking about.

Let me ask you this, Mr. Weich. Again, I want to go back to trying to be effective and efficient. Again, I am tired of—when we are put in a position of where we are wasting time. You know, we may be dead next week. So I am just being very frank with you: I am tired. I don't want to waste time. Life is short.

This is the question: If you got assurances, if the Department got assurances that we would not be disclosing documents that are extremely sensitive and agrees to, you know, try to make sure that—and we would commit to working out accommodations where we could go through—I mean, you submit the documents, we go through them, making sure that—and we sort of go through them together, come up with some type—would you be willing to come up with some kind of schedule whereby we can get what we want, you can be assured that we are not doing something that interferes with the kinds of things that you just talked about?

Mr. WEICH. We will work with you, Congressman. We strongly favor that kind of cooperative accommodation process. It is traditional. And, in this instance, where we recognize the committee's legitimate oversight needs, we want to lean into that process and do as much as we can to provide information to the committee.

Mr. CUMMINGS. Well, would you all be willing to commit to a schedule, a document-production schedule?

See, this is what I am getting to. We can do this all day. And a new Congress will be in. And that is why I am talking the way I am talking. We have to get stuff done. And I can't—we cannot keep our commitment to Ms. Terry by doing this back-and-forth thing. It is a waste of time, it is a waste of effort, and life is short.

Mr. WEICH. I hear you, Congressman.

Mr. CUMMINGS. So I am trying to get you to—I am trying to help you help us——

Mr. WEICH. I understand.

Mr. CUMMINGS [continuing]. And, hopefully, help yourself at the same time. So, I mean, if we can work something out, can we move past this?

Mr. WEICH. Yeah. We——

Mr. CUMMINGS. Because, obviously, the majority feels like we are not moving fast enough, and I can understand that—that you are not moving fast enough. I know you have all kinds of—I think you said you had something like 700,000 pages or something like that.

Mr. WEICH. More than that.

Mr. CUMMINGS. Okay. What would you suggest? Let me put it another way. What kind of arrangements would you suggest so that we don't keep running into this wall?

Mr. WEICH. I don't think we have hit a wall. I don't think we are at an impasse. I think we are now on track. Obviously, it may have been a bumpy start. But we have produced documents in each of the last 3 working days. We made a witness available for an interview, and we have a list of others we are ready to facilitate interviews of.

We are doing what I think you are asking, Congressman, which is trying to accommodate the committee's needs, consistent with our confidentiality interests.

Mr. CUMMINGS. Well, would you, after this, try to sit down with us and try to see if we can't—I mean, it is up to the chairman; he is the chairman of the committee—but see if we can work out something where we can get documents and set up a schedule so we can get these documents faster? The last 3 days is wonderful, but I think we need to try to see if we can move the process along a little bit.

Mr. WEICH. I would be pleased to do that. I would welcome that. One thing I would say is, we have devoted substantial resources, attorneys, full-time to review these documents. We have hired a contractor to help us put these in a form that they can be efficiently reviewed. So we are rolling here.

Mr. CUMMINGS. You know, one of the problems here is something that I talk about a lot—and I would recommend this book to you. It is called "The Speed of Trust" by Covey. And he just talks about, when people don't trust each other, it slows down everything. When they trust each other, it speeds it up.

And I think maybe we need to—I know you all are worried about documents being released. It seems like we are worried about not getting all of the documents timely. Sometimes we have to break through that so that we can do the work of the American people.

And, with that, I yield back.

Chairman ISSA. I thank the gentleman.

And I will close more patiently than I opened.

Would you agree to voluntarily provide a list of DOJ and/or other personnel that prepared or participated in the preparing of the February 4th letter that we have had so much discussion about?

Mr. WEICH. Congressman, I am not prepared to make that commitment at this time. These letters are the product of substantial deliberation within the executive branch. As I said——

Chairman ISSA. Would you agree to make available a list of personnel who worked on and may have in some way been responsible specifically for the misstatement in the letter that says ATF makes every effort to interdict weapons that have been purchased illegally and prevent the transportation to Mexico?

Mr. WEICH. I am not prepared to make that commitment at this time. What I am prepared to commit to is an ongoing effort to help the committee get to the underlying questions here about ATF's law enforcement activities.

Chairman ISSA. Now, just for the record, your job, the reason you are paid and basically have the title you have is to answer Congress' questions.

Mr. WEICH. That is a big part of my job.

Chairman ISSA. Roughly 5 months ago, Senator Grassley was told by your office in writing that he wasn't going to get answers because he wasn't a chairman. You are aware of that, right?

Mr. WEICH. I am. I mean, that is not an accurate statement. I mean, if I may, respectfully——

Chairman ISSA. Or, more specifically, that——

Mr. WEICH [continuing]. Mr. Chairman. It is not that he won't get answers——

Chairman ISSA [continuing]. Chairman Leahy would have to request them.

Mr. WEICH. We have answered Senator Grassley's letters. We have great respect for Senator Grassley, with whom the Department has worked on many projects over the years quite productively.

As to oversight, it is the long-time position of the executive branch, through administrations of both parties, that the Congress, each house of Congress, speaks through its committees as to oversight. And so, you are exercising the power of the House. No Senate chairman has made a parallel request.

Chairman ISSA. And I am well aware that for 2 years of this administration, there were no Republicans able to make those requests and have them granted, and the requests generally were not made at all. That is, in fact, the position of the majority here, is that there wasn't valid oversight for those 2 years.

It is my personal position—and I will go on the record today, since people were kind enough to read things from the past—that we need to have legitimate minority rights and that, at some future time in Congress and each time the rules are produced, I am going to try to have a party of the opposite party of the President, even if they are the minority, have rights. Because I think it is wrong that, in fact, the majority ultimately often finds itself asked and encouraged to protect the administration.

I was here for the Bush administration. I was more junior, but I certainly saw people in your position constantly cajoling us to protect the President. I don't approve of it. I now appreciate just how wrong that was.

Having said that, I will, on behalf of the committee, suggest something that you may take back to DOJ. If you are willing to do in-camera review 100 percent unredacted—I repeat, 100 percent unredacted—and please don't say it is unacceptable because it is obviously above your pay grade—you prepare, we come over—"we" being the staff—they look at the unredacted material. To the extent that we can agree on mutual redactions, then the materials are sent over. To the extent that we disagree, then we can talk in terms of documents that have been seen but are not available, are not releasable, do not fall within your concerns.

Because I share your concerns, that our rules are such that, once something comes over here, with the exception of the Select Intelligence Committee, it becomes much more problematic as far as release. I want to get around that. I want to work with Justice on it.

I cannot, from this side of the dais, accept any responsibility for documents that are leaked by third parties who get them. And I cannot enter into a negotiation where you tell us you are going to redact what we got around you while you don't even let us see unredacted versions in-camera. There has never been a time in which I was more animated than when my staff came back from that breakthrough meeting to find out that they had mostly black pages as your response in-camera.

So please take back, on behalf of this Member and I hope the minority, that we should be trusted to send over career professional staff to look at unredacted documents, understanding we are not

taking them with us, until or unless there is an agreement to how they would be appropriately redacted.

That is an extension I am putting on the record. Until that occurs, we will continue to expect discovery and we will continue to object to getting virtually all black pages.

With that, I think the ranking member has a question.

Mr. CUMMINGS. Would the gentleman yield just for a second?

Chairman ISSA. Of course.

Mr. CUMMINGS. I am assuming that the message that you are sending to higher-ups, that would include both sides, staff from both sides——

Chairman ISSA. That is exactly the intention.

Mr. CUMMINGS [continuing]. Simultaneously——

Chairman ISSA. It is a simultaneous——

Mr. CUMMINGS. Okay.

Chairman ISSA. Our policies—and for those who may want to be aware of it—our policies are that, in fact, anything that is received as a document production is received to both sides.

As you know, Mr. Weich, normally we ask you to send copies to both sides simultaneously. In the case of an in-camera, we would expect that staff would be detailed from both sides to go over and review it.

But we will only come back for in-camera review if, in fact—and we will send cleared personnel, you know, pre-agreed to from both sides, if that becomes an issue. But we have to look at the source material, if an in-camera review will be appropriate. No judge is going to look at redacted material as in-camera. Certainly, you wouldn't expect us to see a part of a document that does us very little good and then say, "Well, yes, we had production."

Mr. WEICH. Well, Mr. Chairman, I appreciate your recognition that I can't, sort of, negotiate this kind of thing at the witness table. But I can assure you that we will work with you on these kind of process concerns. That is the mode that we are in, trying to help the committee address its oversight needs.

Chairman ISSA. We look forward to that.

This has been difficult. I will go again, last, on the record that we believe that there has been some breakthrough in the last week or so. We are thankful for the breakthrough. It has been a while in coming. But, hopefully, it is the last time that we will have a logjam with that.

And, with that, this hearing stands adjourned.

[Whereupon, at 2:08 p.m., the committee was adjourned.]

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