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OPERATION FAST AND FURIOUS: MANAGEMENT FAILURES AT THE DEPARTMENT OF JUSTICE

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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OPERATION FAST AND FURIOUS: MANAGEMENT FAILURES AT THE DEPARTMENT OF JUSTICE

THURSDAY, FEBRUARY 2, 2012

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

The committee met, pursuant to notice, at 9:13 a.m., in room 2154, Rayburn House Office Building, Hon. Darrell E. Issa (chairman of the committee) presiding.

Present: Representatives Issa, Burton, Platts, McHenry, Jordan, Chaffetz, Walberg, Lankford, Amash, Buerkle, Gosar, Labrador, Meehan, DesJarlais, Walsh, Gowdy, Ross, Guinta, Farenthold, Kelly, Cummings, Towns, Maloney, Norton, Kucinich, Tierney, Clay, Lynch, Cooper, Connolly, Quigley, Davis, Welch, Yarmuth, Murphy, and Speier.

Staff present: Ali Ahmad, communications advisor; Michael R. Bebeau, assistant clerk; Robert Borden, general counsel; Molly Boyl, parliamentarian; Lawrence J. Brady, staff director; Sharon Casey, senior assistant clerk; Steve Castor, chief counsel, investigations; John Cuaderes, deputy staff director; Carlton Davis, Jessica L. Donlon, and Mitchell S. Kominsky, counsels; Kate Dunbar, legislative assistant; Adam P. Fromm, director of Member services and committee operations; Linda Good, chief clerk; Christopher Hixon, deputy chief counsel, oversight; Henry J. Kerner, senior counsel for investigations; Justin LoFranco, deputy director of digital strategy; Mark D. Marin, director of oversight; Ashok M. Pinto, deputy chief counsel, investigations; Laura L. Rush, deputy chief clerk; Rebecca Watkins, press secretary; Jeff Wease, deputy CIO; Beverly Britton Fraser, Peter Kenny, and Carlos Uriarte, minority counsels; Kevin Corbin, minority deputy clerk; Ashley Etienne, minority director of communications; Susanne Sachsman Grooms, minority chief counsel; Devon Hill, minority staff assistant; Jennifer Hoffman, minority press secretary; Carla Hultberg, minority chief clerk; Adam Koshkin, minority staff assistant; Lucinda Lessley, minority policy director; Scott Lindsay, minority senior counsel; and Dave Rapallo, minority staff director.

Chairman ISSA. The committee will come to order.

The Oversight Committee's mission statement is that 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. Our job is to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the bureaucracy.

I will now recognize myself for an opening statement.

Today, we are joined by the Attorney General of the United States over a matter that this committee has invested more than a year in research.

In November 2009, Fast and Furious opens.

In December 2009, DEA meets with the ATF and gives them info on Fast and Furious targets, info that could have well ended the operation.

On January 6, 2010, Fast and Furious becomes, in fact, a joint exercise.

On March 15, 2010, the first Federal wiretaps are issued in this case.

On December 15, 2010, December 15, 2010, Brian Terry is murdered with weapons found at the scene that came from Fast and Furious.

On January 27th, Senator Grassley first asked the Department of Justice about Fast and Furious; and within days we are given a false statement of facts, denying that guns were ever allowed to walk. Within days of that, we began to know that Fast and Furious was going to be difficult.

That was more or less Groundhog Day a year ago. Today is Groundhog Day again. This committee has lost its patience to wait longer. We will not wait until next Groundhog Day to get answers for the American people, for Brian Terry, and for others.

On March 3, 2011, John Dodson goes public. Agent Dodson is here today. He, too, deserves to have this nightmare of uncertainty, of having a temporary assignment, of not being allowed to do the job for which he has dedicated his career put behind him.

On October 11th, after months and months and months of this committee trying to get further voluntary cooperation, we issued subpoenas for documents. To date, we have been told two things. First of all, they are difficult and time-consuming to give us, and yet 10 times as many documents were provided to the Inspector General. More than three times as many people have been able to be interviewed by the Attorney—I'm sorry, by the IG, the Inspector General—sorry, Mr. Attorney General—by your Inspector General. During that period of time, whistleblowers have consistently brought us additional information. That information allows us to glean more than most of the documents we have received through discovery.

The minority can say what they want and issue the opinions they want, the memos they want. They have been absent from this, and I am disappointed for that. This is a legitimate requirement of this committee to get to the bottom of it and to get genuine change so this cannot happen again—and I repeat—the genuine change, the safeguards, the protections that were not there apparently before so this cannot happen again.

Mr. Attorney General, as we go through questioning, my question will be when is the primary investigative committee of Congress, of the U.S. House, going to be allowed to have the same access that your own essentially self-appointed Inspector General has?

The IG, if you will, the 12,000 people of the Inspector General's Office throughout the government are important, and we expect them to be respected, and we expect them to receive information. But the 70 men and women that work for the majority and the 30 or so that work for the minority are a very small fraction of that.

We ask very little of government by comparison to what the internal controls historically and always will ask for. Our budget is less than 1/20th of what the Inspector General's Office is. We are not an agency that can ask for vast amounts of documents. We have asked you for documents, and if you look at the totality of government, we have asked for very little compared to the IG's offices.

We believe—and I think the ranking member will join me in this—that we deserve those answers in at least as timely a fashion as your own IG gets. It is our opinion that we haven't gotten that, that the need for overmanaging and redacting and careful looking by teams of lawyers have gotten in the way of the legitimate speed with which we should get that.

We are going to ask you many things today. Hopefully, you came prepared to know a great deal about Fast and Furious. The important things that I am going to ask today are: What can you do to bring this to a close? What can you do before the IG completes her investigation to allow the American people to see change that tells them this is no longer going on and it won't go on in the future?

Last, before I recognize the ranking member, it is this majority at least committee's belief that this is an operation that included reckless behavior at ATF; failure to push harder and inform more by DEA and the FBI; a U.S. attorney who clearly didn't do his job in a way that anyone should be proud of. We now have a Justice Department official who has taken the Fifth. We have moved up a ways, and all of those people should be ashamed that Brian Terry is dead because they didn't do as good a job as they should. Kenneth Melson has said that publicly and privately, that he bears a great deal of that blame.

The point here today is we want to know how Justice will oversee every local operation, every State, every one of the various agencies that are either under your authority or in a joint task force become under your authority, how you will ensure for the American people that this will not happen again, or at least the systems are in place to give us the confidence that it is much more unlikely to happen.

Those are the items that I come here today, asked you to come here today for, and I appreciate your being here voluntarily to answer. It is the committee's responsibility to ask. I hope we will get the answers and the commitments today that we ask for.

I recognize the ranking member for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman, and I want to welcome the Attorney General today.

Mr. Chairman, when the committee started this investigation almost a year ago, you and I made pledges to the family of Agent

Brian Terry to find out what led to the release of hundreds of firearms to criminal networks on both sides of the border. We pledged to follow the facts wherever they may lead and provide the public with answers.

Mr. Chairman, I want to acknowledge your efforts here. Over the past year, we devoted incredible amounts of time, money, and energy to investigating this issue. We interviewed 22 witnesses, including senior officials at the Department of Justice and ATF. We also reviewed thousands of pages of documents, and we held four full committee hearings on this very topic.

Because of our extensive work, we have had concrete results. The committee has exposed a 5-year—5-year pattern of gun-walking operations run by the Phoenix division of ATF and the Arizona U.S. Attorney's Office. More importantly, we have put a stop to it. This is a significant accomplishment, and I commend you for it.

In addition, we can now explain to the public how this series of reckless operations originated and evolved over the past 5 years. I ask unanimous consent to place into the record a report I sent to Members earlier this week.

Chairman ISSA. Without objection, so ordered.

Mr. CUMMINGS. Thank you, Mr. Chairman.

[The information referred to follows:]

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January 30, 2012

Dear Members of the Committee on Oversight and Government Reform:

On December 15, 2010, Brian Terry, an Agent in an elite Customs and Border Protection tactical unit, was killed in a gunfight 18 miles from the Mexican border. Two AK-47 variant assault rifles found at the scene were traced back to purchases by one of the targets of an investigation called Operation Fast and Furious being conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). When he purchased these weapons, the target had already been identified as a suspected straw purchaser involved with a large network of firearms traffickers illegally smuggling guns to deadly Mexican drug cartels. Despite knowing about hundreds of similar purchases over a year-long period, ATF interdicted only a small number of firearms and delayed making arrests.

Last June, I pledged to Agent Terry's family that I would try to find out what led to this operation that allowed hundreds of firearms to be released into communities on both sides of the border. Following the Committee's year-long investigation of this matter, I directed my staff to compile this report to provide some of those answers. I instructed them to focus on the facts we have discovered rather than the heated and sometimes inaccurate rhetoric that has characterized much of this investigation.

As a result, this report tells the story of how misguided gunwalking operations originated in 2006 as ATF's Phoenix Field Division devised a strategy to forgo prosecutions against low-level straw purchasers while they attempted to build bigger charges against higher-level cartel members. Unfortunately, this strategy failed to include sufficient operational controls to stop these dangerous weapons from getting into the hands of violent criminals, creating a danger to public safety on both sides of the border.

The report describes how, rather than halting this operation after its flaws became evident, ATF's Phoenix Field Division launched several similarly reckless operations over the course of several years, also with tragic results. Operation Fast and Furious was the fourth in a series of operations in which gunwalking—the non-interdiction of illegally purchased firearms that could and should be seized by law enforcement—occurred since 2006.

This report also details complaints by ATF line agents and senior officials in Washington, who told the Committee that these failures were aggravated and compounded by the Arizona

U.S. Attorney's Office, which failed to aggressively prosecute firearms trafficking cases, and Federal courts in Arizona, which showed leniency toward the trafficking networks that fuel armed violence in Mexico.

This report debunks many unsubstantiated conspiracy theories. Contrary to repeated claims by some, the Committee has obtained no evidence that Operation Fast and Furious was a politically-motivated operation conceived and directed by high-level Obama Administration political appointees at the Department of Justice. The documents obtained and interviews conducted by the Committee indicate that it was the latest in a series of reckless and fatally flawed operations run by ATF's Phoenix Field Division during both the previous and current administrations.

Although this report provides a great amount of detail about what we have learned to date, it has several shortcomings. Despite requests from me and others, the Committee never held a hearing or even conducted an interview with former Attorney General Michael Mukasey. The Committee obtained documents indicating that in 2007 he was personally informed about the failure of previous law enforcement operations involving the illegal smuggling of weapons into Mexico, and that he received a proposal to expand these operations. Since the Committee failed to speak with Mr. Mukasey, we do not have the benefit of his input about why these operations were allowed to continue after he was given this information.

The Committee also rejected my request to hold a public hearing with Kenneth Melson, the former Acting Director of ATF, the agency primarily responsible for these operations. Although Committee staff conducted an interview with Mr. Melson, the public has not had an opportunity to hear his explanations for why these operations continued for so many years without adequate oversight from ATF headquarters.

As its title indicates, the Committee on Oversight and Government Reform has two primary missions. Not only are we charged with conducting oversight of programs to root out waste, fraud, and abuse, but we are also responsible for reforming these programs to ensure that government works more effectively and efficiently for the American people. For these reasons, this report sets forth constructive recommendations intended to address specific problems identified during the course of this investigation.

Above all, in offering this report and these recommendations, I recognize and commend the contributions of hundreds of thousands of law enforcement agents across our government who risk their lives on a daily basis in the pursuit of public safety and in defense of this nation.

Sincerely,

Elijah E. Cummings
Ranking Member

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I. EXECUTIVE SUMMARY

On December 15, 2010, Customs and Border Protection Agent Brian Terry was killed in a gunfight in Arizona, and two AK-47 variant assault rifles found at the scene were traced back to purchases by one of the targets of an investigation called Operation Fast and Furious being conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The target already had been identified as a suspected straw purchaser involved with a large network of firearms traffickers smuggling guns to deadly Mexican drug cartels.

At the request of the Committee's Ranking Member, Rep. Elijah E. Cummings, this report describes the results of the Committee's year-long investigation into the actions and circumstances that led to this operation.

The report finds that gunwalking operations originated as early as 2006 as agents in the Phoenix Field Division of ATF devised a strategy to forgo arrests against low-level straw purchasers while they attempted to build bigger cases against higher-level trafficking organizers and financiers. Rather than halting operations after flaws became evident, they launched several similarly reckless operations over the course of several years, also with tragic results. Each investigation involved various incarnations of the same activity: agents were contemporaneously aware of illegal firearms purchases, they did not typically interdict weapons or arrest straw purchasers, and firearms ended up in the hands of criminals on both sides of the border.

Operation Wide Receiver (2006-2007)

In 2006, ATF agents in Phoenix initiated Operation Wide Receiver with the cooperation of a local gun dealer. For months, ATF agents watched in real-time as traffickers purchased guns and drove them across the border into Mexico. According to William Newell, the Special Agent in Charge of the Phoenix Field Division, these suspects told the gun dealer that the "firearms are going to his boss in Tijuana, Mexico where some are given out as gifts." Although ATF officials believed they had sufficient evidence to arrest and charge these suspects, they instead continued surveillance to identify additional charges. As one agent said at the time, "we want it all."

Paul Charlton, then the U.S. Attorney in Phoenix, was informed that firearms were "currently being released into the community," and he was asked for his position on allowing an "indeterminate number" of additional firearms to be "released into the community, and possibly into Mexico, without any further

ability by the U.S. Government to control their movement or future use." As his subordinate stated, "[t]his is obviously a call that needs to be made by you Paul."

Over the next year, ATF agents in Phoenix went forward with plans to observe or facilitate hundreds of suspected straw firearm purchases. In 2007, a year after the investigation began, ATF initiated attempts to coordinate with Mexican officials. After numerous attempts at cross-border interdiction failed, however, the lead ATF case agent for Operation Wide Receiver concluded: "We have reached that stage where I am no longer comfortable allowing additional firearms to 'walk'."

In late 2007, the operational phase of Operation Wide Receiver was terminated, and the case sat idle for two years. When a Justice Department prosecutor reviewed the file in 2009, she quickly recognized that "a lot of guns seem to have gone to Mexico" and "a lot of those guns 'walked'." The defendants were indicted in 2010 after trafficking more than 450 firearms.

The Hernandez Case (2007)

ATF agents in Phoenix attempted a second operation in 2007 after identifying Fidel Hernandez and several alleged co-conspirators who "purchased over two hundred firearms" and were "believed to be transporting them into Mexico."

After being informed of several failed attempts at coordinating with Mexican authorities, William Hoover, then ATF's Assistant Director of Field Operations, temporarily halted operations, writing:

> I do not want any firearms to go South until further notice. I expect a full briefing paper on my desk Tuesday morning from SAC Newell with every question answered. I will not allow this case to go forward until we have written documentation from the U.S. Attorney's Office re full and complete buy in. I do not want anyone briefed on this case until I approve the information. This includes anyone in Mexico.

In response, Special Agent in Charge Newell wrote to another ATF official, "I'm so frustrated with this whole mess I'm shutting the case down and any further attempts to do something similar." Nevertheless, ATF operational plans show that additional controlled deliveries were planned for October and November of that year.

In the midst of these operations, Attorney General Michael Mukasey received a briefing paper on November 16, 2007, in preparation for a meeting with the Mexican Attorney General. It stated that "ATF would like to expand the possibility of such joint investigations and controlled deliveries—since only then will it be possible to investigate an entire smuggling network, rather than arresting simply a

single smuggler." The briefing paper also warned, however, that "the first attempts at this controlled delivery have not been successful." Ten days later, ATF agents planned another operation in coordination with Mexico, again without success.

Hernandez and his co-conspirators, who had purchased more than 200 firearms, were arrested in Nogales, Arizona on November 27, 2007, while attempting to cross the border into Mexico. They were brought to trial in 2009, but acquitted after prosecutors were unable to obtain the cooperation of the Mexican law enforcement officials who had recovered the firearms.

The Medrano Case (2008)

In 2008, ATF agents in Phoenix began investigating a straw purchasing network led by Alejandro Medrano. Throughout 2008, ATF agents were aware that Medrano and his associates were making illegal firearms purchases from the same gun dealer who cooperated with ATF in Operation Wide Receiver.

An ATF Operational Plan describes an instance on June 17, 2008, in which agents watched Medrano and an associate illegally purchase firearms and load them into a car bound for Mexico. According to the document, "Agents observed both subjects place the firearms in the backseat and trunk," and then "surveilled the vehicle to Douglas, AZ where it crossed into Mexico."

Agents from U.S. Immigration and Customs Enforcement (ICE) balked when they learned about these tactics. After an interagency planning meeting in August 2008, the head of ICE's Arizona office wrote to ATF Special Agent in Charge Newell that, although ICE agents "left that meeting with the understanding that any weapons that were followed to the border would be seized," ATF agents later informed them that "weapons would be allowed to go into Mexico for further surveillance by LEAs [law enforcement agents] there."

On December 10, 2008, Federal prosecutors filed a criminal complaint that appears to confirm that ATF agents watched as Medrano and his associates smuggled firearms into Mexico. Describing the incident on June 17, 2008, for example, the complaint asserts that the suspects "both entered into Mexico with at least the six (6) .223 caliber rifles in the vehicle." Medrano and his associates were sentenced to multi-year prison terms after trafficking more than 100 firearms to a Mexican drug cartel.

Operation Fast and Furious (2009-2010)

In Operation Fast and Furious, ATF agents in Phoenix utilized gunwalking tactics that were similar to previous operations. In October 2009, ATF agents had

identified a sizable network of straw purchasers they believed were trafficking military-grade assault weapons to Mexican drug cartels. By December, they had identified more than 20 suspected straw purchasers who "had purchased in excess of 650 firearms."

Despite this evidence, the ATF agents and the lead prosecutor in the case believed they did not have probable cause to arrest any of the straw purchasers. As the lead prosecutor wrote: "We have reviewed the available evidence thus far and agree that we do not have any chargeable offenses against any of the players."

In January 2010, ATF agents and the U.S. Attorney's Office agreed on a strategy to build a bigger case and to forgo taking down individual members of the straw purchaser network. The lead prosecutor presented this broader approach in a memo that was sent to U.S. Attorney Dennis Burke. The memo noted that "there may be pressure from ATF headquarters to immediately contact identifiable straw purchasers just to see if this develops any indictable cases and to stem the flow of guns." In the absence of probable cause, however, the U.S. Attorney agreed that they should "[h]old out for bigger." Over the next six months, agents tried to build a bigger case with wiretaps while making no arrests and few interdictions.

After receiving a briefing on Operation Fast and Furious in March 2010, ATF Deputy Director William Hoover became concerned about the number of firearms involved in the case. Although he told Committee staff that he was not aware of gunwalking, he ordered an "exit strategy" to take down the case and ready it for indictment within 90 days. ATF field agents chafed against this directive, however, and continued to facilitate suspect purchases for months in an effort to salvage the broader goal of the investigation. The case was not indicted until January 2011, ten months after Deputy Director Hoover directed that it be shut down.

No evidence that senior officials authorized gunwalking in Fast and Furious

The documents obtained and interviews conducted by the Committee reflect that Operation Fast and Furious was the latest in a series of fatally flawed operations run by ATF agents in Phoenix and the Arizona U.S. Attorney's Office. Far from a strategy that was directed and planned by the "highest levels" of the Department of Justice, as some have alleged, the Committee has obtained no evidence that Operation Fast and Furious was conceived or directed by high-level political appointees at Department of Justice headquarters.

ATF's former Acting Director, Kenneth Melson, and ATF's Deputy Director, William Hoover, told Committee staff that gunwalking violated agency doctrine, that they did not approve it, and that they were not aware that ATF agents in Phoenix were using the tactic in Operation Fast and Furious. They also stated that,

because they did not know about the use of gunwalking in Operation Fast and Furious, they never raised it up the chain of command to senior Justice Department officials.

Apart from whether Mr. Hoover was aware of specific gunwalking allegations in Operation Fast and Furious, it remains unclear why he failed to inform Acting ATF Director Melson or senior Justice Department officials about his more general concerns about Operation Fast and Furious or his March 2010 directive for an "exit strategy." During his interview with Committee staff, Mr. Hoover took substantial personal responsibility for ATF's actions, stating: "I have to take responsibility for the mistakes that we made."

Former Phoenix U.S. Attorney Dennis Burke told Committee staff that although he received multiple briefings on Operation Fast and Furious, he did not approve gunwalking, was not aware it was being used, and did not inform officials in Washington about its use. He told Committee staff that, at the time he approved the proposal for a broader strategy targeting cartel leaders instead of straw purchasers, he had been informed that there was no probable cause to make any arrests and that he had been under the impression that ATF agents were working closely with Mexican officials to interdict weapons. Given the number of weapons involved in the operation, Mr. Burke stated that he "should have spent more time" focusing on the case. He stated: "it should not have been done the way it was done, and I want to take responsibility for that."

Gary Grindler, the former Acting Deputy Attorney General, and Lanny Breuer, the Assistant Attorney General for the Criminal Division, both stated that neither ATF nor the U.S. Attorney's Office ever brought to their attention concerns about gunwalking in Operation Fast and Furious, and that, if they had been told, they "would have stopped it."

When allegations of gunwalking three years earlier in Operation Wide Receiver were brought to the attention of Mr. Breuer in 2010, he immediately directed his deputy to share their concerns directly with ATF's leadership. He testified, however, that he regretted not raising these concerns directly with the Attorney General or Deputy Attorney General, stating, "if I had known then what I know now, I, of course, would have told the Deputy and the Attorney General."

The Committee has obtained no evidence indicating that the Attorney General authorized gunwalking or that he was aware of such allegations before they became public. None of the 22 witnesses interviewed by the Committee claims to have spoken with the Attorney General about the specific tactics employed in Operation Fast and Furious prior to the public controversy.

Testifying before the Senate Judiciary Committee, the Attorney General stated:

> This operation was flawed in its concept and flawed in its execution, and unfortunately we will feel the effects for years to come as guns that were lost during this operation continue to show up at crime scenes both here and in Mexico. This should never have happened and it must never happen again.

The strategy of forgoing immediate action in order to build a larger case is common in many law enforcement investigations, and the Committee has obtained no evidence to suggest that ATF agents or prosecutors in Arizona acted with anything but a sincere intent to stem illegal firearms trafficking.

Nevertheless, based on the evidence before the Committee, it is clear that ATF agents in Phoenix and prosecutors in the Arizona U.S. Attorney's Office embarked on a deliberate strategy not to arrest suspected straw purchasers while they attempted to make larger cases against higher-level targets. Although these officials claimed they had no probable cause to arrest any straw purchasers at the time, allowing hundreds of illegally purchased military-grade assault weapons to fall into the hands of violent drug cartels over the course of five years created an obvious and inexcusable threat to public safety on both sides of the border.

II. METHODOLOGY

Over the past year, the Committee has conducted an investigation into firearms trafficking investigations run by the Phoenix Field Division of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). This inquiry was originally brought to the Committee's attention by Senator Charles Grassley, the Ranking Member of the Senate Judiciary Committee, who had asked ATF to respond to allegations that agents had knowingly allowed the sale of firearms to suspected straw purchasers during Operation Fast and Furious. The Committee has been joined in its investigation by Majority and Minority staff of the Senate Judiciary Committee.

To date, there have been nine congressional hearings relating to these topics, including three before this Committee. Attorney General Eric Holder has agreed to testify before the Committee on February 2, 2011. He has testified previously on five other occasions regarding these issues, including before the Senate and House Judiciary Committees in November and December 2011, respectively.

Committee staff have interviewed 22 witnesses from the ATF Phoenix Field Division, the U.S. Attorney's Office for the District of Arizona, ATF headquarters, and the Department of Justice. Committee staff have also interviewed multiple Federal firearms dealers. The Department has made numerous officials available for briefings, transcribed interviews, and hearings, including the former Deputy Attorney General, the Assistant Attorney General for the Criminal Division, the Deputy Assistant Attorney General for the Criminal Division, and the U.S. Attorney for the District of Arizona. The Department has also organized briefings during the course of the investigation, including with senior leaders from the Federal Bureau of Investigation (FBI) and Drug Enforcement Agency (DEA).

In March 2011, the Committee sent letters to ATF and the Department of Justice requesting documents and communications. Committee Chairman Darrell Issa subsequently issued subpoenas for these documents in March and October 2011, and he has issued numerous document requests to other agencies, including the FBI and DEA.

The Committee has now obtained more than 12,000 pages of internal emails, reports, briefing papers, and other documents from various Federal agencies, whistleblowers, firearms dealers, and other parties. The Department of Justice has produced approximately 6,000 pages of documents to the Committee, including sensitive law enforcement materials related to the pending prosecution of the defendants in the underlying Fast and Furious case.

The Department has declined to produce some documents, including "reports of investigation" and prosecutorial memoranda in the underlying cases. The Department has stated that providing these particular documents at this time could compromise the prosecution of 20 firearms trafficking defendants scheduled for trial in September. In addition, the Department has not provided documents related to its internal deliberations about responding to this congressional investigation, with the exception of documents and correspondence related to the drafting of the February 4, 2011, letter to Senator Grassley, which the Department formally withdrew on December 2, 2011. The Deputy Attorney General explained this policy in a letter to the Committee:

> The Department has a long-held view, shared by Administrations of both political parties, that congressional requests seeking information about the Executive Branch's deliberations in responding to congressional requests implicate significant confidentiality interests grounded in the separation of powers under the U.S. Constitution.[1]

The letter stated that the Department made an exception to this policy and provided documents relating to the drafting of the February 4 letter because Congress had unique equities in understanding how inaccurate information had been relayed to it.[2]

On November 4, 2011, Ranking Member Elijah Cummings requested a hearing with former Attorney General Michael Mukasey in light of documents obtained by the Committee indicating that the former Attorney General was briefed in 2007 on an unsuccessful coordinated delivery operation, as well as a proposal to expand such operations in the future. Ranking Member Cummings wrote:

> Given the significant questions raised by the disclosures in these documents, our Committee's investigation will not be viewed as credible, even-handed, or complete unless we hear directly from Attorney General Mukasey.[3]

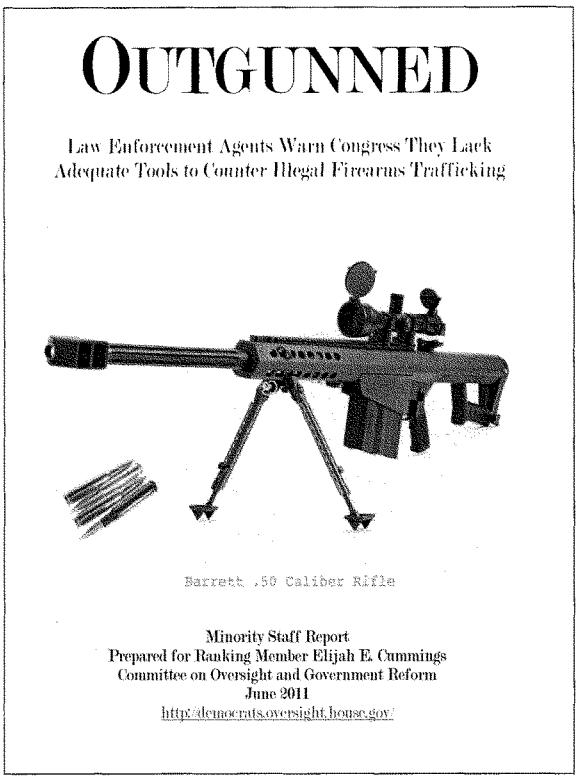
The Committee has not held a hearing with Mr. Mukasey, nor has it conducted an interview with him, depriving the Committee of important information directly relevant to the origin of these operations.

In addition, on October 28, 2011, Ranking Member Cummings requested a public hearing with Kenneth Melson, the former Acting Director of ATF. He wrote:

> Since the Attorney General has now agreed to appear before Congress in December, I believe Members also deserve an opportunity to question Mr. Melson directly, especially since he headed the agency responsible for Operation Fast and Furious.[4]

To date, the Committee has declined to hold this hearing.

In June 2011, Ranking Member Cummings issued a report entitled "Outgunned: Law Enforcement Agents Warn Congress They Lack Adequate Tools to Counter Illegal Firearms Trafficking."[5] He also hosted a Minority Forum of experts regarding the larger problem of firearms trafficking and the lack of law enforcement tools to stem this tide.[6]



OUTGUNNED

Law Enforcement Agents Warn Congress They Lack Adequate Tools to Counter Illegal Firearms Trafficking

Barrett .50 Caliber Rifle

Minority Staff Report
Prepared for Ranking Member Elijah E. Cummings
Committee on Oversight and Government Reform
June 2011
http://democrats.oversight.house.gov/

III. BACKGROUND

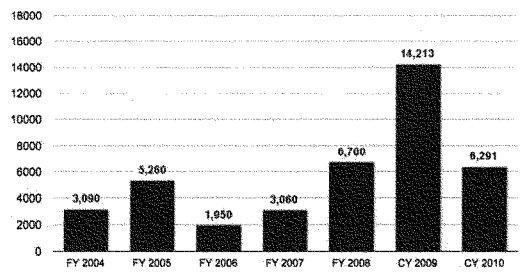
Over the past five years, the Mexican government has been locked in a battle with drug trafficking organizations seeking control of lucrative trafficking routes that carry billions of dollars in narcotics destined for the United States. This battle is fueled in part by the tens of thousands of military-grade weapons that cross the U.S. border into Mexico every year. In particular, law enforcement officials have reported that the "weapons of choice" for international drug cartels are semi-automatic rifles and other assault weapons. These weapons are frequently purchased in the United States because they are generally illegal to purchase or possess in Mexico.[7] According to the latest statistics from the Mexican Attorney General's office, 47,515 people have been killed in drug-related violence since 2006.[8]

On November 1, 2011, Assistant Attorney General Lanny Breuer testified before the Senate Judiciary Committee that the vast majority of guns recovered in Mexico were imported illegally from the United States:

> From my understanding, 94,000 weapons have been recovered in the last five years in Mexico. Those are just the ones recovered, Senator, not the ones that are in Mexico. Of the 94,000 weapons that have been recovered in Mexico, 64,000 of those are traced to the United States.[9]

These statistics are consistent with reports from the Mexican government. In May 2010, Mexican President Felipe Calderon stated before a joint session of

NUMBER OF FIREARMS SEIZED IN MEXICO AND TRACED BACK TO THE UNITED STATES, 2004 - 2010



Sources: Halting U.S. Firearms Trafficking to Mexico: A Report by Senators Dianne Feinstein, Charles Schumer and Sheldon Whitehouse to the United States Senate Caucus on International Narcotics Control (June 2011); Government Accountability Office Report, Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges; and Letter from ATF Acting Director Kenneth Melson to Senator Dianne Feinstein (June 2009). Note: FY= Fiscal Year; CY= Calendar Year.

Congress that, of the 75,000 guns and assault weapons recovered in Mexico over the past three years, more than 80% were traced back to the United States.[10]

ATF is the primary U.S. law enforcement agency charged with combating firearms trafficking from the United States to Mexico. ATF enforces Federal firearms laws and regulates the sale of guns by the firearms industry under the Gun Control Act of 1968.[11] ATF reports to the Attorney General through the Office of the Deputy Attorney General.[12] ATF is organized into 25 Field Divisions led by Special Agents in Charge who are responsible for multiple offices within their jurisdiction.[13] In Phoenix, the Special Agent in Charge is currently responsible for offices in Phoenix, Flagstaff, Tucson, and Yuma, Arizona, as well as Albuquerque, Las Cruces, and Roswell, New Mexico.[14]

The U.S. Attorney for the District of Arizona is the chief Federal law enforcement officer in the State of Arizona. The District of Arizona has approximately 170 Assistant United States Attorneys and approximately 140 support staff members split equally between offices in Phoenix and Tucson.[15] As part of its responsibilities, the U.S Attorney's Office has primary responsibility for prosecuting criminal cases against individuals who violate Federal firearms trafficking laws in its region.[16]

Attorneys from the Department's Criminal Division in Washington, D.C. serve as legal experts on firearms-related issues and assist in prosecuting some firearms trafficking cases.[17] In addition to developing and implementing strategies to attack firearms trafficking networks, Criminal Division attorneys occasionally assist the U.S. Attorneys' offices in prosecuting firearms trafficking cases.[18]

In 2006, ATF implemented a nationwide program called Project Gunrunner to attack the problem of gun trafficking to Mexico.[19] Project Gunrunner is part of the Department's broader Southwest Border Initiative, which seeks to reduce cross-border drug and firearms trafficking and the high level of violence associated with these activities on both sides of the border.[20]

In June 2007, ATF published a strategy document outlining the four key components to Project Gunrunner: the expansion of gun tracing in Mexico, international coordination, domestic activities, and intelligence. In implementing Project Gunrunner, ATF has focused resources on the four Southwest Border States. Additionally, Attorney General Holder has testified that, since his confirmation in 2009, the Department of Justice has made combating firearms trafficking to Mexico a top priority.[21]

In November 2010, the Department of Justice Inspector General issued a report examining the effectiveness of Project Gunrunner in stopping the illicit trafficking of guns from the United States to Mexico. The Inspector General found

that "ATF's focus remains largely on inspections of gun dealers and investigations of straw purchasers rather than on higher-level traffickers, smugglers, and the ultimate recipients of the trafficked guns." The report recommended that ATF "[f]ocus on developing more complex conspiracy cases against higher level gun traffickers and gun trafficking conspirators." The report also found that U.S. Attorneys' offices often declined Project Gunrunner cases because firearms investigations are often difficult to prosecute and result in lower penalties.[22]

Typical firearms trafficking cases involve a "straw purchase" in which the actual buyer of a firearm uses another person, "the straw purchaser," to execute the paperwork necessary to purchase the firearm from a gun dealer.[23] The actual buyer typically is someone who is prohibited from buying a firearm and cannot pass the background check or who does not want a paper trail documenting the purchase. Gun trafficking organizations regularly use straw purchasers who deliver firearms to intermediaries before other members of the organizations transfer the guns across the border.[24]

There is no Federal statute specifically prohibiting firearms trafficking or straw purchases. Instead, ATF agents and Federal prosecutors use other criminal statutes, including: (1) 18 USC § 924(a)(1)(A) which prohibits knowingly making a false statement on ATF Form 4473; (2) 18 USC § 922(a)(6) which prohibits knowingly making a false statement in connection with a firearm purchase; (3) 18 USC § 922(g)(1) which prohibits possession of a firearm by a convicted felon; and (4) 18 USC § 922(a)(1)(A) which prohibits engaging in a firearms business without a license.[25]

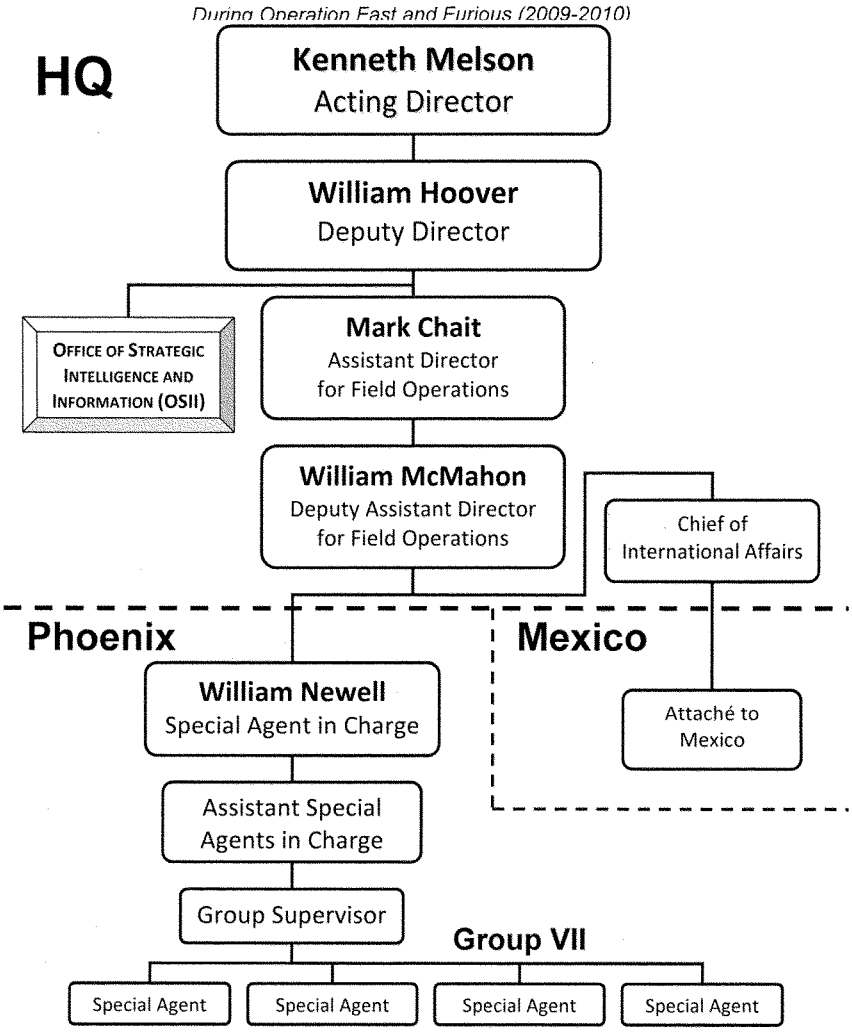
CURRENT WEAPONS OF CHOICE

Primary Weapons of Choice	Secondary Market Inspection Weapons of Choice
Bushmaster XM15 Rifles	Colt AR15 Sporter & Bushmaster XM15 rifles
Romarm Cugir 7.62 x 39mm rifles	Romarm 7.62 x 39mm rifles
FN 5.7 x 28mm pistols	DPMS and Olympic Arms .223 rifles
.50 caliber rifles (Barrett, Beowulf)	Norinco, Polytech, and Maadii AKS rifles
DPMS .223 rifles	Alexander Arms Beowulf .50 rifles
Beretta Model 92 pistols	Beretta and Taurus 9mm pistols
Taurus PT 9mm pistols	Colt .38 Super & .45 Pistols
Colt .38 Super pistols	

Source: Bureau of Alcohol, Tobacco, Firearms and Explosives, Weapons of Choice Presentation (2008).

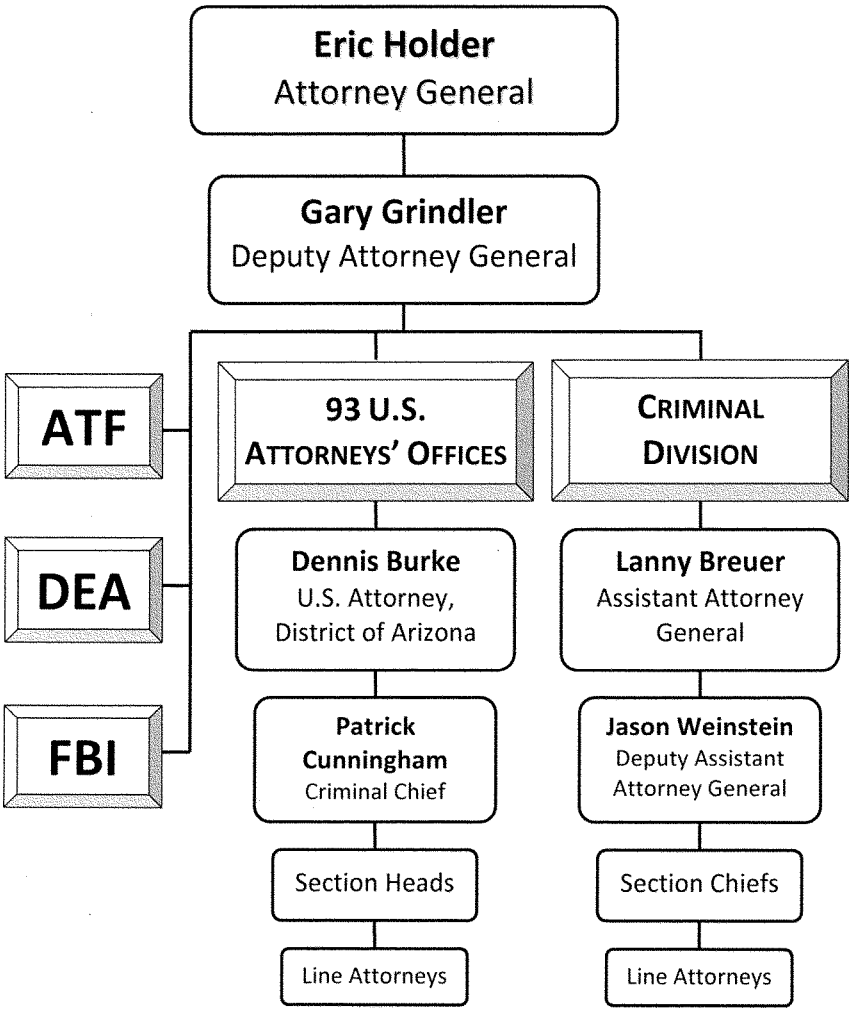
Key ATF Personnel

During Operation Fast and Furious (2009-2010)



Key DOJ Personnel

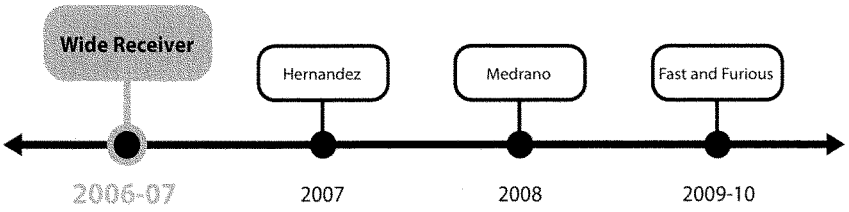
During Operation Fast and Furious (2009-2010)



IV. FINDINGS

A. ATF Phoenix Field Operations Involving "Gunwalking"

Documents obtained by the Committee and transcribed interviews conducted by Committee staff have identified a series of gunwalking operations conducted by ATF's Phoenix Field Division. Beginning in 2006, each of these investigations involved various incarnations of the same activity: ATF-Phoenix agents were contemporaneously aware of suspected illegal firearms purchases, they did not typically interdict the weapons or arrest the straw purchasers, and those firearms ended up in the hands of criminals on both sides of the border.



1. Operation Wide Receiver (2006-07)

Operation Wide Receiver began in early 2006 when ATF agents in Tucson opened an investigation of a suspected straw purchaser after receiving information from a cooperating gun dealer. Documents indicate that agents worked closely with this dealer, including by contemporaneously monitoring firearms sales to known straw purchasers without arrests or interdiction, and that they sought authorization for the expansion of this operation from then-U.S. Attorney for the District of Arizona, Paul Charlton.

The evidence also indicates that, between March 2006 and mid-2007, ATF agents had contemporaneous knowledge of planned sales of firearms to known straw purchasers and repeatedly designed surveillance operations of these illegal firearms purchases without effectuating arrests. According to documents obtained by the Committee, agents avoided interdicting weapons despite having the legal authority to do so in order to build a bigger case. Despite repeated failed attempts to coordinate surveillance with Mexican law enforcement, the ATF agents continued to attempt these operations.

Although the operational phase of the investigation ended in 2007, the case was not prosecuted for more than two years, during which time no arrests were made and the known straw purchasers remained at large. A prosecutor from the Criminal Division of the Department of Justice who was assigned to Operation Wide Receiver in 2009 and reviewed the case file raised concerns that many guns had "walked" to Mexico.

ATF-Phoenix monitored gun dealer selling to straw buyers

In March 2006, ATF-Phoenix agents received a tip from a Federal Firearms Licensee (FFL) in Tucson, Arizona, that a suspected straw purchaser had purchased six AR-15 lower receivers and placed an order for 20 additional lower receivers.[26] The agents opened an investigation of the purchaser because the nature of the transaction suggested a possible connection to illegal firearms trafficking.[27]

Some military-style firearms consist of an upper and lower receiver, with the lower receiver housing the trigger mechanism, and the upper receiver including the barrel of the firearm. According to a memorandum from the U.S. Attorney's Office, ATF had information that the suspects were obtaining both receivers and assembling them to create illegal firearms.[28] The firearms were illegal because the barrels were 10.5 inches in length, and rifles with barrels shorter than 16 inches must be registered and licensed with ATF.[29]

According to summaries prepared subsequently by a Department of Justice attorney prosecuting the case, "The FFL agreed to work with ATF to target the persons who were interested in purchasing large quantities of lower receivers for AR-15s." Specifically, "The FFL agreed to consensual recordings both of the purchases and phone calls."[30] Soon thereafter, ATF-Phoenix briefed prosecutors in the Arizona U.S. Attorney's Office that several suspicious individuals were purchasing "large quantities of lower receivers" from a Tucson FFL.[31]

In a June 22, 2006, memorandum, the Special Agent in Charge of ATF-Phoenix explained that the three suspects in the case had purchased a total of 126 AR-15 lower receivers. According to the memo, one of the suspected straw purchasers "advised the CS [confidential source] that he takes the firearms to a machine shop at or near Phoenix, AZ and they are converted into machine guns." The ATF agents also suspected that these firearms were making their way to Mexico and into the hands of a dangerous drug cartel. Specifically, the Special Agent in Charge wrote that, "ATF just recently tracked the vehicle to Tijuana, Mexico,"and one suspected straw purchaser "stated that these straw purchased firearms are going to his boss in Tijuana, Mexico where some are given out as gifts."[32]

ATF agents learned that the suspected straw purchasers were seeking a new supplier of upper receivers:

> The purchasers have asked the FFL to provide the uppers to them as well, indicating that they are not pleased with their current source for the uppers. The FFL has expressed reluctance to the purchasers regarding selling them both the lowers and the 10.5 inch uppers, as that would look very suspicious as if he was actually providing them with an illegal firearm. The purchasers are well aware that it is illegal to place a 10.5 inch upper on the lowers they are purchasing from the FFL. The FFL has indicated that he could try to find another 3rd party source of uppers for the purchasers.[33]

According to legal research provided by ATF counsel to attorneys in the U.S. Attorney's Office, it is illegal to possess both the upper and lower receivers, even if they are not assembled: "The possessor does not have to assemble the lower and the upper so long as the firearm is in actual or constructive possession of the offender, and can be 'readily restored' to fire."[34]

Despite evidence that the suspects illegally possessed both upper and lower receivers, were assembling them, and were transporting them to Mexico, ATF did not arrest the suspects. On March 31, 2006, the Resident Agent in Charge of the Tucson office—a local office that reports to the Special Agent in Charge of the Phoenix Field Division—wrote an email explaining that they had enough evidence to arrest the suspects, but that they were waiting to build a bigger case. He wrote:

> We have two AUSA assigned to this matter, and the USAO @ Tucson is prepared to issue Search and Arrest Warrants. We already have enough for the 371 and 922 a6 charges, but we want the Title II manufacturing and distribution pieces also—we want it all.[35]

ATF-Phoenix sought U.S. Attorney's approval to walk guns

The evidence indicates that, rather than arrest the straw buyers, the ATF Phoenix Field Division sought the approval of the U.S. Attorney's Office to let the guns walk in June 2006. The prosecutors handling the case wrote a memorandum to Paul Charlton, U.S. Attorney for the District of Arizona, which outlined the request. They wrote:

> ATF is interested in introducing a CI [confidential informant] to act as this source of uppers. This would further the investigation in that it would provide more solid evidence that the purchasers are in fact placing illegal length uppers on the lowers that they are purchasing from the currently-involved FFL. It may also lead to discovery of more information as to the ultimate delivery location of these firearms and/or the actual purchaser.[36]

ATF-Phoenix and the Arizona U.S. Attorney's Office both understood that ATF was already letting firearms walk by working with a cooperating FFL to provide "lower receivers" to straw purchasers trafficking them to Mexico. According to the prosecutors' memorandum to U.S. Attorney Charlton:

> [The ATF Agent] pointed out that these same exact firearms are currently being released into the community, the only difference being that at this time ATF is only involved in providing the lower receiver. We know that an illegal upper is being obtained from a third party, but the government is not currently involved in that aspect.[37]

The memo to U.S. Attorney Charlton then relayed ATF-Phoenix's request:

> The question was posed by RAC [Resident Agent in Charge] Higman as to the U.S. Attorney's Office's position on the possibility of allowing an indeterminate number of illegal weapons, both components of which (the upper and the lower) were provided to the criminals with ATF's knowledge and/or participation, to be released into the community, and possibly into Mexico, without any further ability by the U.S. Government to control their movement or future use.

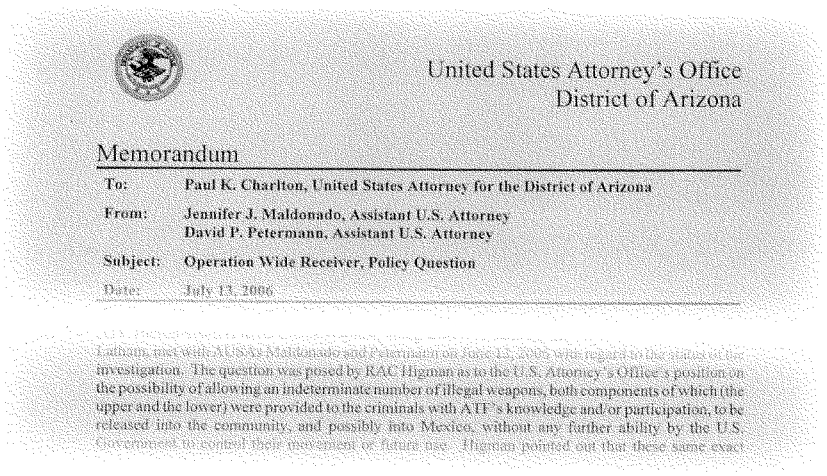
The memo further stated that the proposed tactics were controversial and opposed by ATF's legal counsel:

> [The ATF agent] indicated that ATF's legal counsel is opposed to this proposed method of furthering the investigation, citing moral objections. Recognizing that it will eventually be this office that will prosecute the individuals ultimately identified by this operation, RAC Higman has requested that we ascertain the U.S. Attorney's Office's position with regard to this proposed method of furthering the investigation.[38]

When the Chief of the Criminal Division in the U.S. Attorney's Office sent the prosecutor's memo to U.S. Attorney Charlton, she accompanied it with an email in which she stated that it "does a very good job outlining the investigation and the potential concerns. This is obviously a call that needs to be made by you Paul."[39] U.S. Attorney Charlton responded the next day: "Thanks—I'm meeting with the ATF SAC [Special Agent in Charge William Newell] on Tuesday and I'll discuss it with him then."[40]

Although the Committee has obtained no document memorializing the subsequent conversation between U.S. Attorney Charlton and the Special Agent in Charge, documents obtained by the Committee indicate that ATF-Phoenix went forward with their plans to observe or facilitate hundreds of firearms purchases by

the suspected straw purchasers without arrests. Committee staff did not conduct a transcribed interview of Mr. Charlton.



United States Attorney's Office
District of Arizona

Memorandum

To: Paul K. Charlton, United States Attorney for the District of Arizona

From: Jennifer J. Maldonado, Assistant U.S. Attorney
David P. Petermann, Assistant U.S. Attorney

Subject: Operation Wide Receiver, Policy Question

Date: July 13, 2006

[illegible] Latham, met with AUSAs Maldonado and Petermann on June 13, 2006 with regard to the status of the investigation. The question was posed by RAC Higman as to the U.S. Attorney's Office's position on the possibility of allowing an indeterminate number of illegal weapons, both components of which (the upper and the lower) were provided to the criminals with ATF's knowledge and/or participation, to be released into the community, and possibly into Mexico, without any further ability by the U.S. Government to control their movement or future use. Higman pointed out that these same exact

ATF-Phoenix continued to walk guns after consulting with U.S. Attorney

In October 2006, ATF agents planned a surveillance operation to observe a suspect purchase AR-15 lower receivers and two AR-15 rifles, determine if the suspect was going to make additional purchases, and identify any of his associates.[41] The Operational Plan noted:

> It is suspected that [the suspect] will now be moving the firearms to Tijuana himself. We are not prepared to make any arrests at this time because we are still attempting to coordinate our efforts with AFI [Agencia Federal de Investigación] in Mexico. ... If it is determined that [the suspect] has spotted the surveillance unit, surveillance will be stopped immediately.[42]

Documents indicate that ATF agents observed the suspect purchase five AR-15 lower receivers and terminated surveillance after three hours.[43] Notes taken after the investigation explained that the surveillance included audio recordings of the suspect stating that he "is now personally transporting the firearms to Tijuana, Mexico himself."[44]

On December 5, 2006, Special Agent in Charge Newell wrote that another key suspect in the Wide Receiver investigation had recently "purchased a total of ten (10)

AR-15 type lower receivers on two separate purchases."[45] He also wrote that, during those transactions, the suspect told the confidential source that he was taking the firearms to Mexico and would soon be ordering an additional 50 lower receivers.[46] Special Agent in Charge Newell wrote that the Tucson field office was planning to secure the cooperation of Mexican authorities:

> The Tucson II Field Office has maintained contact with the ATF Mexico City Country Office in an effort to secure the cooperation and join investigation with the Agencia Federal de Investigación (Mexico). Three Tucson II Field Office SA have obtained official U.S. Government passports in anticipation of a coordination meeting with the AFT early during calendar year 2007.[47]

On February 23, 2007, ATF agents planned to conduct a traffic stop of one suspected straw purchaser "with the assistance of the Tucson Police Department."[48] Although the Operational Plan indicated that "[p]robable cause exists to arrest [the suspect]," the agents' goal was to lawfully detain him at the traffic stop and bring him to the ATF office for questioning.[49] According to a memorandum from Special Agent in Charge Newell, between February 7 and April 23, 2007, the suspect and co-conspirators together purchased and ordered 150 firearms, including AK-47 and AR-15 rifles and pistols.[50] Although ATF apparently had probable cause for arrest, on February 27, 2007, the subject was interviewed by ATF agents and released.[51] The documents do not indicate why he was not arrested and prosecuted at that time.

ATF agents unsuccessfully attempted to coordinate with Mexico

The documents indicate that, although ATF had sufficient evidence to arrest the suspected straw purchasers, the agents continued to press forward with plans to attempt coordinated surveillance operations with Mexico. In April 2007, the ATF agents in charge of Operation Wide Receiver were unsure whether they could successfully coordinate surveillance with their Mexican counterparts. On April 10, 2007, the case agent for Wide Receiver wrote to a Tucson Police Department (TPD) officer:

> Assuming that the MCO [ATF's Mexico Country Office] can coordinate with the Mexican authorities, we anticipate that Tucson VCIT will hand off his surveillance operation at the U.S. / Mexican border. No ATF SA or local officers working at our direction will travel into Mexico. Through MCO we have requested that the Mexican authorities pick up the surveillance at the border and work to identify persons, telephone numbers, "stash" locations and source(s) of money supply in furtherance of this conspiracy.[52]

According to an ATF Operational Plan, just one day later, ATF agents and Tucson Police officers conducted surveillance and recorded the "planned arrival of [the suspect] and other persons at the FFL."[53] The Operational Plan stated that U.S. law enforcement would watch the "firearms cross international lines and enter Mexico. ... If the Mexican authorities decline or fail to participate in this operation the firearms traffickers will be arrested prior to leaving the United States."[54] Although the agents obtained an electronic record of the sale and initiated surveillance, the plan failed according to a summary prepared by one agent:

> ATF agents in conjunction with TPD VCIT Task Force Officers conducted a surveillance of suspected firearms traffickers in furtherance of this investigation. Suspects purchased 20+ firearms which totaled over $35,000.00 in retail cost. The surveillance successfully obtained electronic evidence of the transaction, further identified the traffickers and additional suspect vehicles. The traffickers were followed to a neighborhood on the Southside of Tucson and then later lost. The suspects are planning on making a purchase of 20-50 M4 rifles and are negotiating this next deal. The investigation continues.[55]

Despite the surveillance of the straw purchase and other evidence collected during the April 11, 2007, operation, the suspects were not arrested even after they were later located. Instead, more operations were planned.

An April 23, 2007, memo from Special Agent in Charge Newell to the Chief of Special Operations requesting additional funding for Operation Wide Receiver documented the failure to coordinate surveillance with Mexican law enforcement and public safety risks associated with continuing on that course:

> To date, the Tucson II Field Office and TPD SID have been unable to surveil the firearms to the International border. From contact with those offices, the Mexican Federal law enforcement authorities understand that the surveillance is difficult and that several firearms will likely make it to Mexico prior to a U.S. law enforcement successful surveillance of firearms to the international border.[56]

Two weeks later, on May 7, 2007, ATF agents and Tucson Police conducted surveillance of another "planned arrival" of a suspected straw purchaser and his associates at an FFL.[57] The Operational Plan shows that ATF agents had advance notice that the suspect had contacted the FFL to arrange the purchase of more than 20 firearms, planned to purchase the firearms from the FFL later in the day, and had made arrangements for a vehicle to transport the weapons into Mexico that night.[58] The Operational Plan indicated that "[i]f the Mexican authorities decline or fail to participate, the firearms traffickers will be arrested prior to leaving the

United States."[59] ATF agents contacted Mexican law enforcement in advance of the operation and they agreed to assist with surveillance of the suspects if they entered Mexico.[60] According to a subsequent summary of these events:

> [The suspects] were scheduled to purchase the ordered firearms. [Redacted] cancelled at the last minute, but [the suspect] purchased 15 firearms and was surveilled to his residence at [redacted]. Surveillance was discontinued the following day due to neighbors becoming suspicious of surveillance vehicles."[61]

The suspects were not arrested, the firearms were not interdicted, and the investigation continued in anticipation of the suspects' next major purchase.

ATF agents expressed concern about gunwalking

Agents in ATF's Phoenix Field Division began to express concern that Operation Wide Receiver was not yielding the desired results. In a June 7, 2007, email, one special agent on the case wrote to his supervisor:

> We have invested a large amount of resources in trying to get the load car followed to Mexico and turning it over to PGR [Mexican federal prosecutors] and are preparing to expend even more. We already have numerous charges up here and actually taking in to Mexico doesn't add to our case specifically at that point. We want the money people in Mexico that are orchestrating this operation for indictment but obviously we may never actually get our hands on them for trial, so the real beneficiary is to PGR.[62]

Despite the agent's concerns, Operation Wide Receiver remained on the same course with another "planned arrival" attempted on June 26, 2007.[63] The Operational Plan indicated that ATF agents had advance notice that the suspect had been in contact with the FFL, that the suspect was "extremely anxious" to purchase more firearms, and that firearms are to be purchased and then continue to "unknown locations throughout Tucson and Southern Arizona."[64] Documents show that ATF agents and Tucson police were unable to follow the firearms to the Mexican border.[65]

In an email sent on June 26, 2007, as the surveillance operation was set to begin, the ATF case agent for Operation Wide Receiver expressed reluctance about the repeated failures to coordinate surveillance of firearms traffickers with Mexican law enforcement.[66] He wrote to a prosecutor at the Texas U.S. Attorney's Office:

> We anticipate surveillance this evening where the subject(s) of interest are scheduled to purchase approx. $20K of associated firearms for

> further shipment to Caborca, Mx, and we are coordinating with the Mexican authorities in the event that the surveillance is successful. We have reached that stage where I am no longer comfortable allowing additional firearms to 'walk,' without a more defined purpose.[67]

Criminal Division took over prosecution and found gunwalking

In late 2007, the operational phase of Operation Wide Receiver was terminated, and the case was passed to the U.S. Attorney's Office for prosecution. The case then sat idle for nearly two years without indictments or arrests. The first prosecutor assigned to the case became a magistrate judge, and the second prosecutor did not open the case file for more than six months.[68]

In 2009, the Department of Justice's Criminal Division in Washington, D.C. offered to assign prosecutors to support firearms trafficking cases in any of the five border-U.S. Attorneys' offices.[69] The U.S. Attorney's Office in Arizona accepted the offer and asked for assistance with the prosecution of targets in Operation Wide Receiver.[70] In September 2009, the Criminal Division assigned an experienced prosecutor to take over the case.[71]

After reviewing the investigative files from 2006 and 2007, the Criminal Division prosecutor quickly realized that there were serious questions about how the case had been handled. On September 23, 2009, she wrote an email to her supervisors giving a synopsis of the case and its problems: "In short it appears that the biggest problem with the case is its [sic] old should have been taken down last year AND a lot of guns seem to have gone to Mexico."[72]

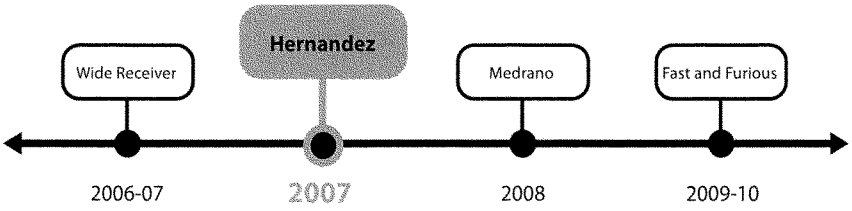
As she prepared the case for indictment, she continued to update her supervisors as new details emerged from the case file. On March 16, 2010, she sent an email to her supervisor:

> It is my understanding that a lot of those guns "walked." Whether some or all of that was intentional is not known. The AUSA seemed to think ATF screwed up by not having a mechanism in place to seize weapons once they crossed the border.[73]

The prosecutor also found evidence that guns involved in Operation Wide Receiver were connected to crime scenes in Mexico. She wrote that "13 of the purchased firearms have been recovered in Mexico in connection with crime scenes, including the April 2008 Tijuana gun battle" and that "[t]wo potential defendants were recently murdered in Mexico."[74]

The Criminal Division proceeded with prosecutions relating to the investigation. In May 2010, one suspect pleaded guilty to forfeiture charges pre-

indictment while two additional co-conspirators were indicted in federal court.[75] On October 27, 2010, seven additional suspects were indicted in the District of Arizona on gun-trafficking related charges.[76]



2. The Hernandez Case (2007)

According to documents obtained by the Committee, agents in the ATF Phoenix Field Division unsuccessfully attempted a second operation in the summer of 2007 after identifying Fidel Hernandez and several alleged co-conspirators as suspected straw purchasers seeking to smuggle firearms into Mexico. Despite failed attempts to coordinate with Mexican authorities, ATF agents sought approval from the U.S. Attorney's Office to expand so-called "controlled deliveries." In addition, documents obtained by the Committee indicate that then-Attorney General Michael Mukasey was personally briefed on these failed attempts and was asked to approve an expansion of these tactics. During the course of the investigation, Hernandez and his co-conspirators reportedly purchased more than 200 firearms.

ATF-Phoenix watched guns cross border without interdiction

According to their Operational Plan, ATF-Phoenix Field Division agents initiated a firearms trafficking investigation in July 2007 against Fidel Hernandez and his associates who, between July and October 2007, "purchased over two hundred firearms" and were "believed to be transporting them into Mexico."[77] ATF analysts discovered that "Hernandez and vehicles registered to him had recently crossed the border (from Mexico into the U.S.) on 23 occasions" and that "four of their firearms were recovered in Sonora, Mexico."[78]

According to contemporaneous ATF documents, ATF-Phoenix unsuccessfully attempted a cross-border operation in September 2007 in coordination with Mexican law enforcement authorities:

> On September 26 and 27, 2007, Phoenix ATF agents conducted nonstop surveillance on Hernandez and another associate, Carlos Morales. ATF had information that these subjects were in possession

> of approximately 19 firearms (including assault rifles and pistols) and were planning a firearm smuggling trip into Mexico. The surveillance operation was coordinated with Tucson I Field Office and the ATF Mexico Country Attaché. The plan, agreed to by all parties and authorized by the Phoenix SAC, was to follow these subjects to the border crossing in Nogales, Arizona while being in constant communication with an ATF MCO [Mexico Country Office] agent who would be in constant contact with a Mexican law enforcement counterpart at the port of entry and authorized to make a stop of the suspects' vehicle as it entered into Mexico.
>
> On September 27, 2007, at approximately 10:00 pm, while the Phoenix agents, an MCO agent and Mexican counterparts were simultaneously on the phone, the suspects' vehicle crossed into Mexico. ATF agents observed the vehicle commit to the border and reach the Mexican side until it could no longer be seen. The ATF MCO did not get a response from the Mexican authorities until 20 minutes later when they informed the MCO that they did not see the vehicle cross.[79]

ATF headquarters raised concerns about operational safeguards

Failed attempts to coordinate with Mexican authorities to capture suspected firearms traffickers as part of controlled deliveries raised serious concerns at ATF headquarters. On September 28, 2007, the day after the failed attempt, Carson Carroll, ATF's then-Assistant Director for Enforcement Programs, notified William Hoover, ATF's then-Assistant Director of Field Operations, that they had failed in their coordination. Mr. Carroll stated that when the suspected firearms traffickers were observed purchasing a number of firearms from an FFL in Phoenix, Arizona, ATF officials "immediately contacted and notified the GOM [Government of Mexico] for a possible controlled delivery of these weapons southbound to the Nogales, AZ., US/Mexico Border."[80] Mr. Carroll continued:

> ATF agents observed this vehicle commit to the border and reach the Mexican side until it could no longer be seen. We, the ATF MCO did not get a response from the Mexican side until 20 minutes later, who then informed us that they did not see the vehicle cross.[81]

According to internal ATF documents, ATF agents attempted a second cross-border controlled delivery with Mexican authorities on October 4, 2007. That operation also failed to lead to the successful capture of the subject in Mexico.[82]

That same day, Assistant Director Hoover sent an email to Assistant Director Carroll and ATF-Phoenix Field Division Special Agent in Charge William Newell demanding a call to discuss the investigation:

> Have we discussed the strategy with the US Attorney's Office re letting the guns walk? Do we have this approval in writing? Have we discussed and thought thru the consequences of same? Are we tracking south of the border? Same re US Attorney's Office. Did we find out why they missed the handoff of the vehicle? What are our expected outcomes? What is the timeline?[83]

The next day, Assistant Director Hoover wrote Mr. Carroll again:

> I do not want any firearms to go South until further notice. I expect a full briefing paper on my desk Tuesday morning from SAC Newell with every question answered. I will not allow this case to go forward until we have written documentation from the U.S. Attorney's Office re full and complete buy in. I do not want anyone briefed on this case until I approve the information. This includes anyone in Mexico.[84]

Mr. Hoover's concerns seem to have temporarily halted controlled delivery operations in the Hernandez investigation. On October 6, 2007, Special Agent in Charge Newell wrote to Assistant Director Carroll:

> I'm so frustrated with this whole mess I'm shutting the case down and any further attempts to do something similar. We're done trying to pursue new and innovative initiatives—it's not worth the hassle.[85]

Nevertheless, Mr. Newell insisted that he did have approval from the U.S. Attorney's Office. He wrote:

> We DO have them [the U.S. Attorney's Office] on board and as a matter of fact they (Chief of Criminal John Tucchi) recently agreed to charge the firearms recipients in Mexico (if we could fully [ID] them via a controlled delivery) with a conspiracy charge in US court.[86]

Despite the concerns expressed by Assistant Director Hoover, ATF operational plans show that additional controlled deliveries were planned for October 18, November 1, and November 26-27, 2007.[87] The documents describe ATF plans to observe the purchases at the FFL, follow the suspects "from the FFL in Phoenix, AZ to the Mexican port of entry in Nogales, Arizona," allow the suspects to "cross into Mexico," and allow "Mexican authorities to coordinate the arrest of the subjects."[88]

Attorney General Mukasey briefed and asked to "expand" operations

In the midst of these ongoing operations, on November 16, 2007, Attorney General Michael Mukasey received a memorandum in preparation for a meeting

with Mexican Attorney General Medina Mora. The memo described the Hernandez case as "the first ever attempt to have a controlled delivery of weapons being smuggled into Mexico by a major arms trafficker."[89] The briefing paper warned the Attorney General that "the first attempts at this controlled delivery have not been successful."[90] Despite these failures, the memorandum sought to expand such operations in the future:

> ATF would like to expand the possibility of such joint investigations and controlled deliveries—since only then will it be possible to investigate an entire smuggling network, rather than arresting simply a single smuggler.[91]

This briefing paper was prepared by senior officials at ATF and the Department of Justice only weeks after Assistant Director Hoover had expressed serious concerns with the failure of these tactics.[92]

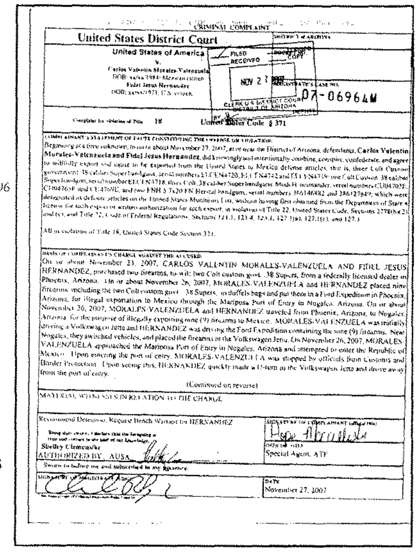
The emails exchanging drafts of the Attorney General's briefing paper also make clear that ATF officials understood that these were not, in fact, the first operations that allowed guns to "walk." Assistant Director Carroll wrote to Assistant Director Hoover: "I am going to ask DOJ to change 'first ever'... there have [been] cases in the past where we have walked guns."[93] That change never made it into the final briefing paper for Attorney General Mukasey.

Ten days after Attorney General Mukasey was notified about the failed surveillance operations and was asked to expand the use of the cross-border gun operations, ATF agents planned another surveillance operation in coordination with Mexico. The Operational Plan stated:

> 1) Surveillance units will observe [redacted] where they will attempt to confirm the purchase and transfer of firearms by known targets.
>
> 2) Once the transfer of firearms is confirmed through surveillance, units will then follow the vehicle and its occupants from the FFL in Phoenix, AZ to the Mexican port of entry in Nogales, Arizona. Once the subjects cross into Mexico, ATF attachés will liaison with Mexican authorities to coordinate the arrest of the subjects.
>
> 3) ATF agents will not be involved with the arrest of the subjects in Mexico but will be present to coordinate the arrest efforts between surveillance units and Mexican authorities as well as to conduct post-arrest interviews.[94]

As part of this operation, surveillance units were monitoring the FFL during normal business hours in order to observe large firearms transfers by their known targets.[95]

The Committee has not received any documents indicating that ATF-Phoenix agents were able to successfully coordinate with Mexican law enforcement to interdict firearms in the Hernandez case. During the course of the investigation, Hernandez and his co-conspirators purchased more than 200 firearms. In multiple instances, ATF agents witnessed Hernandez and his associates take these weapons into Mexico.[96]


CRIMINAL COMPLAINT

United States District Court | DISTRICT of ARIZONA

United States of America
v.
Carlos Valentin Morales-Valenzuela
Fidel Jesus Hernandez

FILED / RECEIVED / LODGED / COPY
NOV 27 2007
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA
MAGISTRATE'S CASE NO. 07-06964M

Complaint for violation of Title 18 United States Code § 371

COMPLAINANT'S STATEMENT OF FACTS CONSTITUTING THE OFFENSE OR VIOLATION:
Beginning at a time unknown, to on or about November 27, 2007, at or near the District of Arizona, defendants, **Carlos Valentin Morales-Valenzuela and Fidel Jesus Hernandez**, did knowingly and intentionally combine, conspire, confederate, and agree to willfully export and cause to be exported from the United States to Mexico defense articles, that is, three Colt Custom government .38 caliber Super handguns, [illegible] ... which were designated as defense articles on the United States Munitions List, without having first obtained from the Department of State a license for such export or written authorization for such export, in violation of Title 22, United States Code, Sections 2778(b)(2) and (c), and Title 22, Code of Federal Regulations, Sections 121.1, 123.1, 127.1(a), 127.3(c), and 127.3.

All in violation of Title 18, United States Code Section 371.

BASIS OF COMPLAINANT'S CHARGE AGAINST THE ACCUSED:
On or about November 23, 2007, CARLOS VALENTIN MORALES-VALENZUELA AND FIDEL JESUS HERNANDEZ, purchased two firearms, to-wit: two Colt custom govt. .38 Supers, from a federally licensed dealer in Phoenix, Arizona. On or about November 26, 2007, MORALES-VALENZUELA and HERNANDEZ placed nine firearms including the two Colt custom govt. .38 Supers, in duffels bags and put them in a Ford Expedition in Phoenix, Arizona, for illegal exportation to Mexico through the Mariposa Port of Entry in Nogales, Arizona. On or about November 26, 2007, MORALES-VALENZUELA and HERNANDEZ traveled from Phoenix, Arizona, to Nogales, Arizona, for the purpose of illegally exporting nine (9) firearms to Mexico. MORALES-VALENZUELA was initially driving a Volkswagen Jetta and HERNANDEZ was driving the Ford Expedition containing the nine (9) firearms. Near Nogales, they switched vehicles, and placed the firearms in the Volkswagen Jetta. On November 26, 2007, MORALES-VALENZUELA approached the Mariposa Port of Entry in Nogales, Arizona and attempted to enter the Republic of Mexico. Upon entering the port of entry, MORALES-VALENZUELA was stopped by officials from Customs and Border Protection. Upon seeing this, HERNANDEZ quickly made a U-turn in the Volkswagen Jetta and drove away from the port of entry.

(Continued on reverse)

MATERIAL WITNESSES IN RELATION TO THE CHARGE:

Recommend Detention; Request Bench Warrant for HERNANDEZ

Being duly sworn, I declare that the foregoing is true and correct to the best of my knowledge.
Shelley Clemens
AUTHORIZED BY: AUSA

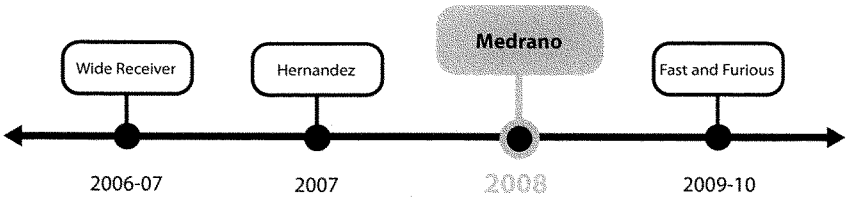
SIGNATURE OF COMPLAINANT
OFFICIAL TITLE
Special Agent, ATF

Sworn to before me and subscribed in my presence.
SIGNATURE OF MAGISTRATE JUDGE
DATE
November 27, 2007

Hernandez and his associate were arrested in Nogales, Arizona on November 27, 2007, while attempting to cross the border into Mexico.[97] The defendants were charged with Conspiracy to Export Firearms, Exporting Firearms, and two counts of Attempted Exportation of Firearms. The defendants were brought to trial in 2009, but acquitted after prosecutors were unable to obtain the cooperation of the Mexican law enforcement officials who had recovered firearms purchased by Hernandez. An ATF briefing paper from 2009 summarized the result:

> The judge also would not allow us to introduce evidence of how the guns were found in Mexico unless we could produce the Mexican Police Officials who located the guns. We were unable to obtain the cooperation of Mexican law enforcement to identify and bring these witnesses to trial to testify.[98]

At the conclusion of the trial, the jury was unable to reach a verdict on three counts of the indictment, and the defendants were acquitted on a fourth charge.[99]



3. The Medrano Case (2008)

In February 2008, ATF agents in Phoenix began investigating a straw purchasing network led by Alejandro Medrano. Documents obtained by the Committee indicate that on multiple occasions throughout 2008, ATF agents were aware that Medrano and his associates were making illegal firearms purchases and trafficking the weapons into Mexico. According to documents obtained by the Committee, ATF-Phoenix did not arrest suspects for approximately one year while their activities continued, instead choosing to continue surveillance. During the summer of 2008, agents from U.S. Immigration and Customs Enforcement (ICE) raised concerns about the tactics being used, but the tactics continued for several more months. On December 10, 2008, a criminal complaint was filed against Medrano and his associates in the United States District Court for the District of Arizona, and the targets were later sentenced to varying prison sentences.

ATF agents watched as firearms crossed the border

An ATF-Phoenix Operational Plan obtained by the Committee describes an instance on June 17, 2008, in which ATF agents watched Medrano and an associate, Hernan Ramos, illegally purchase firearms at an FFL in Arizona, load them in their car, and smuggle them into Mexico:

> Agents observed both subjects place the firearms in the backseat and trunk [of a vehicle]. Agents and officers surveilled the vehicle to Douglas, AZ where it crossed into Mexico at the Douglas Port of Entry (POE) before a stop could be coordinated with CBP [Customs and Border Protection].[100]

Neither Medrano nor Ramos was arrested or detained at the time or in the months after. The Operational Plan does not include any indication that ATF agents attempted to coordinate with Mexican law enforcement. The fact that the suspects continued to make firearms purchases in the United States and take them to Mexico suggests that they were not intercepted by Mexican law enforcement.

In the two months following these surveillance operations, Medrano and his co-conspirators purchased several additional firearms at gun shows and from FFLs in the Phoenix area.[101] The suspects also continued to travel back and forth to Mexico.[102] The ATF Operational Plan also stated:

> The group particularly targeted gun shows where several members purchased firearms from various FFL'S. According to TECS [the Treasury Enforcement Communications System, a government database used to track individuals' travel patterns], identified subjects routinely crossed into Mexico prior to and following a large number of firearms purchases. While only purchasing a small number of firearms, MEDRANO crossed into Mexico utilizing several vehicles that were not registered to him or his immediate family. MEDRANO routinely returned to the US on foot while other identified subjects drove a vehicle into the US. It is believed that identified subjects entering the US on foot were carrying bulk cash to pay for future firearms.[103]

According to the Operational Plan, multiple firearms connected to the network were recovered in Mexico, some very soon after they were sold:

> Hernan RAMOS purchased a 7.62 caliber rifle in February 2008 that was recovered in June 2008. Jose ARIZMENDIZ purchased two pistols that were recovered at the same location in Mexico. One of the pistols had a time to crime of fifteen (15) days.[104]

ICE agents raised concerns

Documents obtained by the Committee indicate that in the summer of 2008, ATF agents handling the Medrano investigation met with ICE agents to coordinate surveillance of another cross-border smuggling attempt. At this meeting, ICE agents balked when they learned about the tactics being employed by ATF-Phoenix. On August 12, 2008, the head of ICE's offices in Arizona wrote to ATF Special Agent in Charge Newell asking for an in-person meeting about the dispute among agents over ATF operational plans to allow straw purchased guns to cross the border:

> One of [the ICE] groups worked with your guys over the weekend on a surveillance operation at a Tucson gun show. While we had both met in advance with the USAO, our agents left that meeting with the understanding that any weapons that were followed to the border would be seized. On Friday night, however, our agents got an op plan that stated that weapons would be allowed to go into Mexico for further surveillance by LEAs [law enforcement agents] there.[105]

In his response, Mr. Newell acknowledged that letting guns cross the border was part of ATF's plan, but stated that he needed more information about what had happened:

> I need to get some clarification from my folks tomorrow because I was told that your folks were aware of the plan to allow the guns to cross, in close cooperation with both our offices in Mexico as well as Mexican Feds.[106]

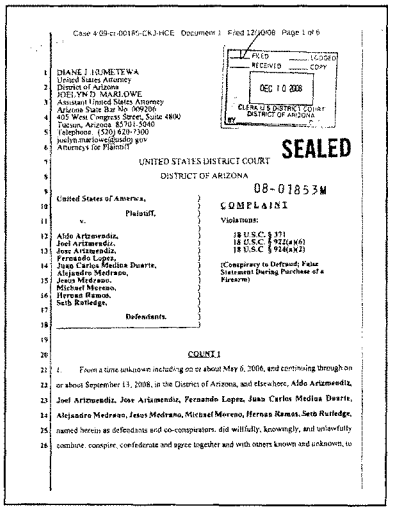
Although the subsequent correspondence does not explain how this dispute was resolved, the Medrano trafficking network reportedly supplied over 100 assault rifles and other weapons "to a member of the Sinaloan drug cartel known as 'Rambo.'"[107]

Criminal complaint also confirms "gunwalking"

On December 10, 2008, Federal prosecutors filed a complaint in the United States District Court for the District of Arizona that describes in detail gun trafficking activities conducted by Medrano and his associates that involved more than 100 firearms over the course of the year. The complaint confirms that ATF agents watched as Medrano and his associates trafficked illegal firearms into Mexico. For example, the complaint discusses the incident on June 17, 2008, discussed above, in which ATF agents observed the suspects purchase weapons, load them in their car, and drive them to Mexico. The complaint states:

> On or about June 17, 2008, at or near Tucson, Arizona, Alejandro Medrano and Hernan Ramos went together to Mad Dawg Global, a federally licensed firearms dealer, where Hernan Ramos purchased six (6) .223 caliber rifles for approximately $4800.00 and falsely represented on the 4473 that he was the actual purchaser. Both Alejandro Medrano and Hernan Ramos placed the six (6) rifles in the back seat of their vehicle.[108]

The complaint then explains that the suspects drove these firearms across the border. It states:



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DEC 10 2008
CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY

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Attorneys for Plaintiff

SEALED

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

08-01853M

United States of America,
Plaintiff,
v.
Aldo Arizmendiz,
Joel Arizmendiz,
Jose Arizmendiz,
Fernando Lopez,
Juan Carlos Medina Duarte,
Alejandro Medrano,
Jesus Medrano,
Michael Moreno,
Hernan Ramos,
Seth Rutledge,
Defendants.

COMPLAINT
Violations:
18 U.S.C. § 371
18 U.S.C. § 922(a)(6)
18 U.S.C. § 924(a)(2)
(Conspiracy to Defraud; False Statement During Purchase of a Firearm)

COUNT 1

1. From a time unknown including on or about May 6, 2006, and continuing through on or about September 11, 2008, in the District of Arizona, and elsewhere, **Aldo Arizmendiz, Joel Arizmendiz, Jose Arizmendiz, Fernando Lopez, Juan Carlos Medina Duarte, Alejandro Medrano, Jesus Medrano, Michael Moreno, Hernan Ramos, Seth Rutledge,** named herein as defendants and co-conspirators, did willfully, knowingly, and unlawfully combine, conspire, confederate and agree together and with others known and unknown, to

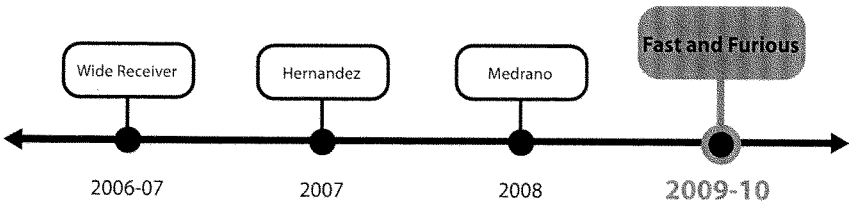
> Alejandro Medrano drove Hernan Ramos's vehicle with Hernan Ramos as a passenger from Mad Dawg Global in Tuscon, Arizona, to the Douglas Port of Entry where they both entered into Mexico with at least the six (6) .223 caliber rifles in the vehicle.[109]

The complaint states that the information was obtained by ATF agents conducting surveillance:

> ATF Special Agents conducted surveillance, recorded firearms transactions, and identified the dates and times that the conspirators herein crossed the international border either in vehicles or on foot.[110]

The complaint also describes how quickly Medrano and his associates traveled back and forth between the United States and Mexico for additional firearm purchases. For example, in one instance on May 21, 2008, Hernan Ramos entered the United States and returned to Mexico "less than two hours later in the same vehicle." The complaint also states that in another instance on August 13, 2008, Medrano and an associate entered the United States "driving a vehicle which had entered into Mexico approximately fifteen minutes earlier."[111]

On August 9, 2010, Medrano was "sentenced to 46 months in prison for his leadership role in the conspiracy."[112] Ramos was sentenced to 50 months in prison and "[m]ost of the remaining defendants in the conspiracy received prison terms ranging from 14 to 30 months."[113] Many of the firearms purchased by the Medrano network were subsequently recovered in Mexico.[114]



4. Operation Fast and Furious (2009-10)

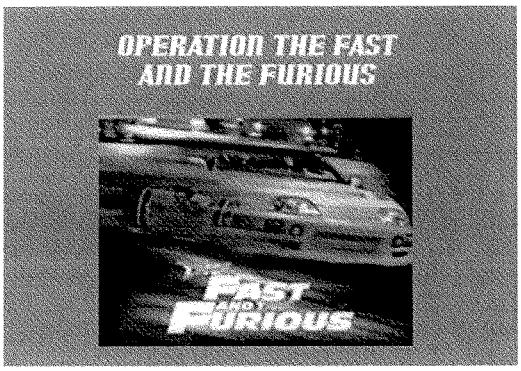
The investigation that became known as Operation Fast and Furious began in the ATF Phoenix Field Division in October 2009. Despite having identified 20 suspects who paid hundreds of thousands of dollars in cash to buy hundreds of military-grade firearms on behalf of the same trafficking ring, ATF-Phoenix and the Arizona U.S. Attorney's Office asserted that they lacked probable cause for any arrests. Three months into the investigation, they agreed instead on a broader

strategy to build a bigger case against cartel leaders, rather than straw purchasers, through long-term surveillance and wiretaps. While they pursued this broader strategy, ATF-Phoenix agents did not interdict hundreds of firearms purchased and distributed by the suspects under their surveillance. In March 2010, the Deputy Director of ATF became concerned with the operation and ordered an "exit" strategy to bring indictments within 90 days. The documents indicate that ATF-Phoenix field agents chafed against this directive, however, and allowed suspect purchases to continue for months in an effort to salvage the broader goal of the investigation. In January 2011, the U.S. Attorney's Office indicted 19 straw purchasers and the local organizer of the network, all of whom had been identified at the beginning of the investigation in 2009.

Initiated by ATF-Phoenix in the Fall of 2009

According to documents obtained by the Committee, the investigation that became known as Operation Fast and Furious started in October 2009 when ATF agents received a tip that four suspected straw purchasers had acquired numerous AK-47 style rifles from the same gun dealer. ATF also received a tip about a man named Uriel Patino who had purchased numerous AK-47 rifles from the same dealer.[115]

ATF-Phoenix presentation on Fast and Furious



The next month, ATF identified six additional suspected straw purchasers and two local properties that were being utilized as firearm drop locations.[116] On November 20, 2009, some of the guns purchased by the suspects were recovered in Naco, Mexico, including firearms with a "short time to crime." Two additional suspects were identified based on the firearms recovered in Naco.[117]

The case continued to grow in December with the identification of seven additional suspected straw purchasers and Manuel Celis-Acosta, a suspect connected to a large-scale Drug Enforcement Administration (DEA) investigation.[118]

A Briefing Paper prepared by ATF-Phoenix noted the size of the organization and the rapid pace of firearm purchases in those initial months of the investigation. It stated:

> It should also be noted that the pace of firearms procurement by this straw purchasing group from late September to early December, 2009 defied the "normal" pace of procurement by other firearms trafficking groups investigated by this and other field divisions. This "blitz" was extremely out of the ordinary and created a situation where measures had to be enacted in order to slow this pace down in order to perfect a criminal case.[119]

The Briefing Paper stated that the investigation had identified more than 20 individual straw purchasers, all connected to the same trafficking ring, who "had purchased in excess of 650 firearms (mainly AK-47 variants) for which they have paid cash totaling more than $350,000.00"[120]

Prosecutors claimed no probable cause to arrest straw buyers

According to documents obtained by the Committee, on January 5, 2010, ATF-Phoenix officials working on the investigation had a meeting with the lead prosecutor on the case, Arizona Assistant U.S. Attorney Emory Hurley. The ATF agents and the prosecutor wrote separate memos following the meeting reflecting a consensus that no probable cause existed to arrest any of the straw purchasers despite the significant number of firearms that had been purchased. The ATF-Phoenix Briefing Paper, prepared three days after the meeting, stated:

> On January 5, 2010, ASAC Gillett, GS [Group Supervisor] Voth, and case agent SA MacAllister met with AUSA Emory Hurley who is the lead federal prosecutor on this matter. Investigative and prosecutions 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.[121]

Similarly, the prosecutor wrote a memo to his direct supervisor, stating: "We have reviewed the available evidence thus far and agree that we do not have any chargeable offenses against any of the players."[122]

During a transcribed interview with Committee staff, the ATF-Phoenix Group Supervisor who oversaw the operation and participated in the meeting explained that he had to follow the prosecutor's probable cause assessment:

> I don't think that agents in Fast and Furious were forgoing taking action when probable cause existed. We consulted with the U.S.

> Attorney's Office. And if we disagree, I guess we disagree. But if the U.S. Attorney's Office says we don't have probable cause, I think that puts us in a tricky situation to take action independent, especially if that is contradictory to their opinion.[123]

In another exchange, the Group Supervisor explained the prosecutor's assessment with respect to Uriel Patino, the single largest suspected straw purchaser in the Fast and Furious network:

> Q: Does that meet your understanding of probable cause to interdict a gun when Uriel Patino goes in for the fifth or sixth or 12th time to purchase more and more guns with cash?
>
> A: We talked that over at the U.S. Attorney's Office, and the conclusion was that we would need independent probable cause for each transaction. Just because he bought 10 guns yesterday doesn't mean that the 10 he is buying today are straw purchased. You can't transfer probable cause from one firearm purchase to the next firearm purchase. You need independent probable cause for each occurrence.
>
> Q: And it doesn't matter not just that he bought 10 last week and 20 the week before, but that five of them ended up in Mexico at a crime scene, at a murder?
>
> A: Again, in talking to the U.S. Attorney's Office, unless we could prove that he took them to Mexico, the fact that he sold them or transferred them to another [non-prohibited] party doesn't necessarily make him a firearms trafficker. If he sells them to his neighbor lawfully and then his neighbor takes them to Mexico, it is the neighbor who has done the illegal act, not Patino, who sold them to his neighbor.[124]

Although the determination of whether sufficient probable cause existed to make arrests ultimately rested with the prosecutor, documents obtained by the Committee indicate that all of the participants agreed with the strategy to proceed with building a bigger case and to forgo taking down individual members of the straw purchaser network one-by-one. The ATF Briefing Paper stated:

> 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 additional co-conspirators who would continue to operate and illegally traffic

> firearms to Mexican DTOs [drug trafficking organizations] which are perpetrating armed violence along the Southwest Border.[125]

During his transcribed interview with Committee staff, Special Agent in Charge Newell explained:

> [T]he goal was twofold. It was to identify the firearms-trafficking network, the decision-makers, and not just focus on the straw purchasers. We would go after the decision-makers, the people who were financing.[126]

He stated that it was critical to identify the network rather than arresting individual straw purchasers one-by-one:

> The goal of the investigation, as I said before, was to identify the whole network, knowing that if we took off a group of straw purchasers this, as is the case in hundreds of firearms trafficking investigations, some that I personally worked as a case agent, you take off the low level straw purchaser, all you're doing is one of – you're doing one of two things, one of several things. You're alerting the actual string-puller that you're on to them, one, and, two, all they are going to do is go out and get more straw purchasers.
>
> Our goal in this case is to go after the decision-maker, the person at the head of the organization, knowing that if we remove that person, in the sense of prosecute that person, successfully, hopefully, that we would have much more impact than just going after the low-level straw purchaser.[127]

Prosecutor encouraged U.S. Attorney to "hold out for bigger" case

In addition to finding no probable cause to arrest suspected straw purchasers who had already purchased hundreds of firearms, the lead prosecutor recommended against employing traditional investigative tactics against the suspects. In a memorandum to his supervisor on January 5, 2010, Mr. Hurley wrote:

> In the past, ATF agents have investigated cases similar to this by confronting the straw purchasers and hoping for an admission that might lead to charges. This carries a substantial risk of letting the members of the conspiracy know that they are the subject of an investigation and not gain any useful admissions from the straw buyer. In the last couple of years, straw buyers appear to be well coached in how to avoid answering question about firearms questions. Even when the straw buyers make admissions and can be prosecuted, they

> are easily replaced by new straw buyers and the flow of guns remains unabated.[128]

The lead prosecutor noted that ATF-Phoenix was aware that ATF headquarters would likely object to both the strategy of trying to build a bigger case and the proposal to forgo using traditional law enforcement tactics:

> ATF [Phoenix] believes that there may be pressure from ATF headquarters to immediately contact identifiable straw purchasers just to see if this develops any indictable cases and to stem the flow of guns. Local ATF favors pursuing a wire and surveillance to build a case against the leader of the organization. If a case cannot be developed against the hub of the conspiracy, he will be able to replace the spokes as needed and continue to traffic firearms. I am familiar with the difficulties of building a case only upon the interviews of a few straw purchasers and have seen many such investigations falter at the first interview. I concur with Local ATF's decision to pursue a longer term investigation to target the leader of the conspiracy.[129]

Later the same day, January 5, 2010, the lead prosecutor's supervisor forwarded the memorandum to U.S. Attorney Dennis Burke, recommending that he agree to both the strategy and tactics. The supervisor's email to Mr. Burke stated:

> Dennis—Joe Lodge has been briefed on this but wanted to get you a memo for your review. Bottom line – we have a promising guns to Mexico case (some weapons already seized and accounted for), local ATF is on board with our strategy but ATF headquarters may want to do a smaller straw purchaser case. We should hold out for the bigger case, try to get a wire, and if it fails, we can always do the straw buyers. Emory's memo references that this is the "Naco, Mexico seizure case"—you may have seen photos of that a few months ago.[130]

Mr. Burke responded two days later with a short message: "Hold out for bigger. Let me know whenever and w/ whomever I need to weigh-in."[131]

Although Mr. Burke agreed with the proposal to target the organizers of the firearms trafficking conspiracy, he told Committee staff that neither ATF-Phoenix nor his subordinates suggested that agents would be letting guns walk as part of the investigation. As discussed in Section C, below, Mr. Burke stated in his transcribed interview that he was under the impression that ATF-Phoenix was coordinating interdictions with Mexican officials. Mr. Burke stated:

> I was under the opposite impression, which was that based on his [Mr. Newell's] contacts and the relationships with Mexico and what they

> were doing, that they would be working with Mexico on weapons transferred into Mexico.[132]

According to documents obtained by the Committee, Mr. Burke also received explicit assurances from the lead prosecutor on the case, Mr. Hurley, that ATF-Phoenix agents "have not purposely let guns 'walk.'"[133]

ATF-Phoenix sought funding and wiretaps to target higher-level suspects

To secure additional resources for Operation Fast and Furious, including agents, funding, and sophisticated investigative tools, ATF-Phoenix requested funding from the Organized Crime Drug Enforcement Task Forces (OCDETF) Program, which provides funding "to identify, disrupt, and dismantle the most serious drug trafficking and money laundering organizations and those primarily responsible for the nation's drug supply."[134]

In January 2010, ATF-Phoenix submitted an investigative strategy in its application for funding from OCDETF.[135] ATF-Phoenix and the U.S. Attorney's Office used evidence gathered from another agency's investigation to draft its proposal.[136] The application explained that the goal Operation Fast and Furious was to bring down a major drug trafficking cartel:

> The direct goal of this investigation is to identify and arrest members of the CONTRERAS DTO [Drug Trafficking organization] as well as seize assets owned by the DTO. Based upon the amount of drugs this organization distributes in the US it is anticipated that the investigation will continue to expand to other parts of the US and enable enforcement operations in multiple jurisdictions. In addition to the CONTRERAS DTO, this investigation is intended to identify and expand to the hierarchy within the Mexico-based drug trafficking organization that directs the CONTRERAS DTO.[137]

ATF-Phoenix's proposal for Operation "The Fast and the Furious" was approved by an interagency group of Federal law enforcement officials in Arizona in late January 2010.[138]

ATF-Phoenix also drafted a proposal to conduct a wiretap with the goal of obtaining evidence to connect the straw purchasers to the leaders of the firearms trafficking conspiracy.[139] During his transcribed interview with Committee staff, U.S. Attorney Burke explained the purpose behind this wiretap application:

> [T]he belief was, at least in I think January 2010, was when they first, my recollection is that they first started referencing the interest in

> getting the [wiretap]. But the point being that they were going to try to reach beyond just the straw purchasers and figure out who the actual recruiters were and organizers of the gun trafficking ring.[140]

ATF-Phoenix submitted its wiretap application with the necessary affidavits and approvals from the Department of Justice, Office of Enforcement Operations, and received federal court approval for its first wiretaps.[141]

ATF-Phoenix agents watched guns walk

Documents obtained by the Committee indicate that while ATF-Phoenix and the U.S. Attorney's Office pursued their strategy of building a bigger case against higher-ups in the firearms trafficking conspiracy, ATF-Phoenix field agents continued daily surveillance of the straw purchaser network. With advance or real-time notice of many purchases by the cooperating gun dealers, the agents watched as the network purchased hundreds of firearms. One ATF-Phoenix agent assigned to surveillance described a common scenario:

> [A] situation would arise where a known individual, a suspected straw purchaser, purchased firearms and immediately transferred them or shortly after, not immediately, shortly after they had transferred them to an unknown male. And at that point I asked the case agent to, if we can intervene and seize those firearms, and I was told no.[142]

When asked about the number of firearms trafficked in a given week, one agent answered:

> Probably 30 or 50. It wasn't five. There were five at a time. These guys didn't go to the FFLs unless it was five or more. And the only exceptions to that are sometimes the Draco, which were the AK-variant pistols, or the FN Five-seveN pistols, because a lot of FFLs just didn't have ... 10 or 20 of those on hand.[143]

Agents told the Committee that they became increasingly alarmed as this practice continued, which they viewed as a departure from both protocol and their expectations as law enforcement officials. One agent stated:

> We were walking guns. It was our decision. We had the information. We had the duty and the responsibility to act, and we didn't do so. So it was us walking those guns. We didn't watch them walk, we walked.[144]

ATF Deputy Director Hoover ordered an "exit strategy"

The documents obtained and interviews conducted by the Committee indicate that, following a briefing in March 2010, ATF Deputy Director William Hoover ordered an "exit strategy" in order to extract ATF-Phoenix from this operation. At the March briefing, the ATF Intelligence Operations Specialist and the Group Supervisor made a presentation regarding Operation Fast and Furious that covered the suspects, the number of firearms each had purchased, the amount of money each had spent, the known stash houses where guns were deposited, and the locations in Mexico where Fast and Furious firearms had been recovered. The briefing also included Assistant Director for Field Operations Mark Chait and Deputy Assistant Director for Field Operations William McMahon, four ATF Special Agents in Charge from ATF's Southwest border offices, and others.

In his transcribed interview with Committee staff, Deputy Director Hoover stated that he became concerned sometime after the briefing about the number of guns being purchased and ordered an "exit strategy" to close the case and seek indictments within 90 days:

> Q: It's our understanding that you and Mr. Chait, in March approximately, asked for an exit strategy for the case?
>
> A: That is correct. ...
>
> Q: And if you could tell us what led to that request?
>
> A: We received a pretty detailed briefing in March, I don't remember the specific date, I'm going to say it's after the 15th of March, about the investigation, about the number of firearms purchased by individuals. ... That would have been by our Intel division in the headquarters. ... During that briefing I was, you know, just jotting some notes. And I was concerned about the number of firearms that were being purchased in this investigation, and I decided that it was time for us to have an exit strategy and I asked for an exit strategy. It was a conversation that was occurring between Mark Chait, Bill McMahon and myself. And I asked for the exit strategy 30, 60, 90 days, and I wanted to be able to shut this investigation down.
>
> Q: And by shutting the investigation down, you were interested in cutting off the sales of weapons to the suspects, correct?
>
> A: That's correct.

Q: And you were worried, is it fair to say, that these guns were possibly going to be getting away and getting into Mexico and showing up at crime scenes?

A: I was concerned not only that that would occur in Mexico, but also in the United States.[145]

Other than requesting an exit strategy, Mr. Hoover did not recall making any other specific demands because he generally "allowed field operations to run that investigation."[146]

ATF-Phoenix did not follow the 90-day exit strategy and continued the operation

In April 2010, more than one month after Deputy Director Hoover's demand for an exit strategy, ATF-Phoenix still had not provided it, and Special Agent in Charge Newell expressed his frustration with perceived interference from ATF headquarters that he believed could prevent him from making a larger case. In an April 27, 2010, email to Deputy Assistant Director McMahon, he wrote:

> I don't like HQ driving our cases but understand the "sensitivities" of this case better than anyone. We don't yet have the direct link to a DTO that we want/need for our prosecution, [redacted]. Once we establish that link we can hold this case up as an example of the link between narcotics and firearms trafficking which would be great on a national media scale but if the Director wants this case shut down then so be it.[147]

Although Mr. Newell delivered an exit strategy that day at Mr. McMahon's reminder, the operation continued to grow and expand rather than wind down over the months to follow.[148] In June 2010, three months after Deputy Director Hoover's directive, the operational phase of the case was still continuing. On June 17, 2010, the ATF-Phoenix Group Supervisor received an email from a cooperating gun dealer raising concerns about how the firearms he was selling could endanger public safety. The dealer stated:

> 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.[149]

A month later, on July 14, 2010, Special Agent in Charge Newell sent an email to an ATF colleague in Mexico stating that ATF was "within 45-60 days of taking this [Operation Fast and Furious] down IF the USAO goes with our 846/924(c) conspiracy plan."[150] At that time, the case was still months away from indictment.

In August 2010, the operation continued, with another cooperating gun dealer writing to the ATF-Phoenix Group Supervisor seeking advice about a large purchase order made by Uriel Patino, who personally purchased more than 600 assault weapons from a small handful of cooperating gun dealers. The dealer stated:

> 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 mm 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 [sic] or not we should perform the transaction, as it is outside of the standard way we have been dealing with him.[151]

The Group Supervisor wrote back requesting that the gun dealer fulfill the order:

> [O]ur 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.[152]

During a transcribed interview with Committee staff, another cooperating gun dealer explained that ATF agents had promised to address the concerns he raised about their capability to interdict these weapons:

> I was assured in no uncertain terms—and let me be straight about this. She assured that they would have enough agents on sight to surveil the sale and make sure that it didn't get away from them, as it was stated

> to me. ... To continue, we went along with these sales at their request. ATF would want us to continue with them, and we did so.[153]

Indictments delayed for months

By August 2010, rather than indicting the suspects in Operation Fast and Furious, ATF-Phoenix and the prosecutor were still in the process of compiling evidence to make indictment decisions. During his transcribed interview with Committee staff, Special Agent in Charge Newell stated:

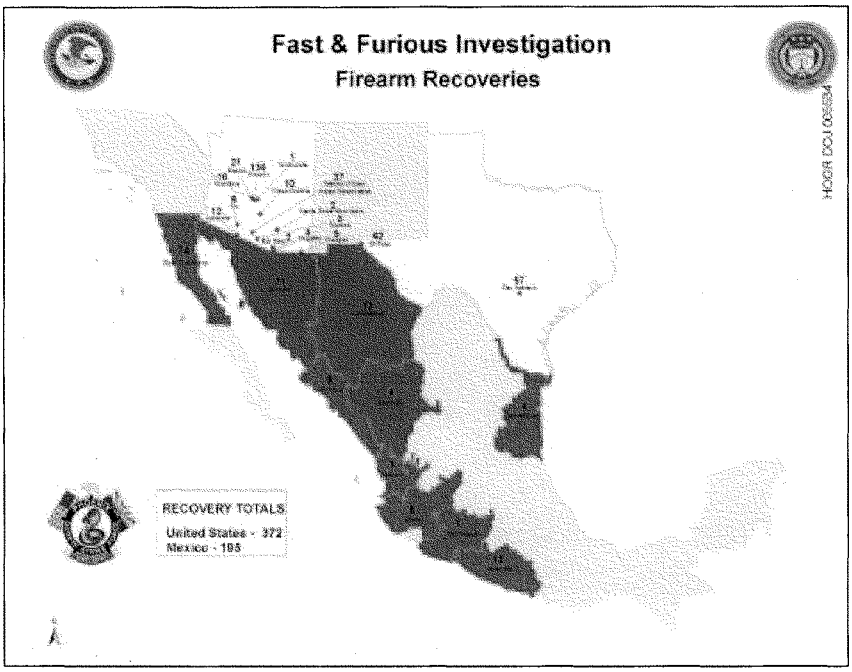
> Well, the next phase in the investigation, it really moves from an investigation phase to prosecution phase at that point in the sense of getting the case ready for indictment. So I know that the case agent ... as well as the others were meeting regularly with the AUSA Emory Hurley, compiling all the different pieces of evidence specific to each individual prospective defendant, to get to a point where we met what we felt in conjunction with the U.S. Attorney's Office, in coordination with them, that met the burden of proof to be able to seek an indictment.[154]

Mr. Newell stated that he understood that this process of "compiling" evidence takes significant time and, as a result, "we were hoping to get indictments in, as I recall, I think it was maybe October, November roughly."[155] Mr. Newell attributed the delay in the indictments to "a combination of workload [at the U.S. Attorney's Office] and the fact that there was a lot of work that needed to be done as far as putting the charges together."[156]

In contrast, U.S. Attorney Burke informed Committee staff that the delay in the indictments was because ATF-Phoenix failed to produce to the prosecutor the completed case file until October 2010:

> There is a formal process when an agency gives us a case with their cover, and the actual full documentation of the case was given to us, our office in October 2010, and I believe it was represented that it was given to us in August 2010.[157]

On January 19, 2011, ten months after Deputy Director Hoover ordered an exit strategy, the U.S. Attorney's Office filed an indictment against Manuel Celis-Acosta and 19 straw purchasers that included counts for conspiracy, dealing in firearms without a license, conspiracy to possess a controlled substance with intent to distribute, possession with intent to distribute marijuana, conspiracy to possess a firearm in furtherance of a drug trafficking offense, false statements in connection with acquisition of firearms, conspiracy to commit money laundering, money laundering, and aiding and abetting.[158]



Department of Justice, Report of Firearms Recoveries as of Indictment of Suspects (Jan. 21, 2011)

B. Challenges Specific to the Arizona U.S. Attorney's Office

Numerous ATF agents in Phoenix and senior ATF officials in Washington, D.C. informed the Committee that the U.S. Attorney's Office in Arizona historically has been reluctant to prosecute firearms traffickers. Due to the Federal prosecutors' analysis of heightened evidentiary thresholds in their district, agents reported that they faced significant challenges over the course of many years getting the U.S. Attorney's Office in Arizona to arrest, prosecute, and convict firearms traffickers.

"Viewed as an obstacle more than a help"

In testimony before the Committee, ATF Special Agent Peter Forcelli stated that within a few weeks of transferring to the Phoenix Field Division from New York in 2007, he noticed a difference in how Federal prosecutors in Arizona handled gun cases:

> 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.[159]

Special Agent Forcelli testified that "this situation wherein the United States Attorney's Office for Arizona in Phoenix declined most of our firearms cases, was at least one factor which led to the debacle that's now known as 'Operation Fast and Furious.'"[160] He added that little improvement has been made to date:

> I would say, if anything, we have gone from a 'D-minus' to maybe a 'D.' It is still far from, again, effective or far from what, you know, the taxpayers deserve. But it is still very bad. I mean I wouldn't say it is effective. ... Guns in the hands of gang members or cartel traffickers, that's pretty concerning.[161]

He added: "the U.S. Attorney's Office is kind of viewed as an obstacle more than a help in criminal prosecutions here in Arizona, here in the Phoenix area."[162]

In his transcribed interview with Committee staff, Acting ATF Director Kenneth Melson stated that Arizona historically has been a very difficult place to prosecute firearms traffickers. He stated:

> A: We have had, as Peter Forcelli said, a long history with the District of Arizona going back to Paul Charlton, if not earlier, where it was difficult to get these cases prosecuted. Diane

Humetewa was the second U.S. Attorney there who had issues with our cases and wouldn't prosecute. I was head of the Executive Office for U.S. Attorneys at the time. I know exactly what was going on there and the issues we had with getting cases prosecuted in the District of Arizona.

Q: What was going on there?

A: Well, they—

Q: Were they prosecuting gun cases?

A: No, no. And they had a limit—for example, they wouldn't take any case that had less than 500 pounds of marijuana coming across the border with people in custody of it. We had to take some of our most significant cases to the state courts to try because they wouldn't take them.

Q: So is it fair to say there was a frustration—I believe you said earlier there was a frustration and aggravation with the Arizona U.S. Attorney's office, is that fair?

A: Yes, I think there was a frustration. Peter Forcelli said it really like it was. Let me say it, Dennis Burke has really made a change in the office. And he has turned that office around, maybe not 180 degrees but he's getting there. He's at least at 45 or 50 degrees. We have gotten more prosecutions out of his office than before, but historically, we have had a real hard time getting prosecutions. And when we do, we get no sentences. The guidelines are so low.[163]

Evidentiary thresholds in Arizona

According to ATF officials, prosecutors in the Arizona U.S. Attorney's Office insisted that they could not prosecute firearms cases without physical possession of the firearms at issue. The prosecutors referred to this as the doctrine of *corpus delicti* ("body of the crime").[164] Because it was difficult to get Mexican authorities to cooperate in returning recovered firearms from that country, agents claimed that this created an effective bar to prosecution of many trafficking suspects. Agents told the Committee that prosecutors in the Arizona U.S. Attorney's Office applied the *corpus delicti* doctrine to refuse to prosecute cases even when suspects confessed to committing the crime.[165]

ATF counsel strongly disagreed with the U.S. Attorney's Office that firearms had to be present to prove that straw purchasers had lied on the Federal forms they

filled out when purchasing firearms. According to Special Agent in Charge Newell, the other other U.S. Attorneys' offices in his jurisdiction—New Mexico, Colorado, Wyoming, and Utah—did not share Arizona's interpretation of this evidentiary standard.[166]

On February 24, 2010, ATF counsel prepared a memorandum criticizing the *corpus delicti* doctrine as interpreted by the Arizona U.S. Attorney's Office. The memo stated:

> In furtherance of ATF's primary investigative authority and the Southwest Border Initiative, ATF agents spend a very significant number of hours—and often place themselves in dangerous circumstances—investigating alleged straw transactions as part of firearms trafficking cases. In recent years, few of these investigations have resulted in Federal prosecutions in the District of Arizona. It is our desire to work with your office to adjust the scope of our investigations and/or our investigative procedures to provide straw purchaser cases that fall within the prosecution guidelines of your office.[167]

According to ATF agents in Phoenix, the U.S. Attorney's Office also established additional evidentiary hurdles that made prosecuting firearms cases difficult, including requiring independent evidence of illegality for each firearms transaction. According to ATF agents, prosecutors would not build a case based on a pattern of multiple successive firearms purchases followed in quick succession by trips to Mexico. Instead, agents had to prove that each transaction, standing by itself, was illegal. The ATF-Phoenix Group Supervisor for Fast and Furious told the Committee how this policy applied:

> We talked that over at the U.S. Attorney's Office, and the conclusion was that we would need independent probable cause for each transaction. Just because he bought 10 guns yesterday doesn't mean that the 10 he is buying today are straw purchased. You can't transfer probable cause from one firearm purchase to the next firearm purchase. You need independent probable cause for each occurrence.[168]

The ATF Group Supervisor explained that application of this requirement meant that agents could not rely on prior actions as the basis for arresting suspected straw purchasers or interdicting weapons.[169]

ATF agents also informed the Committee that the Arizona U.S. Attorney's Office required proof, by clear and convincing evidence, that every person in a chain of people who possessed the firearm had the intent to commit a crime.[170] Agents

understood this to mean that they would not have sufficient probable cause to arrest a suspect or interdict weapons when suspects transferred guns to non-prohibited persons who then trafficked the guns to Mexico.[171]

DEA photo from announcement of Fast and Furious indictments (January 2011)

C. No Evidence that Senior Officials Authorized or Condoned Gunwalking in Fast and Furious

Contrary to some claims, the Committee has obtained no evidence that Operation Fast and Furious was conceived and directed by high-level political appointees at the Department of Justice. Rather, the documents obtained and interviews conducted by the Committee reflect that Fast and Furious was the latest in a series of fatally flawed operations run by ATF's Phoenix Field Division and the Arizona U.S. Attorney's Office during both the previous and current administrations.

The Acting Director of ATF, the Deputy Director of ATF, and the U.S. Attorney in Arizona each told the Committee that they did not approve of gunwalking in Operation Fast and Furious, were not aware that agents in ATF-Phoenix were using the tactic, and never raised any concerns with senior officials at the Department of Justice in Washington, D.C. In addition, the Deputy Attorney General and Assistant Attorney General for the Criminal Division both stated that ATF and prosecutors never raised concerns about gunwalking in Operation Fast and Furious to their attention, and that, if they had been told about gunwalking, they would have shut it down. The Attorney General has stated consistently that he was not aware of allegations of gunwalking until 2011, and the Committee has received no evidence that contradicts this assertion.

Attorney General Holder

> *"This should never have happened and it must never happen again."*
> *-Attorney General Holder*

The Attorney General has stated repeatedly that he was unaware that gunwalking occurred in Operation Fast and Furious until the allegations became public in early 2011.[172] In testimony before the Senate Judiciary Committee, Attorney General Holder was unequivocal in his criticism of the controversial tactics employed in Fast and Furious:

> Now I want to be very clear, any instance of so called gunwalking is simply unacceptable. Regrettably this tactic was used as part of Fast and Furious which was launched to combat gun trafficking and violence on our Southwest border.
>
> This operation was flawed in its concept and flawed in its execution, and unfortunately we will feel the effects for years to come as guns that were lost during this operation continue to show up at crime scenes

> both here and in Mexico. This should never have happened and it must never happen again.[173]

Testifying before the House Judiciary Committee, the Attorney General rejected the allegation that senior leaders at the Department of Justice approved of gunwalking in Operation Fast and Furious:

> I mean, the notion that people in the—in Washington, the leadership of the Department approved the use of those tactics in Fast and Furious is simply incorrect. This was not a top-to-bottom operation. This was a regional operation that was controlled by ATF and by the U.S. Attorney's Office in Phoenix.[174]

The Committee has obtained no evidence indicating that the Attorney General authorized gunwalking or that he was aware of such allegations before they became public. None of the 22 witnesses interviewed by the Committee claims to have spoken with the Attorney General about the specific tactics employed in Operation Fast and Furious prior to the public controversy.

To the contrary, the evidence received by the Committee supports the Attorney General's assertion that the gunwalking tactics in Operation Fast and Furious were developed in the field. The leaders of the two components with management responsibility for Operation Fast and Furious—ATF and the U.S. Attorney's Office—informed the Committee that they themselves were not aware of the controversial tactics used in Operation Fast and Furious and did not brief anyone at Justice Department headquarters about them. Similarly, the Attorney General's key subordinates—the Deputy Attorney General and the Assistant Attorney General for the Criminal Division—informed the Committee that they were never briefed on the tactics by ATF or the U.S. Attorney's Office and never raised concerns about the operation to the Attorney General.

In 2010, the Office of the Attorney General received six reports from the National Drug Intelligence Center that contained a brief, one paragraph overview of Operation Fast and Furious. None of the information in the documents discussed the controversial tactics used by ATF agents in the case. One typical paragraph read:

> From August 2 through August 6, the National Drug Intelligence Center Document and Media Exploitation Team at the Phoenix Organized Crime Drug Enforcement Task Force (OCDETF) Strike Force will support the Bureau of Alcohol, Tobacco, Firearms, and Explosives' Phoenix Field Division with its investigation of Manuel Celis-Acosta as part of OCDETF Operation Fast and the Furious. This investigation, initiated in September 2009 in conjunction with the Drug Enforcement Administration, Immigration and Customs Enforcement,

> and the Phoenix Police Department, involves a Phoenix-based firearms trafficking ring headed by Manuel Celis-Acosta. Celis-Acosta and [redacted] straw purchasers are responsible for the purchase of 1,500 firearms that were then supplied to Mexican drug trafficking cartels. They also have direct ties to the Sinaloa Cartel which is suspected of providing $1 million for the purchase of firearms in the greater Phoenix area.[175]

In his October 7, 2011, letter, the Attorney General explained that he never reviewed the reports and that his staff typically reviews these reports. He also testified that even if he had reviewed them personally, they did not indicate anything problematic about the case because "the entries suggest active law enforcement action being taken to combat a firearms trafficking organization that was moving weapons to Mexico."[176]

Documents provided to the Committee indicate that in December 2010, the Arizona U.S. Attorney's Office was preparing to inform the Attorney General's Office about the general status of upcoming indictments in Operation Wide Receiver when news of Agent Terry's death broke.

On December 14, 2010, Monty Wilkinson, the Attorney General's Deputy Chief of Staff, sent an email to U.S. Attorney Burke asking if he was available for a call that day.[177] The next day, U.S. Attorney Burke replied, apologized for not responding sooner, and said he would call later in the day.[178] He also stated that the U.S. Attorney's Office had a large firearms trafficking case he wanted to discuss that was set to be indicted in the coming weeks.[179]

Several hours later on December 15, 2010, U.S. Attorney Burke learned that Agent Terry had been murdered.[180] He alerted Mr. Wilkinson, who replied, "Tragic, I've alerted the AG, the Acting DAG, Lisa, etc."[181]

Later that same day, U.S. Attorney Burke learned that two firearms found at Agent Terry's murder scene had been purchased by a suspect in Operation Fast and Furious. He sent an email to Mr. Wilkinson forwarding this information and wrote: "The guns found in the desert near the murder [sic] BP officer connect back to the investigation we were going to talk about—they were AK-47's purchased at a Phoenix gun store."[182] Mr. Wilkinson replied, "I'll call tomorrow."[183]

In his interview with Committee staff, U.S. Attorney Burke stated that he did not recall having any subsequent conversation with Mr. Wilkinson that "included the fact that Fast and Furious guns were found at the scene" of Agent Terry's murder.[184] In a November 2011 hearing of the Senate Judiciary Committee, Senator Charles Grassley asked Attorney General Holder, "Did Mr. Wilkinson say anything to you about the connection between Agent Terry's death and the ATF operation?"

Attorney General Holder responded, "No, he did not."[185] In a January 27, 2011, letter to the Committee, the Department stated that Mr. Wilkinson "does not recall a follow-up call with Burke or discussing this aspect of the matter with the Attorney General."[186]

> *"I would have stopped it."*
> *-former Deputy Attorney General Grindler*

Deputy Attorney General Grindler

During his interview with Committee staff, Gary Grindler, the former Acting Deputy Attorney General stated that he was not aware of the controversial tactics that ATF-Phoenix employed in Operation Fast and Furious, never authorized them, and never briefed anyone at the Department of Justice about them.[187]

In March 2010, Acting ATF Director Melson and Deputy Director Hoover met with Mr. Grindler for a monthly check-in meeting and shared information about Operation Fast and Furious and other matters. As part of this briefing, Mr. Melson and Mr. Hoover stated that they discussed the total number of firearms purchased by individual suspects in Operation Fast and Furious, the total amount of money spent on purchasing these firearms, and a map displaying seizure events for the case in both the United States and Mexico.[188]

Mr. Grindler stated that neither of ATF's senior leaders raised any concerns with him about Operation Fast and Furious at that briefing or mentioned gunwalking:

> Q: And to your recollection, did Director Melson or Deputy Director Hoover ever tell you that they were deliberately allowing firearms to be transferred to Mexico in order to use them as a predicate for cases in the United States?
>
> A: I mean, I am extraordinarily confident that they didn't tell me that. That is just an absurd concept. If that had been told to me, I would not only have written something, but done something about it.
>
> Q: What would you have done?
>
> A: I would have stopped it. I would have asked for detailed briefings about this matter and figure out more clearly what's going on here.[189]

Deputy Director Hoover corroborated Mr. Grindler's account. In his interview with the Committee, Mr. Hoover explained that he did not inform the

Deputy Attorney General about gunwalking in Operation Fast and Furious because he did not know about it himself:

> A: Well, there's been reports that the Deputy Attorney General's office was aware of the techniques being employed in Fast and Furious, and that's not the case, because I certainly didn't brief them on the techniques being employed in Fast and Furious.
>
> Q: Because you didn't know?
>
> A: Right.[190]

When asked whether he ever discussed his briefing on Operation Fast and Furious with the Attorney General, Mr. Grindler said, "I don't have any recollection of advising the Attorney General about this briefing in 2010."[191]

Acting ATF Director Melson

In an interview with Committee staff on July 4, 2011, then-Acting ATF Director Kenneth Melson stated that he was not aware of the controversial tactics that the ATF-Phoenix Field Division employed, never authorized them, and never briefed anyone at the Department of Justice about them. Mr. Melson stated:

> I don't believe that I knew or that [Deputy Director] Billy Hoover knew that they were—that the strategy in the case was to watch people buy the guns and not interdict them at some point. That issue had never been raised. It had never been raised to our level by the whistleblowers in Phoenix—that stayed in-house down there. The issue was never raised to us by ASAC [Assistant Special Agent in Charge] Gillett who was supervising the case.
>
> It unfortunately was never raised to my level by SAC [Special Agent in Charge] Newell who should have known about the case, if he didn't, and recognize the issue that was percolating in his division about the disagreement as to how this was occurring. Nor was it raised to my level by DAD [Deputy Assistant Director] McMahon who received the briefing papers from [Phoenix Group Supervisor] Voth and may have had other information on the case. Nor was it given to me by a Deputy Assistant Director in OSII, the intel function, when he briefed this case the one time I wasn't there and he raised an objection to it and saw nothing change.[192]

Director Melson also denied that Department of Justice or senior ATF officials devised or authorized those tactics:

> Q: Did you ever use or authorize agents to use a tactic of non-intervention to see where the guns might go?
>
> A: I don't believe I did.
>
> Q: Did you ever tell agents not to use or authorize agents not to use other common investigative techniques like "knock and talks" or police pullovers in order to see where the guns might go in this case?
>
> A: No.
>
> Q: Did anyone at the Department of Justice ever tell you or tell anyone else at headquarters and it got to you that those tactics were authorized as part of a new strategy in order to follow the guns, let the guns go, see where they might end up?
>
> A: No.[193]

Documents obtained by the Committee indicate that Mr. Melson received three briefings regarding Fast and Furious in the early months of the operation and had regular status updates thereafter. He stated that "the general assumption among the people that were briefed on this case was that this was like any other case that ATF has done."[194] In addition to stating that he was not aware of the controversial tactics in Operation Fast and Furious, Mr. Melson stated that he did not know the full scope or scale of criminal activity by suspects until after concerns about gunwalking became public.

After the public controversy broke, Mr. Melson requested copies of Operation Fast and Furious case files to review for himself. He told Committee staff that he became extremely concerned after reviewing them:

> I think I became fully aware of what was going on in Fast and Furious when I was reading the ROIs. And I remember sitting at my kitchen table reading the ROIs, one after another after another, I had pulled out all Patino's—and ROIs is, I'm sorry, report of investigation—and you know, my stomach being in knots reading the number of times he went in and the amount of guns that he bought.

> And this is why I wish the people in Phoenix had alerted us during this transaction to exactly this issue, so we could have had at least made a judgment as to whether or not this could continue or not.[195]

ATF Deputy Director Hoover

During his interview with Committee staff, then-Deputy Director William Hoover stated that he had not been aware of the tactical details in Operation Fast and Furious and had not raised any concerns with Acting ATF Director Melson or anyone at Justice Department headquarters.[196] Deputy Director Hoover rejected the suggestion that senior management officials at ATF or the Department of Justice were responsible for any of the controversial tactical decisions made in Operation Fast and Furious:

> Q: But you don't believe that this is some sort of top-down—it wasn't a policy or some tactical strategy from either ATF management or main Justice to engage in what happened here in Phoenix in Fast and Furious?
>
> A: No, sir. It's my firm belief that the strategic and tactical decisions made in this investigation were born and raised with the U.S. Attorney's Office and with ATF and the OCDETF strike force in Phoenix.[197]

Mr. Hoover's subordinates also informed the Committee that they did not warn him about gunwalking allegations in Operation Fast and Furious because they were unaware of them. Assistant Director for Field Operations Mark Chait told the Committee that he was "surprised" when he learned of allegations that gunwalking occurred in Operation Fast and Furious in February 2011.[198] Deputy Assistant Director for Field Operations William McMahon, the supervisor above the Phoenix Field Division, stated:

> I don't think at any point did we allow guns to just go into somebody's hands and walk across the border. I think decisions were made to allow people to continue buying weapons that we suspected were going to Mexico to put our case together. But I don't believe that at any point we watched guns going into Mexico. I think we did everything we could to try to stop them from going to Mexico.[199]

Although Mr. Hoover stated that he was unaware of gunwlking allegations in Operation Fast and Furious prior to the public controversy, he informed Committee staff that he became concerned in March 2010 about the number of guns being purchased.[200] As discussed above, Mr. Hoover received a briefing in March 2010 during which ATF officials described the suspects, the number of firearms, the

amount of money each had spent, known stash houses, and the locations where firearms had been recovered. Mr. Hoover told the Committee that he ordered an "exit strategy" to close the case and seek indictments within 90 days.

Apart from whether Mr. Hoover was aware of specific gunwalking allegations in Operation Fast and Furious, it remains unclear why he failed to inform Acting ATF Director Melson or senior Justice Department officials about his more general concerns with the investigation or his directive for an exit strategy.

During his interview with Committee staff, Deputy Director Hoover took substantial personal responsibility for ATF's actions in Operation Fast and Furious. He stated:

> I blame no one else. I blame no one else – not DEA, not the FBI, not the U.S. Attorney's Office. If we had challenges, then we need to correct those challenges. I am the deputy director at ATF, and, ultimately, you know, everything flows up, and I have to take responsibility for the mistakes that we made.[201]

United States Attorney Burke

During an interview with Committee staff, Arizona U.S. Attorney Dennis Burke stated that neither he nor anyone above him ever authorized non-interdiction of weapons or letting guns walk in Operation Fast and Furious:

> Q: To your knowledge as the U.S. Attorney for the District of Arizona, did the highest levels of the Department of Justice authorize [the] non-interdiction of weapons, cutting off of surveillance, as an investigative tactic in Operation Fast and Furious?
>
> A: I have no knowledge of that.
>
> Q: Do you believe you would have known if that was the case?
>
> A: Yes.
>
> Q: Did you ever authorize those tactics?
>
> A: No.
>
> ...
>
> Q: Did anyone ever discuss—from the Department of Justice main headquarters—your supervisors—ever discuss with

you or raise to your attention that there was a new policy with respect to interdiction of weapons or surveillance of firearms?

A: No. Not that I can recall at all.

Q: And did anyone ever—from the Department of Justice, Main Justice I will call it, ever tell you that you were authorized to allow weapons to cross the border when you otherwise would have had a legal authority to seize or interdict them because they were a suspected straw purchase or it was suspected that they were being trafficked in a firearms scheme?

A: I have no recollection of ever being told that.[202]

Although U.S. Attorney Burke agreed with ATF-Phoenix's proposal to build a "bigger" case that targeted the organizers of the firearms trafficking conspiracy, he stated that ATF-Phoenix never indicated that agents would be letting guns walk as part of the investigation:

Q: Did you ever discuss with him [Special Agent in Charge Newell] a deliberate tactic of non-interdiction to see where the weapons ended up? To see if they ended up with the DTO in Mexico?

A: I do not recall that at all.

Q: Would that stick out in your mind at this point if he had said we're going to let the guns go, find them in crime scenes in Mexico, and then use that to make a connection to a DTO?

A: I don't recall that at all. I was under the opposite impression, which was that based on his contacts and the relationships with Mexico and what they were doing, that they would be working with Mexico on weapons transferred into Mexico.[203]

Emails from Special Agent in Charge Newell touting recent seizures of firearms in both the United States and in Mexico are consistent with U.S. Attorney Burke's statement that he believed ATF-Phoenix was coordinating interdiction with appropriate law enforcement agencies on both sides of the border. For example, on June 24, 2010, Mr. Newell sent an email to Mr. Burke with a picture of a .50 caliber weapon that had been recovered, stating: "Never ends ... our folks are working non-stop around the clock 7 days a week. But they are making some great seizures and gleaning some great Intel."[204]

The lead prosecutor on the case, Emory Hurley, sent Mr. Burke similar updates. On August 16, 2010, for example, Mr. Hurley prepared a memorandum asserting that "the investigation has interdicted approximately 200 firearms, including two .50 caliber rifles" and stating, "[a]gents have not purposely let guns 'walk.'"[205]

Criminal Division review of Fast and Furious wiretap applications

In testimony before a Subcommittee of the Senate Judiciary Committee on November 1, 2011, Assistant Attorney General Lanny Breuer stated that he first became aware of the controversial tactics in Operation Fast and Furious after they became public:

> I found out first when the public disclosure was made by the ATF agents early this year. When they started making those public statements, of course, at that point, as you know, both the leadership of ATF and the leadership of the U.S. Attorney's Offices adamantly said that those allegations were wrong.
>
> But as those allegations became clear, that is when I first learned that guns that could—that ATF had both the ability to interdict and the legal authority to interdict, that they failed to do so. That is when I first learned that, Senator.[206]

Similarly, in an interview with Committee staff, Deputy Assistant Attorney General Jason Weinstein stated:

> I did not know at any time during the investigation of Fast and Furious that guns had walked during that investigation. I first heard of possible gunwalking in Fast and Furious when the whistleblower allegations were made public in early 2011. Had I known about gunwalking in Fast and Furious before the allegations became public, I would have sounded the alarm about it.[207]

"I would have sounded the alarm"
-Assistant Attorney General Breuer

Mr. Breuer and Mr. Weinstein also rejected the allegation that they should have been able to identify gunwalking in Operation Fast and Furious based on the Criminal Division's legal reviews of wiretap applications submitted by the Arizona U.S. Attorney's Office.

Federal law requires that senior Department officials approve all Federal law enforcement applications to Federal judges for the authority to conduct wiretaps.[208] The Department has assigned that legal review duty to the Office of

Enforcement Operations in the Criminal Division.[209] During Operation Fast and Furious, numerous wiretap applications were submitted to the Criminal Division to determine whether they satisfied the legal threshold established under the Fourth Amendment to the United States Constitution. Drafts of the applications were sent to the Office of Enforcement Operations, which prepared cover memos for final review and approval by a Deputy Assistant Attorney General.[210] The wiretap applications are under court seal and therefore have not been produced to the Committee.

Mr. Weinstein informed the Committee that he reviewed the cover memoranda prepared by the Office of Enforcement Operations for three wiretap applications in Operation Fast and Furious and that he approved all three.[211] He stated that his general practice was to read the cover memo first and examine the underlying affidavit only if there were issues or questions necessary to the probable cause determination that the summary memo did not provide.[212] Mr. Weinstein stated that he believed his practice was consistent with the conduct across various administrations.[213]

Mr. Weinstein rejected the criticism that he should have identified gunwalking in Operation Fast and Furious based on his review of the memoranda summarizing the wiretap affidavits in the case. Although he could not comment on the contents of the documents because they are under seal by a Federal District Court judge, he stated:

> It's not a fair criticism. As I said earlier, I can't comment on the contents. What I can say is I obviously have a sensitive radar to gunwalking, since that's been the focus of my life, my professional life, is keeping guns out of the hands of criminals. So when I saw in Wide Receiver that an investigation, however well intentioned it may have been, was being conducted in a way that put guns in the hands of criminals, I reacted pretty strongly to it. Had I seen anything at any time during the investigation of Fast and Furious that raised the same concerns, I would have reacted. And I would have reacted even more strongly because that would have meant it was still going on and that Wide Receiver was not in fact an isolated incidence as I believed it to be.[214]

"The focus of my life, my professional life, is keeping guns out of the hands of criminals."
-Deputy Assistant Attorney General Weinstein

In testimony before the Senate Judiciary Committee, Mr. Breuer made clear that his staff reviews wiretap affidavits to determine the legal sufficiency of the

request rather than to conduct oversight of investigative tactics in law enforcement investigations. He stated:

> [A]s Congress made clear, the role of the reviewers and the role of the deputy in reviewing Title III applications is only one. It is to ensure that there is legal sufficiency to make an application to go up on a wire and legal sufficiency to petition a Federal judge somewhere in the United States that we believe it is a credible request. But we cannot—those now 22 lawyers that I have who review this in Washington, and it used to only be 7, cannot and should not replace their judgment, nor can they, with the thousands of prosecutors and agents all over the country.
>
> Theirs is a legal analysis: Is there a sufficient basis to make this request? We must and have to rely on the prosecutors and their supervisors and the agents and their supervisors all over the country to determine that the tactics that are used are appropriate.[215]

Criminal Division response to Wide Receiver

Questions have been raised about whether Mr. Breuer or Mr. Weinstein should have been aware of gunwalking in Operation Fast and Furious because they learned about similar tactics in a different case dating back to 2006 and 2007, Operation Wide Receiver. Documents obtained by the Committee indicate that as soon as they learned about gunwalking during the previous Administration, Mr. Breuer and Mr. Weinstein took immediate steps to register their concerns directly with the highest levels of ATF leadership, but they did not inform the Attorney General or the Deputy Attorney General.

In March 2010, a Criminal Division supervisor sent an email to Mr. Weinstein regarding the Wide Receiver case stating that, "with the help of a cooperating FFL, the operation has monitored the sale of over 450 weapons since 2006."[216] In response, Mr. Weinstein expressed concern, writing: "I'm looking forward to reading the pros[ecution] memo on Wide Receiver but am curious—did ATF allow the guns to walk, or did ATF learn about the volume of guns after the FFL began cooperating?"[217] The supervisor inaccurately responded: "My recollection is they learned afterward."[218] As discussed above, ATF Operational Plans and other documents provided to the Committee show that ATF agents in Arizona were contemporaneously aware of the illegal straw purchases.

The next month, Mr. Weinstein received and reviewed a copy of the prosecution memorandum prepared by the criminal prosecutor in the Wide Receiver case.[219] On April 12, 2010, Mr. Weinstein wrote to the prosecutors stating:

> ATF HQ should/will be embarrassed that they let this many guns walk—I'm stunned, based on what we've had to do to make sure not even a single operable weapon walked in UC [undercover] operations I've been involved in planning—and there will be press about that.[220]

In his interview with Committee staff, Mr. Weinstein explained that "there was no question from the moment those sales were completed that ATF had a lot of evidence that those sales were illegal. That's pretty rare. And it's that specific fact that set me off on Wide Receiver."[221] He also stated that the gunwalking tactics used in Wide Receiver "were unlike anything I had encountered in my career as a prosecutor."[222] As a former prosecutor in the U.S. Attorney's Office in Baltimore, he added:

> One of my priorities in all of the work I did in Maryland was to stop guns from getting to criminals and get guns out of the hands of criminals who managed to get their hands on them. But I was very sensitive about any situation or any operation that might result in law enforcement, however inadvertently, putting a gun into the hands of a criminal. And so all of the operations that I participated in designing, and I referred to this in the email, were designed to make sure that not even a single operable weapon got in the hands of a criminal.[223]

After reading the prosecution memorandum, Mr. Weinstein contacted his supervisor, Assistant Attorney General Breuer. On April 19, 2010, they met to discuss Mr. Weinstein's concerns about ATF-Phoenix's handling of the case.[224] According to Mr. Weinstein, Mr. Breuer shared his shock about the gunwalking tactics used in Wide Receiver:

> [T]here's no question in my mind from his reaction at the meeting that Mr. Breuer shared the same concerns that I did. As I indicated in my opening, Mr. Breuer has made helping Mexico and stopping guns from getting to Mexico a top priority. I had commented to somebody in my office that I traded when I came from Baltimore to the Criminal Division, I traded having a boss come into my office every day and ask me what am I doing to keep the murder rate down, to a boss who is asking me virtually every day, what am I doing to stop guns from going to Mexico? So when he heard about this he had the same reaction I did.[225]

According to Mr. Weinstein, Mr. Breuer directed him to immediately register their concerns "directly with the leadership of ATF."[226] The next day, Mr. Weinstein contacted ATF Deputy Director Hoover to request a meeting.[227] On April 28, 2010, Mr. Weinstein and Mr. Hoover met and were joined by the Acting Chief of the Organized Crime and Gang Section at DOJ, James Trusty and ATF Deputy Assistant

Director William McMahon.[228] Mr. Weinstein told the Committee that he expressed his serious concerns about ATF-Phoenix's management of Wide Receiver and the fact that so many firearms had been allowed to walk. Notes taken at that meeting indicate that of 183 guns sold in the first part of Operation Wide Receiver, the "vast majority walk[ed]" and were linked to "violent crime."[229] Mr. Weinstein stated:

> [A]t the meeting the first topic on the agenda was to talk about the tactics. And so Mr. Trusty and I went through the facts of the case and I explained my concerns about the tactics. The meeting was nearly 2 years ago now, and as I sit here today I just can't recall the specific words used, but my strong memory from that meeting is that Mr. Hoover had the same reaction I did; that is, that he shared my concerns about the tactics. And I walked away from that meeting being satisfied that although this had happened in '06 and '07, this was not the kind of thing that would be happening under Mr. Hoover's watch. I wish I could remember the exact words used, but that's the strong sense I walked away with.[230]

Although neither Mr. Breuer nor Mr. Weinstein had direct supervisory authority over ATF, Mr. Weinstein told the Committee that the seriousness of issue compelled them to request the meeting. Mr. Weinstein stated:

> I raised this with Mr. Hoover because I knew it was something he would be concerned about, and he was concerned about it. I didn't direct him. It's not my place to direct him. I didn't ask him to do anything in particular. His reaction, as I said, was exactly what I expected, which was concern about the tactics. And so I just walked away. I walked away feeling there was no reason to worry that this was the kind of thing that he would tolerate.[231]

Mr. Weinstein stated that he relayed the details of the meeting to Mr. Breuer, and at that time both of them believed that they had satisfied their duty to address the issue with the appropriate managers.[232] Mr. Weinstein also noted that he believed the gunwalking in Wide Receiver was an "extreme aberration from years ago."[233]

Despite raising these concerns about gunwalking in Operation Wide Receiver immediately with senior ATF leadership, Mr. Breuer later expressed regret for not raising these concerns directly with the Attorney General or Deputy Attorney General. During an exchange at a hearing with Senator Grassley, Mr. Breuer stated:

> I regret the fact that in April of 2010, I did not. At the time, I thought that we—dealing with the leadership of ATF was sufficient and reasonable. And frankly, given the amount of work I do, at the time,

> I thought that that was the appropriate way of dealing with it. But I cannot be more clear that knowing now—if I had known then what I know now, I, of course, would have told the Deputy and the Attorney General.[234]

Criminal Division interactions with Mexican Officials

According to documents obtained by the Committee, Assistant Attorney General Breuer met with senior officials from the Mexican government in Mexico on February 2, 2011, to discuss potential areas of cooperation to fight transnational organized crime and drug trafficking.[235] According to a summary, the group discussed a wide range of issues including U.S. extradition requests to Mexico, firearms trafficking, and a cooperative security agreement between the United States, Mexico, and countries in Central America.[236]

With respect to combating firearms trafficking, the Mexican Undersecretary for North America explained that "greater coordination and flow of information would be helpful to combat arms trafficking into Mexico."[237] Mr. Breuer responded by telling the Mexican officials that the Department had sought to increase penalties for straw purchasers and desired their support for such measures. According to the summary, Mr. Breuer also made a suggestion about one way the two countries could increase coordination:

> AAG Breuer suggested allowing straw purchasers cross into Mexico so SSP [Mexican federal police force] can arrest and PGR [the Mexican Attorney General's Office] can prosecute and convict. Such coordinated operations between the US and Mexico may send a strong message to arms traffickers.[238]

Documents produced to the Committee indicate that this summary of Mr. Breuer's meeting was shared with Acting ATF Director Melson in anticipation of his February 8, 2011, meeting with the U.S. Ambassador to Mexico.[239] According to a summary of this latter meeting, Mr. Melson discussed with the Ambassador the possibility of controlled firearms deliveries, but the Department of Justice Attaché who was also present raised concern about the "inherent risk" of such joint operations:

> Melson and the Ambassador discussed the possibility of allowing weapons to pass from the US to Mexico and US law enforcement coordinating with SSP and PGR to arrest and prosecute the arms trafficker. I raised the issue that there is an inherent risk in allowing weapons to pass from the US to Mexico; the possibility of the GoM [Government of Mexico] not seizing the weapons; and the weapons being used to commit a crime in Mexico.[240]

The documents obtained by the Committee do not indicate that any action was taken after this meeting regarding efforts to coordinate operations with Mexican authorities.

As described in the section above on the Hernandez case, the memo prepared for Attorney General Mukasey in 2007 similarly explained that "ATF would like to expand the possibility of such joint investigations and controlled deliveries—since only then will it be possible to investigate an entire smuggling network, rather than arresting simply a single smuggler.[241] The memo provided to Attorney General Mukasey was explicit, however, in warning that previous operations "have not been successful."[242]

D. Department Responses to Gunwalking in Operation Fast and Furious

Inaccurate information initially provided to Congress

On January 27, 2011, Senator Charles Grassley wrote a letter to the Department of Justice relaying allegations from whistleblowers that ATF-Phoenix had walked guns in Operation Fast and Furious.[243] On February 4, 2011, Ron Weich, the Assistant Attorney General for Legislative Affairs, sent a written response that stated:

> [T]he allegation described in your January 27 letter—that ATF "sanctioned or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico"—is false. ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.[244]

As this report documents, it became apparent during the course of the Committee's investigation that this statement in the Department's letter was inaccurate and, on December 2, 2011, the Deputy Attorney General formally withdrew the Department's February 4th letter.[245] On the same day, the Department provided the Committee with more than 1,000 pages of internal emails, notes, and drafts from all of the parties involved in the drafting of the February 4 letter, as well as a lengthy explanation of how the inaccurate information was included in the letter. According to the Department:

> Department personnel, primarily in the Office of Legislative Affairs, the Criminal Division and the Office of the Deputy Attorney General, relied on information provided by supervisors from the components in the best position to know the relevant facts: ATF and the U.S. Attorney's Office in Arizona, both of which had responsibility for Operation Fast and Furious. Information provided by those supervisors was inaccurate.[246]

The documents obtained by the Committee and the interviews conducted by Committee staff support this explanation.

Documents obtained by the Committee indicate that, during the drafting of the letter, senior ATF officials insisted that ATF-Phoenix had not allowed guns to walk in Operation Fast and Furious. Detailed notes of a meeting with Acting Director Melson taken by a Department of Justice official state that ATF "didn't let a guns [sic] walk," and "didn't know they were straw purchasers at the time."[247]

Additional notes taken of a meeting with Deputy Director Hoover state that "ATF doesn't let guns walk," and "we always try to interdict weapons purchased illegally."[248]

Both Acting ATF Director Melson and ATF Deputy Director Hoover told the Committee that they did not intend to mislead the Department or Congress and that they sincerely believed that guns had not walked in Operation Fast and Furious at the time the letter was drafted.[249]

The U.S. Attorney's Office in Arizona also adamantly denied allegations of gunwalking. On January 31, 2011, U.S. Attorney Burke wrote to senior Department officials that the allegations "are based on categorical falsehoods."[250] Mr. Burke and the Chief of the Criminal Division at the U.S. Attorney's Office sent a series of emails over the course of that week continuing to deny the allegations and pressing for a strong response.[251]

In his interview with Committee staff, U.S. Attorney Burke stated that, after later learning about the scope of gunwalking in Operation Fast and Furious, he deeply regretted conveying "inaccurate" information to senior Department officials drafting the February 4 response, but that it "was not intentional."[252]

The Committee was not able to interview one witness from the U.S. Attorney's Office, the former Criminal Chief, Patrick Cunningham. In a letter on January 19, 2011, Mr. Cunningham's attorney informed the Committee that he was exercising his Fifth Amendment right against self-incrimination. The letter stated:

> I am writing to advise you that my client is going to assert his constitutional privilege not to be compelled to be a witness against himself. The Supreme Court has held that "one of the basic functions of the privilege is to protect innocent men." *Grunewald v. United States*, 353 U.S. 391,421 (1957); *see also Ohio v. Reiner*, 532 U.S.17 (2001) (per curiam). The evidence described above shows that my client is, in fact, innocent, but he has been ensnared by the unfortunate circumstances in which he now stands between two branches of government. I will therefore be instructing him to assert his constitutional privilege.[253]

During his interview with Committee staff, U.S. Attorney Burke stated that Mr. Cunningham adamantly denied that gunwalking occurred in Operation Fast and Furious.[254] Similarly, Deputy Assistant Attorney General Weinstein informed Committee staff that Mr. Cunningham continued to assert that gunwalking had not occurred in Operation Fast and Furious after the February 4, 2011, letter.[255]

Within the Criminal Division, Mr. Weinstein informed the Committee that he offered to assist in the drafting of the February 4 letter "to be helpful," but that he

had no independent knowledge of Operation Fast and Furious and relied on ATF and the U.S. Attorney's Office for information. He stated:

> As the Department prepared its response, I and others in Main Justice were repeatedly and emphatically assured by supervisors in the relevant components who were in position to know the case best—that is the Arizona U.S. Attorney's Office and ATF leadership—that no guns had been allowed to walk in connection with Fast and Furious; and it was on that basis that the Department provided inaccurate information to Congress in the February 4th letter.
>
> Now much attention has been paid to the sentence in that letter that reads, "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." As the documents you've received made clear, I and others at Main Justice received multiple assurances from the U.S. Attorney's Office and from ATF that this statement, like the other information in the letter, was true. ...
>
> Given what I know now, of course, I wish I had not placed such faith in the assurances provided to me by the leadership of the U.S. Attorney's Office and ATF. But given what I knew then and given the strength of those assurances I believed at the time that it was entirely appropriate to do so. I trusted what was said to me and I firmly believed at that time that in fact ATF had not let guns walk in Fast and Furious. Obviously, time has revealed the statements made to me and others to be inaccurate, and that is beyond disappointing to me.[256]

Mr. Weinstein also explained why he did not raise concerns about gunwalking during the previous administration in Operation Wide Receiver in 2006 and 2007. During his interview with Committee staff, he stated:

> Now some have said that because I knew about Wide Receiver at the time I assisted with the February 4th letter, I knew that statement to be untrue, and that is just not correct. Let me explain why.
>
> Wide Receiver was an old case in which inappropriate tactics had been used in the investigative phase years earlier. This occurred under a prior administration, under a different U.S. Attorney's Office management and different ATF management. Because of the repeated assurances I and others received in February 2011, from the then current leadership of the U.S. Attorney's Office in ATF that guns had not walked in Fast and Furious and from ATF that it was making every effort to interdict guns, I did not make any connection between

Wide Receiver and Fast and Furious. For that reason, I simply was not thinking about Wide Receiver as I assisted with the February 4th letter which I understood to be about Fast and Furious.[257]

Mr. Weinstein also rebutted the allegation of an intentional cover-up:

Q: Mr. Weinstein, during the drafting of the February 4th letter, did you intentionally try to mislead Congress?

A: Absolutely not.

Q: To your knowledge, did Mr. Breuer ever try to intentionally mislead Congress?

A: Absolutely not.

Q: To your knowledge, did anyone else at Main Justice, during the drafting of the February 4th letter, intentionally try to mislead Congress?

A: Absolutely not.[258]

Request for IG investigation and reiteration of Department policy

Soon after the Attorney General became aware of allegations relating to gunwalking in Operation Fast and Furious, he took several steps to address them. First, the Attorney General requested that the Inspector General investigate Operation Fast and Furious and the Department's response to Senator Grassley's letter.[259] Testifying before a Senate Appropriations Subcommittee, the Attorney General stated:

> It is true that there have been concerns expressed by ATF agents about the way in which this operation was conducted, and on that I took those allegations, those concerns, very seriously and asked the Inspector General to try to get to the bottom of it. An investigation, an inquiry is now under way.
>
> I've also made clear to people in the Department that letting guns walk—I guess that's the term that the people use—that letting guns walk is not something that is acceptable. Guns are—are different than drug cases or cases where we're trying to follow where money goes.
>
> We cannot have a situation where guns are allowed to walk, and I've made that clear to the United States Attorneys as well as the Agents in Charge in the various ATF offices.[260]

On March 9, 2011, Deputy Attorney General James Cole hosted a conference call with Southwest Border United States Attorneys in which he reiterated the Department's policy against gunwalking. After the call, Mr. Cole followed up with an email summarizing the conversation:

> As I said on the call, to avoid any potential confusion, I want to reiterate the Department's policy: We should not design or conduct undercover operations which include guns crossing the border. If we have knowledge that guns are about to cross the border, we must take immediate action to stop the firearms from crossing the border, even if that prematurely terminates or otherwise jeopardizes an investigation.[261]

Personnel actions

Justice Department officials have explained that, although they are awaiting the findings from the Inspector General's investigation before making any final personnel determinations, they have removed the key players in Operation Fast and Furious from any further operational duties.

At the U.S. Attorney's Office for the District of Arizona, all of the key personnel have resigned, been removed, or been relieved of their relevant duties in the aftermath of Operation Fast and Furious. On August 30, 2011, Dennis Burke resigned as the U.S. Attorney.[262] In January 2012, the Chief of the Criminal Division, Patrick Cunningham, resigned his position and left the U.S. Attorney's Office.[263] The Section Head responsible for supervising Operation Fast and Furious resigned his supervisory duties in the fall of 2011, and the Assistant U.S. Attorney who was responsible for managing Operation Fast and Furious was moved out of the criminal division to the civil division.[264]

On August 30, 2011, the Justice Department removed Kenneth Melson as the acting head of ATF and reassigned him to a position as a forensics advisor in the Department's Office of Legal Policy.[265] On October 5, 2011, ATF removed Deputy Director William Hoover from his position and subsequently reassigned him to a non-operational role.[266] Also on October 5, 2011, ATF removed Assistant Director for Field Operations Mark Chait from his position and subsequently placed him in a non-operational role as well.[267] Deputy Assistant Director for Field Operations William McMahon was also reassigned as a Deputy Assistant in the ATF Office of Professional Responsibility and Security Operations on May 13, 2011, and was later reassigned to a non-operational position.[268]

ATF supervisors from the Phoenix Field Division have also been reassigned. Special Agent in Charge William Newell was reassigned to an administrative position as a special assistant in the ATF Office of Management.[269] Assistant Special

Agent in Charge George Gillett was reassigned as a liaison to the U.S. Marshal's Service.[270] The former Supervisor of Group VII, David Voth, was reassigned to ATF's Tobacco Division.[271]

Agency reforms

On January 28, 2011, Deputy Attorney General James Cole sent a letter to Congress explaining that the Department was "undertaking key enhancements to existing Department policies and procedures to ensure that mistakes like those that occurred in Wide Receiver and Fast and Furious are not repeated."[272] The letter detailed numerous reforms, including:

- Implementing a new Monitored Case Program to increase coordination between ATF headquarters and the field for sensitive investigations and to improve oversight;
- Clarifying the prohibition on gunwalking and providing guidance on responding to a gun dealer concerns about suspicious purchasers;
- Revising ATF's Confidential Informants Usage Policy and its Undercover Operations Policy and establishing committees on undercover operations and confidential informants;
- Providing training to personnel in ATF's Phoenix Field Division to address U.S.-Mexico cross-border firearms trafficking issues, improve techniques and strategies, and educate agents on the applicable law; and
- Restructuring ATF's Office of the Ombudsman by appointing a senior special agent as Chief ATF Ombudsman and adding a full-time special agent to handle agent complaints.[273]

Deputy Attorney General Cole also outlined key improvements to ensure the "accuracy and completeness" of the information the Department provides to Congress. The Department issued a directive requiring the responding component to ensure that it supplies Congress with the most accurate information by soliciting information from employees with detailed personal knowledge of the relevant subject matter. Ultimate responsibility for submitting or reviewing a draft response to Congress is assigned to an appropriate senior manager, according to the new directive. Finally, the directive emphasizes the importance of accuracy and completeness of the information provided to Congress over the timeliness of responding to requests.[274]

V. RECOMMENDATIONS

As its title indicates, the Committee on Oversight and Government Reform has two primary missions. Not only is it charged with conducting oversight of programs to root out waste, fraud, and abuse, but it is also responsible for reforming these programs to ensure that government works more effectively and efficiently for the American people. For these reasons, set forth below are ten constructive recommendations intended to address operational problems identified during the course of this investigation.

These recommendations for both Executive and Congressional action are not intended to be comprehensive or exhaustive, and some already may be under consideration or in various stages of implementation at the Department of Justice and ATF.

Strictly Enforce the Prohibition on Gunwalking Across Law Enforcement Agencies. Documents obtained by the Committee indicate that ATF lacked sufficient clarity regarding its operational policies and training for firearms trafficking cases. Following the public controversy over Fast and Furious, Acting ATF Director B. Todd Jones issued a memo strongly stating the Department's policy against gunwalking, and the Attorney General has used his position to publicly reiterate this prohibition. These measures should be complemented by efforts within each Federal law enforcement agency to establish clear operational policies with respect to suspect firearms transfers and provide appropriate training for field agents and supervisors.

Improve Management and Oversight of ATF Trafficking Investigations. Documents obtained by the Committee reveal a lack of adequate communication between ATF field offices and headquarters about significant trafficking investigations. In several cases, deficient communication was magnified by disagreements between the field and headquarters about tactics and strategy. ATF should improve its management of investigations by requiring operational approval of all significant gun trafficking investigations by senior ATF officials in order to ensure consistent application of ATF policies and procedures.

Require "Operational Safety Strategy" in Trafficking Investigations. As part of its broader effort to improve management and oversight of significant trafficking investigations, ATF should require that each Operational Plan developed in the field include an Operational Safety Strategy that analyzes the risks to agents and the public of firearms potentially being released into

the community and sets forth appropriate operational safeguards. Senior ATF officials should approve these plans in order to ensure that each specific operation has sufficient resources to implement the safeguards intended to protect agent and public safety.

Enhance the Accessibility and Responsiveness of the ATF Ombudsman. Documents obtained by the Committee indicate that Operation Fast and Furious was one of several deeply flawed operations run by ATF's Phoenix Field Division since 2006. Line agents reported to the Committee that they made their concerns about these controversial tactics public only after raising them first with their supervisors, but they stated that their concerns were not heeded. To ensure agents' concerns are communicated to ATF leadership, ATF should consider ways to improve its Office of the Ombudsman to make it more accessible and responsive to ATF line agents.

Conduct a Review of the U.S. Attorney's Office in Arizona. Documents and testimony received by the Committee indicate that the legal interpretations and prosecutorial decisions regarding firearms cases made by officials in the U.S. Attorney's Office in Arizona may differ substantially from those of other U.S. Attorneys' offices. Because it remains unclear to what extent these differences are the result of judicial, prosecutorial, or individual decisions, the Department of Justice should direct the Executive Office for United States Attorneys to conduct a thorough review of the Arizona U.S. Attorney's Office to ensure that it is doing everything it can to keep illegal guns off the streets and out of the hands of criminals.

Expand the Multiple Long Gun Sales Reporting Requirement. Numerous law enforcement agents testified before the Committee that obtaining reports on multiple purchases of long guns, including AK-47 variant assault weapons and .50 caliber semi-automatic sniper rifles that are now the "weapons of choice" for international drug cartels, would provide them with timely and actionable intelligence to help combat firearms trafficking rings. In July 2011, the Department of Justice issued a rule requiring such reports for weapon sales in certain states. Earlier this month, a Federal District Court upheld the rule, finding that "ATF acted rationally."[275] ATF should now expand the reporting requirement to apply to other states in which firearms trafficking networks are particularly active.

Confirm or Appoint a Permanent ATF Director. Consistent and strong leadership is vital to strengthening ATF and ensuring that policies and procedures are applied consistently. For six years, however, ATF has been forced to contend with temporary leadership because individual senators have blocked the confirmation of a permanent director. The Senate should

confirm a permanent director for ATF as soon as possible, and the President should consider a recess appointment if the Senate fails to do so.

Enact a Dedicated Firearms Trafficking Statute. During the Committee's investigation, multiple law enforcement agents warned that there is currently no Federal statute that specifically prohibits firearms trafficking and, as a result, prosecutors often charge traffickers with "paperwork violations" such as dealing in firearms without a license. The agents testified that these cases are difficult to prove and that U.S. Attorneys' offices frequently decline to prosecute. They stated that a Federal statute specifically dedicated to prohibiting firearms trafficking would help them disrupt, defeat, and dismantle firearms trafficking organizations. In July 2011, Ranking Member Elijah Cummings and Representative Carolyn Maloney introduced legislation in the House to establish such a firearms trafficking statute. Senator Kirsten Gillibrand has introduced a similar bill in the Senate. Congress should consider and pass this legislation without delay.

Provide ATF with Adequate Resources to Combat Illegal Gun Trafficking. Documents and testimony obtained by the Committee revealed that ATF line agents were drastically under-resourced, resulting in deficient surveillance of suspected straw purchasers and firearms traffickers. Over the past decade, ATF's budget has not kept pace with its law enforcement responsibilities, particularly in light of the exponential growth in illegal firearms trafficking to Mexico. Congress should appropriate the additional resources ATF needs to perform its mission and combat gun trafficking along the Southwest Border.

Repeal the Prohibition Against Reporting Crime Gun Trace Data. To increase transparency by ATF and oversight by Congress, Congress should repeal the prohibition against reporting crime gun trace data and require ATF to provide yearly reports to Congress that include aggregate statistics about crime gun trace data categorized by State and Federal Firearms Licensee, as well as aggregate gun trace data for guns that are recovered in Mexico, categorized by State and Federal Firearms Licensee. This information will assist Congress in understanding the problem of gun trafficking along the Southwest Border and assessing ATF's progress in fighting it.

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Opening Statement
Rep. Elijah E. Cummings, Ranking Member

Hearing on "Fast and Furious: Management Failures at the Department of Justice"

February 2, 2012

Mr. Chairman, when the Committee started this investigation almost a year ago, you and I made pledges to the family of Agent Brian Terry to find out what led to the release of hundreds of firearms to criminal networks on both sides of the border. We pledged to follow the facts wherever they may lead and provide the public with answers.

Mr. Chairman, I want to acknowledge your efforts here. Over the past year, we devoted incredible amounts of time, money, and energy to investigating this issue. We interviewed 22 witnesses, including senior officials at the Department of Justice and ATF. We also reviewed thousands of pages of documents, and we held four full Committee hearings on this topic.

Because of our extensive work, we have had concrete results. The Committee has exposed a five-year pattern of gunwalking operations run by the Phoenix Division of ATF and the Arizona U.S. Attorney's Office. More importantly, we have put a stop to it. This is a significant accomplishment, and I commend you for it.

In addition, we can now explain to the public how this series of reckless operations originated and evolved over the past five years. I ask unanimous consent to place into the record a report I sent to Members earlier this week.

This 95-page report, called *Fatally Flawed: Five Years of Gunwalking in Arizona*, provides a detailed and comprehensive account of what we learned in our investigation.

It documents how suspects in 2006 and 2007 trafficked more than 450 firearms during Operation Wide Receiver as ATF agents who knew they had probable cause chose not to make arrests in order to build bigger cases. As one field agent said at the time, "We want it all."

It documents the Hernandez case in 2007, in which suspects purchased 200 firearms as ATF failed repeatedly to coordinate interdiction with Mexican officials. Despite alerting then-Attorney General Mukasey about these failed operations, they continued.

It documents the Medrano case in 2008, in which ATF agents watched in real time as suspects, who were part of a trafficking ring that bought more than 100 firearms, packed weapons into the backseat of a car and drove them across the border.

And it documents Operation Fast and Furious, during which the same ATF Special Agent in Charge of the Phoenix Field Division in all three previous operations chafed against an order from the Deputy Director of ATF to shut down the operation. As the agent stated, "I don't like HQ driving our cases." Instead, field agents continued to encourage gun dealers to sell firearms to suspects for months.

There are several things that our investigation did not find. We found no evidence that agents or prosecutors in Arizona acted in bad faith. They sincerely wanted to put away gun traffickers and higher level targets. In pursuit of that goal, however, they lost sight of the predictable collateral damage of letting guns walk.

In addition, contrary to many unsubstantiated allegations, the Committee obtained no evidence indicating that the Attorney General authorized gunwalking. None of the 22 witnesses we interviewed claimed to have spoken with the Attorney General about the tactics used in Operation Fast and Furious before this controversy broke.

Mr. Chairman, although you deserve credit for exposing these operations over the last five years, we part ways in what we should do next. You now appear intent on escalating controversy and promoting unsubstantiated allegations in a campaign that looks more like an election-year witch hunt than an even-handed investigation.

This is the sixth time the Attorney General has testified on these issues.

In contrast, you have never once called the former head of ATF to testify at a public hearing, even though ATF was the agency responsible for these reckless programs. And although Attorney General Holder has answered questions repeatedly, you have refused to even interview former Attorney General Mukasey.

When I was just starting out in my law practice, a veteran attorney gave me some advice. He said, "you have to take the facts as you find them." Now that we have the facts, I hope we can put aside the politics and the rhetoric and focus on concrete reforms to ensure that this never happens again.

Mr. CUMMINGS. This 95-page report, called Fatally Flawed: Five Years of Gun-Walking in Arizona, provides a detailed and comprehensive account of what we learned in our investigation. It documents how suspects in 2006 and 2007 trafficked more than 450 firearms during Operation Wide Receiver as ATF agents, who knew they had probable cause, chose not to make arrests in order to build bigger cases. As one field agent said at the time, "We want it all."

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There are several things that our investigation did not find. We found no evidence that agents or prosecutors in Arizona acted in bad faith. They sincerely wanted to put away gun traffickers and higher-level targets. In pursuit of that goal, however, they lost sight of predictable collateral damage of letting guns walk.

In addition, contrary to many unsubstantiated allegations, the committee obtained no evidence indicating that the Attorney General authorized gun-walking. None of the 22 witnesses we interviewed claimed to have spoken with the Attorney General about the tactics used in Operation Fast and Furious before this controversy broke.

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This is the sixth time—the sixth time the Attorney General has testified on these issues. In contrast, you have never once called the former head of the ATF to testify at a public hearing, even though ATF was the agency responsible for these reckless programs. And although Attorney General Holder has answered questions repeatedly, you refuse to even interview former Attorney General Mukasey.

When I was just starting as a lawyer some 30-some years ago, the senior partner in the law firm said to me, young man, you have to take the facts as you find them. You cannot manufacture them.

Now that we have the facts, I hope that we can put aside the politics and the rhetoric and focus on concrete reforms to ensure that this never, ever, never, ever happens again.

With that, I yield back.

Chairman ISSA. I thank the gentleman.

Now I ask unanimous consent that the majority memo and related materials be entered in the record.

Without objection, so ordered.

[The information referred to follows:]

MEMORANDUM

To: **Republican Members, Committee on Oversight and Government Reform**

From: **Committee Staff for Chairman Darrell Issa and Senator Charles Grassley, Ranking Member, Senate Judiciary Committee**

Date: **February 1, 2012**

Re: **Main Justice: Extensive Involvement in Operation Fast and Furious**

This memorandum provides supplemental information detailing Main Justice's involvement in Operation Fast and Furious. For months, the Department blamed Fast and Furious on the U.S. Attorney's Office for the District of Arizona and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) – notwithstanding the fact that they are both components of the Department of Justice. In fact, Main Justice had much greater knowledge of, and involvement in, Fast and Furious than it has previously acknowledged. A discussion of the key issues follows.

I. The Fast and Furious Investigation Failed in its Goal

From the beginning of the congressional investigation, ATF officials claimed that the goal of Operation Fast and Furious was to identify and take down an entire gun trafficking operation. Former Special Agent in Charge (SAC) William Newell, who served as head of ATF's Phoenix Field Division during Fast and Furious, aimed to reach the highest levels of the criminal organization:

> **The goal of the investigation . . . was to identify the whole network,** knowing that if we took off a group of straw purchasers this, as is the case in hundreds of firearms trafficking investigations, some that I personally worked as a case agent, you take off the low level straw purchaser, all you're doing is one of – you're doing one of two things, one of several things. You're alerting the actual string puller that you're on to them, one, and, two, all they are going to do is go out and get more straw purchasers.
>
> **Our goal in this case is to go after the decision maker, the person at the head of the organization,** knowing that if we remove that person, in the sense of prosecute that person, successfully, hopefully, that we would have much more impact than just going after the low level straw purchaser.[1]

With this goal in mind, ATF purposefully failed to confront straw purchasers and interdict guns. Disrupting and deterring the illegal activity took a backseat to the lofty goal of dismantling the entire organization. SAC Newell believed the straw purchasers were only the bottom rung of a complex organization:

[1] Transcribed Interview of William Newell, at 91-92 (June 8, 2011) (emphasis added) [hereinafter Newell Tr.].

Q. Right, and in order to achieve that goal, if in order to not tip them, if agents wanted to be more aggressive about attempting to interdict and discourage . . . the straw purchasing that was going on right in front of them that that would have been not consistent with the goal of the strategy as outlined in this paper, right?

A. The goal of the investigation . . . is using the straw purchasers, identifying the straw purchasers, to get, using information we gleaned from them in a sense of where they're going, where they're dropping the guns off, to **identify the middlemen, to identify the decision makers and seize assets when appropriate**, and we have the ability to do that, identify bank accounts, **identify transporters, identify anything so that when we make the arrests, do the takedown, that we take down the whole organization.**[2]

ATF insisted that the techniques and strategies used in Operation Fast and Furious were necessary to take down a complicated gun trafficking operation. In reality, however, the network was not complex. Once believed to be an intricate web, it actually included a small cadre of about 40 straw purchasers – only five of whom purchased 70% of the weapons – one ringleader, and two cartel associates who were the link to the Sinaloa Cartel. The whole point of Fast and Furious – an operation that allowed nearly 2,000 guns to get into the hands of the Mexican drug cartels – was to identify this ringleader and these two cartel associates.

To make matters worse, federal law enforcement officials had identified this ringleader as early as December 2009. On December 14, 2009, the Drug Enforcement Administration (DEA) contacted the ATF case agents in charge of Fast and Furious and alerted them that one of the telephone numbers ATF had submitted for de-confliction was related to an ongoing investigation in which DEA had obtained a state wiretap. A December 14, 2009 internal DEA e-mail confirms this contact: "We checked with ATF and they have the gun source and the courier identified. They have a pole cam on the gun source's house. We scheduled a meeting tomorrow with the case agent to make sure we don't inadvertently step on each other."[3]

ATF Group Supervisor David Voth and the case agents attended a December 15, 2009 meeting in which DEA shared with ATF the information they had thus far acquired on the ringleader, Manuel Celis-Acosta.[4] ATF investigators also received access to a DEA wire room, used to monitor live wiretap intercepts, and the resulting information gleaned from the wires. A December 16, 2009, internal DEA e-mail recounting the meeting said: "They are going to OCDETF [Organized Crime Drug Enforcement Task Force] the case and work with us if a gun load moves. They said the best way is to try to stop the load as it goes across into Mexico which

[2] Newell Tr. at 92-93 (emphasis added).
[3] E-mail from [DEA] to [DEA] (Dec. 14, 2009).
[4] DEA Report of Investigation (ROI) 50, "Deconfliction Meeting with DEA Personnel on December 15, 2009."

adds a whole bunch of charges. . . [W]e have the conspiracy through the wire which will help significantly with charging down the road."[5]

By December 18, 2009, the case that became Fast and Furious had expanded to include 15 interconnected straw purchasers known to have purchased 500 firearms.[6] These guns had a "time-to-crime," the amount of time between purchase and use to commit a crime, of as little as one day, a typical indicator of trafficking. Such data illustrates that ATF was fully aware that the guns being regularly purchased by the straw buyers – transactions which ATF allowed to proceed – were flowing to violent criminals.

Intercepts from the DEA wiretap provided the probable cause necessary for ATF to make arrests at least as early as December 2009, or, at the very least, supplied the necessary predicate to use other investigative techniques to disrupt the illegal activity and seize the weapons.[7] For instance, the intercepts contained information showing that Celis-Acosta was to receive money to traffic the weapons. Although they were destined for Juarez, Mexico, he didn't want to take them there in person.[8]

ATF, however, did not act on this information. Agents could have arrested Celis-Acosta in December 2009 and used his arrest to work their way up the ladder to the two cartel associates.[9] Instead, ATF wanted to get its own federal wiretaps and create its own big case. This decision ensured that Fast and Furious lasted nearly a year longer, with 1,500 more guns being purchased – *including* the guns bought by Jaime Avila in January 2010 that were found at the murder scene of Border Patrol Agent Brian Terry.

When ATF finally brought the ringleader, Celis-Acosta, in for his proffer after his indictment in January 2011, ATF learned the names of the two cartel associates.[10] These were the "big fish" that Newell had hoped to catch as a result of Fast and Furious and the federal wiretaps. Because the ATF wiretaps and ATF agent surveillance had thus far failed to identify these associates, the proffer was the first time ATF identified these individuals.

Shockingly, though, other federal law enforcement components of the Department of Justice *were already aware* of the two cartel associates that ATF had finally identified. Their names appeared frequently in DEA call logs provided to ATF – in December 2009.[11] Inexplicably, ATF failed to review all the materials DEA had provided, missing these prime investigative targets.

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[5] E-mail from [DEA] to [DEA] (Dec. 16, 2009).
[6] E-mail from Kevin Simpson, Intelligence Officer, Phoenix Field Intelligence Group (FIG), ATF, to David Voth (Dec. 18, 2009).
[7] Meeting with Drug Enforcement Administration and Congressional Staff (Oct. 20, 2011) [hereinafter DEA meeting].
[8] Federal Bureau of Investigation FD-302 281C-AQ-63002 1-6 (Jan. 17, 2010) [hereinafter FD-302].
[9] DEA Meeting, *supra* note 7.
[10] Transcribed Interview with David Voth at 126-127 (June 30, 2011).
[11] DEA Meeting, *supra* note 7.

Additionally, DEA and the Federal Bureau of Investigation (FBI) had jointly opened a separate investigation specifically targeting these two cartel associates.[12] As early as mid-January 2010, both agencies had collected a wealth of information on these associates.[13] Yet, ATF spent the next year engaging in the reckless tactics of Fast and Furious in attempting to identify them.

During the course of this separate investigation, the FBI designated these two cartel associates as national security assets.[14] In exchange for one individual's guilty plea to a minor count of "Alien in Possession of a Firearm," both became FBI informants and are now considered to be unindictable.[15] This means that the entire goal of Fast and Furious – to target these two individuals and bring them to justice – was a failure. ATF's discovery that the primary targets of their investigation were not indictable was "a major disappointment."[16]

Nevertheless, other ATF officials have tried to claim that the cartel associates are not necessarily untouchable. For example, Acting Deputy ATF Director Billy Hoover expressed his belief that any such status was not final:

> Q. In this ongoing investigation we've learned that some of these guys may be unindictable. Have you learned that as well?
>
> A. No, sir, I'm not sure that's the final answer, and I'm not sure there is a final answer.
>
> Q. So if they're paid [informants] and they're on the payroll that they're indictable? Hypothetically?
>
> A. Hypothetically, no one is unindictable. That's the way I perceive this, no one is unindictable.[17]

The Department of Justice has shown little concern for these troubling facts. In June 2011, when the Deputy Attorney General became aware of the lack of information-sharing among these three Department components – ATF, DEA, and the FBI – and the fact that the FBI viewed the targets of Fast and Furious as assets, his response was simply, "We will look into it. . . All he said was we will have to look into it. There was very little expression."[18] This reaction and lack of follow-through typify the serious management failures that occurred throughout all levels of the Department during Fast and Furious.

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[12] Meeting with Federal Bureau of Investigation, Drug Enforcement Administration, Bureau of Alcohol, Tobacco, Firearms, and Explosives, and Congressional Staff at Robert F. Kennedy Building, Justice Command Center, Oct. 5, 2011 10:00 AM [hereinafter FBI Meeting]. *See also* Head Shot, Organized Crime Drug Enforcement Task Forces [hereinafter Head Shot].

[13] FBI Meeting, *supra* note 7. *See also* FD-302 *supra* note 8.

[14] FBI Meeting, *supra* note 7.

[15] Head Shot, *supra* note 12.

[16] Transcribed Interview of James Needles, at 30 (Nov. 4, 2011) (going on to describe it as "very" frustrating) [hereinafter Needles Tr.].

[17] Transcribed Interview of William J. Hoover, at 31 (July 21, 2011) [hereinafter Hoover Tr.].

[18] Transcribed Interview of Kenneth Melson, at 184-185 (July 4, 2011) [hereinafter Melson Tr.].

II. Main Justice Should Have Known Key Investigative Details

The Department of Justice constantly references parallels between Fast and Furious and Operation Wide Receiver, an earlier operation conducted during the previous administration. Indeed, both were run out of ATF's Phoenix Field Division, both involved cooperating gun dealers, and thus both provided ATF with contemporaneous notice of gun purchases. In addition, in both cases, the Justice Department's Criminal Division—including Deputy Assistant Attorney General Jason Weinstein and Assistant Attorney General Lanny Breuer—was in a position to know the key investigative techniques employed. The Criminal Division briefed ATF headquarters on gunwalking in Operation Wide Receiver, and the Criminal Division should have known about the misguided tactics used in Operation Fast and Furious, outlined in documents the Criminal Division approved. One reason Main Justice was involved in Fast and Furious was new coordination between the Criminal Division and ATF. A second reason was the use of federal wiretaps in the case. Both of these factors are explained in more detail below.

A. Coordination Between the Justice Department's Criminal Division and ATF

In early September 2009, ATF and the Criminal Division began discussions "to talk about ways CRM [Criminal Division] and ATF can coordinate on gun trafficking and gang-related initiatives."[19] Early on in these discussions, Lanny Breuer, Assistant Attorney General for the Criminal Division, sent a Criminal Division prosecutor to Arizona to help the U.S. Attorney's Office there to prosecute ATF cases. The first case chosen for prosecution was Operation Wide Receiver. E-mails produced by the Justice Department reveal that Breuer was "VERY interested in the Arizona gun trafficking case, and he is traveling out [to Arizona] around 9/21. Consequently, he asked us for a 'briefing' on that case before the 21st rolls around."[20] The next day, Breuer's chief of staff "mentioned the case again, so there is clearly great attention/interest from the front office."[21]

When the Criminal Division prosecutor first arrived in Arizona, she gave a senior official in the Criminal Division's Gang Unit her impressions of the case which Breuer was so interested in prosecuting:

> I believe the ffl [sic][Federal Firearms Licensee] has a business but was selling the guns to the targets from his house. There are tapes which I am told have been translated. Case involves 300 to 500 guns (unclear to me why we have such a wide range; doesn't someone know exact number?). **It is my understanding that a lot of these guns "walked"**. Whether some or all of that was intentional is not know. The ausa [sic] seemed to think ATF screwed up by not having mechanism in place to seize weapons once they crossed the border. In any event I believe a small number of the

[19] E-mail from Jason Weinstein to Lanny Breuer (Sept. 10, 2009) [HOGR 003378].
[20] E-mail from James Trusty to Laura Gwinn (Sept. 2, 2009) [HOGR 003375].
[21] E-mail from James Trusty to Laura Gwinn (Sept. 3, 2009) [HOGR 003376].

> guns have been recovered in connection with police action in mexico [sic].[22]

This exchange indicates that federal prosecutors in Arizona did not prosecute the case because they disagreed with the misguided and unacceptable tactics used by ATF. This is consistent with documents provided to the Committee. Former U.S. Attorney Paul Charlton received a memo proposing controversial tactics during Operation Wide Receiver. Charlton has emphasized that he never approved the tactics.[23] Subsequently, the case was never prosecuted. Breuer's order to resurrect the case, however, signaled that the new leadership in the Department of Justice *was* willing to prosecute the case despite the use of these reckless tactics. As head of the Phoenix Field Division, SAC Newell saw this development – as with Operation Wide Receiver – as an opportunity to make a name for himself by overseeing a big case.

Kevin Carwile, Chief of the Criminal Division's Gang Unit, told Newell later in September 2009 that:

> I had one of my attys in Tucson last week reviewing the semi-dormant ATF gun trafficking investigation being handled out of that office. After our review, we have decided to take the case and the USAO has agreed.[24]

Newell responded favorably to Carwile: "I was informed of this yesterday. I appreciate your interest in the case and the assistance."[25] With the support of the Criminal Division for prosecuting cases that used gunwalking tactics like those in Wide Receiver, Newell began his work on Operation Fast and Furious.

Discussions at the staff level over coordinating and prosecuting gun seizures in Mexico continued between the Criminal Division and ATF. On December 3, 2009, the Acting ATF Director reached out to Breuer about this cooperation:

> Lanny: We have decided to take a little different approach with regard to seizures of multiple weapons in Mexico. Assuming the guns are traced, instead of working each trace almost independently of the other traces from the seizure, I want to coordinate and monitor the work on all of them collectively as if the seizure was one case. . . We should meet again just to catch up on where we are in our gun trafficking issues and we could talk about the above idea as well. Let me know what you think.[26]

With the awareness of the Office of the Deputy Attorney General, Breuer responded:

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[22] E-mail from Laura Gwinn to James Trusty (Sept. 3, 2009) (emphasis added) [HOGR 003377].
[23] Michel Marizco, *Lawyer Leaves Case of Slain Border Patrol Agent*, FRONTERAS, Nov. 7, 2011, *available at* http://www.fronterasdesk.org/news/2011/nov/07/wide-receiver-fast-furious-gun-walking/.
[24] E-mail from Kevin Carwile to William Newell (Sept. 30, 2009) [HOGR 003389].
[25] E-mail from William Newell to Kevin Carwile (Sept. 30, 2009) [HOGR 003389].
[26] E-mail from Kenneth Melson to Lanny Breuer (Dec. 3, 2009) [HOGR 003403].

> We think this is a terrific idea and a great way to approach the investigations of these seizures. Our Gang Unit will be assigning an attorney to help you coordinate this effort.[27]

The Criminal Division did assign an attorney, Joe Cooley, to assist with this effort. The case chosen for this assistance was Operation Fast and Furious. In fact, this initiative was so paramount to the Criminal Division that Cooley had to rearrange his holiday plans to attend an important briefing on Fast and Furious.[28]

For the next three months, until mid-March 2010, Joe Cooley was involved with Fast and Furious, suggesting prosecutorial strategy to the lead federal prosecutor in Arizona, Emory Hurley, and receiving briefings on operational details. Cooley, though, was not the only Criminal Division attorney involved with Fast and Furious during this time period. The head of the division, Lanny Breuer, was also drawn in through meetings with ATF officials.

The Criminal Division should have been far more alarmed about what it learned about Fast and Furious and should have halted the program in its early stages, especially in light of the gunwalking in Wide Receiver. Two pivotal briefings at the beginning of 2010 revealed concerning details about Fast and Furious. The first of these briefings occurred on January 5, 2010, after which Assistant Director for Field Operations Mark Chait fielded questions within ATF on his plan for shutting down the program. Chait, however, failed to pay this audience much heed, because he had a more important audience than ATF; he had just come to the briefing from a meeting with Lanny Breuer where they focused on weapons seizures in Mexico – seizures subsequently discussed in detail at the ATF meeting.[29]

The second detailed briefing on Fast and Furious was held at ATF headquarters on March 5, 2010. Joe Cooley from the Criminal Division was in attendance. He had been working on Fast and Furious for months, serving as a constant link between ATF in Phoenix and the Criminal Division for Fast and Furious – a link that bypassed ATF leadership.

Two weeks later, in mid-March 2010, the Criminal Division pulled Joe Cooley off Fast and Furious. Satisfied with how the U.S. Attorney's Office was handling the prosecutor-led OCDETF case, the Criminal Division believed the case was in good hands. **Strangely, Main Justice has consistently blamed the U.S. Attorney's Office for mismanaging Fast and Furious. The congressional investigation has shown, though, that at the time, Main Justice was confident enough in the U.S. Attorney's Office that it removed its assigned prosecutor from the case.**

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[27] E-mail from Lanny Breuer to Kenneth Melson (Dec. 4, 2009) [HOGR 003403].
[28] E-mail from Kevin Carwile to Jason Weinstein (Mar. 16, 2010) [HOGR 002832].
[29] Meeting on "Weapons Seizures in Mexico w/ Lanny Breuer" at Robert F. Kennedy Building, Room 2107, Jan. 5, 2010, 10:00 AM [HOGR 001987].

B. Use of Federal Wiretaps

Around this same time, and continuing through the summer of 2010, the Criminal Division remained involved in Fast and Furious through its authorization of seven federal wiretaps. Federal wiretaps are rare in gun trafficking cases, and they are rare for ATF cases in general. They require the approval of the Office of Enforcement Operations, which is part of the Criminal Division. A Deputy Assistant Attorney General within the Criminal Division is the official who typically reviews an Affidavit in Support of an Application for the Interception of Wire Communication (Wiretap Affidavit), then signs an Authorization for Interception Order Application (Wiretap Authorization) which allows the agency making the application to move forward.

The Wiretap Affidavits are the documents which establish the need for the wiretap and discuss why alternative investigative techniques are insufficient. Rich in detail, they provide a mother lode of information. No one in ATF leadership admitted to reading the Wiretap Affidavits. Similarly, political appointees at Main Justice denied reviewing the Wiretap Affidavits, despite being responsible for reading them in order to approve the Wiretap Authorization. Because of the Wiretap Affidavits, the Criminal Division at Main Justice was in a position to know as much about Fast and Furious as ATF. Both Justice Department and ATF leaders in Washington, D.C. claimed they were unaware of the gunwalking that occurred during Fast and Furious, yet both could have and should have reviewed the Wiretap Affidavits. Senior officials at Main Justice were aware of the tactics in Operation Wide Receiver and should have prevented them from being repeated in Fast and Furious.

In both operations, key information flowed straight to the Criminal Division. As previously discussed, the Criminal Division resurrected Wide Receiver in the fall of 2009 due to Lanny Breuer's keen interest in the case. The Criminal Division, and not ATF leadership, had the full complement of facts about Wide Receiver, since it had assumed primary responsibility for the case. Similarly, the Criminal Division possessed detailed information regarding Fast and Furious since it approved the Wiretap Authorizations. The Criminal Division failed to connect the cases and understand that the unacceptable tactics in Wide Receiver were being duplicated on a much larger scale in Fast and Furious.

Criminal Division officials claim they were concerned about Operation Wide Receiver and took action to inform ATF and prevent a repeat of these misguided tactics. Their actions at the time, however, belie these claims. The Criminal Division held exactly one meeting with ATF, in April 2010, to raise concerns about Wide Receiver. At the exact same time, the Criminal Division was approving multiple Wiretap Authorizations in Fast and Furious based on specific evidence in the Wiretap Affidavits indicating the continued use of these same misguided tactics.[30] Their failure to inform Department leadership or the Inspector General (IG) at the time undermines the claims that they were conscientious and dutiful upon learning that ATF had walked guns.

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[30] See 18 U.S.C. § 2510 *et seq.* (for wiretap application approval, requiring, "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous").

III. Jason Weinstein Knew About Illegal Activity Yet Failed To Stop It

During his transcribed interview, Deputy Assistant Attorney General Jason Weinstein of the Criminal Division testified that he first became concerned about Operation Wide Receiver when he read a single word: "monitor." In an attachment to a March 16, 2010, e-mail sent to Weinstein, a description of Operation Wide Receiver contained the following sentence:

> With the help of a cooperating FFL, the operation has **monitored** the sales of over 450 weapons since 2006.[31]

As Weinstein explained about Operation Wide Receiver:

> The piece of that that caused the greatest concern was the possibility that with the assistance of the cooperating FFL that they had actually monitored, and I took that to possibly mean that they had recorded in real time the sales of those guns. And so my question to Mr. Carwile is did they actually – was the FFL cooperating and were they monitoring the sales as they occurred, or did the sales happen and the FFL began cooperating after the fact; because the answer to that question would affect, at least potentially affect the analysis about whether they let guns go that they had the legal authority to have stopped.[32]

Messrs. Weinstein and Breuer have both expressed regret for failing to draw a connection between Operation Wide Receiver and Operation Fast and Furious. The two cases used similar investigative techniques, operated in the same ATF Field Division with the same Special Agent in Charge, and both received considerable attention from the Criminal Division in the spring of 2010.

Although a direct connection existed through a common suspect in the two investigations, Weinstein failed to realize that the two investigations also involved the exact same *tactics*. As Weinstein testified, "I believed Wide Receiver to be an aberration and to be a case from years earlier."[33] Through the Wiretap Affidavits, however, Weinstein had information available to him indicating that guns *were* being walked in Fast and Furious. In fact, through these Wiretap Affidavits Weinstein had much more information available about gunwalking used in Fast and Furious than he ever did in Operation Wide Receiver. Further, this information was available to Weinstein in May 2010, a month *after* he expressed major concerns with Wide Receiver in April, and yet he *still* failed to recognize that the tactic was widely used in Fast and Furious.

ATF had pole cameras inside the stores of cooperating gun dealers. These cameras recorded, in real time, sales of weapons. Not only did ATF agents monitor these straw purchases

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[31] E-mail from Kevin Carwile to Jason Weinstein (Mar. 16, 2010) (emphasis added) [HOGR 003434-003435].
[32] Transcribed Interview of Jason Weinstein, at 95 (Jan. 10, 2012) [hereinafter Weinstein Tr.].
[33] Weinstein Tr. at 157.

as they happened electronically, but they also monitored them in person. A March 3, 2011 CBS News interview with ATF Special Agent John Dodson contained footage of ATF agents watching known straw purchasers walk out of a gun store and load the weapons into their vehicles.[34]

Weinstein should have known from the Wiretap Affidavits that ATF agents were witnessing, monitoring, and recording not only these straw purchases but also the subsequent illegal transfer of the weapons. He also should have known from the Wiretap Affidavits that these weapons were being recovered in Mexico, sometimes only one day after they were purchased. Weinstein should have known from the Wiretap Affidavits who the straw purchasers were, where they met, and where they stored the guns they bought before they were transported to Mexico. Yet, he failed to raise the same concerns about Fast and Furious that he identified in Wide Receiver.

Weinstein did not admit to being aware of all this information in his transcribed interview. In his testimony, Weinstein attempted to explain why he failed to recognize any problems in the Fast and Furious Wiretap Affidavits:

> My general practice . . . is to review the summary memo in the first instance and to go to the affidavit only if there are issues or questions that are not answered by the summary memo that I need to answer in order to make a probable cause determination. So my practice in every case, in every wiretap I reviewed since I came on the job, is to review the summary memo. And I can probably count on one hand the number of times when there's been something in the memo that was poorly written, that left me confused about the meaning of a dirty call or a legal issue that caused me to have to go to the affidavit.[35]

Weinstein admitted that he "reviewed what [he] believe[d] to be three of the wiretaps in Fast and Furious, in what [he] now knows to be Fast and Furious."[36] He further explained that nothing in them concerned him:

> What I can say is that had I seen anything in what I reviewed in connection with the wiretaps that gave me any reason to suspect that guns were walking in that case in Fast and Furious, I would have reacted very strongly to it. And you saw in the April 12th email, April 12, 2010 email, how strongly I reacted to guns that had walked 3 years earlier. If I thought that those guns were walking 3 weeks earlier or 3 days earlier or 3 hours earlier -- that is, that it was still ongoing -- my reaction would have been even stronger.[37]

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[34] *Agent: I was Ordered to Let U.S. Guns into Mexico*, CBSNEWS.COM, March 3, 2011, *available at* http://www.cbsnews.com/stories/2011/03/03/eveningnews/main20039031.shtml.
[35] Weinstein Tr. at 87.
[36] Weinstein Tr. at 87.
[37] Weinstein Tr. at 92-93.

During prior testimony before Congress, Breuer and Attorney General Eric Holder have both gone to great lengths to explain that the Criminal Division reviews Wiretap Affidavits only for legal sufficiency and not to evaluate the appropriateness of the tactics.[38] It is now apparent why Breuer and the Attorney General have emphasized this point. That distinction is essential in order to avoid responsibility for knowing of the tactics described in the Wiretap Affidavits.

Congressional investigators have learned about the information contained in one Wiretap Authorization and Wiretap Affidavit from Fast and Furious that Jason Weinstein signed. The Wiretap Affidavit presented Weinstein with the details of at least two instances in which ATF agents had *witnessed illegal straw purchasing and the subsequent transfer* of the purchased weapons to other individuals. Considering that a single word, "monitor," had made Weinstein so anxious in the description of Operation Wide Receiver, detailed eyewitness transactions in Fast and Furious should have caused Weinstein to sound the alarm immediately. The Wiretap Affidavit accompanying the Wiretap Authorization Weinstein signed described these two situations and several others in great detail. Yet, the straw purchasing ring continued to operate under the government's nose for *seven more months* before indictments were finally handed down, thereby severely jeopardizing the safety of the citizens of Arizona, the American public, and the people of Mexico.

IV. Main Justice: Failing to Ask Questions

Through its investigation, Congress has learned that senior Department officials showed a serious lack of inquisitiveness when it came to discovering details about Operation Fast and Furious. They knew as early as April 2010 that ATF's Phoenix Field Division – under the same SAC, Bill Newell – had previously used this same tactic of gunwalking. Still, these officials failed to ascertain the true scope of the program. Later, when whistleblowers came forward with information and supporting documents, these same officials provided false information to Congress and refused to get to the bottom of the matter.

Over the past year, Congress has exposed the dangers of Operation Fast and Furious to the public and has sought to bring accountability to the decision-makers responsible for its origin and implementation. Fast and Furious represents a breach of trust that, to date, has led to the tragic murder of Border Patrol Agent Brian Terry and the deaths of countless innocent Mexican citizens. Despite these tragedies, the Justice Department has obstructed the Committee's investigation every step of the way.

On July 4, 2011, the former ATF Acting Director testified that the Justice Department was managing the congressional investigation in order to protect the political appointees at the Department.[39] This statement has proved prophetic, as the Department has blamed everyone except for its political appointees for Fast and Furious. This includes the U.S. Attorney's Office in Arizona, the ATF Phoenix Field Division, and even ATF headquarters.

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[38] Test. of Asst Att'y Gen Lanny Breuer, Subcomm. on Crime and Terrorism, Senate Comm. on the Judiciary, "Combating International Organized Crime: Evaluating Current Authorities, Tools and Resources" (Nov. 1, 2011); Test. of Att'y Gen Eric Holder, Senate Judiciary Comm., "Oversight of the U.S. Department of Justice," (Nov. 8, 2011).

[39] Transcribed Interview of Kenneth Melson, at 130 (July 4, 2011) [hereinafter Melson Tr.].

For months, the Department has stonewalled Committee document requests and refused to comply with Committee subpoenas. The Department has produced scores of blacked-out pages containing no information and many duplicate documents in order to bolster its page count. Recently, the IG's office disclosed that it has reviewed approximately 80,000 pages of documents related to Fast and Furious, and conducted approximately 70 interviews in its investigation. That investigation is not even close to completion. In comparison, the Department has produced just over 6,000 pages to Congress, representing only 8% of the materials available to the IG. The Department is withholding 92% of the documents it has given the IG. Also, Congress has conducted 22 interviews – only 31% of the total the IG has already conducted. If the Department granted Congress access to all the documents and witnesses available to the IG, it would be much closer to determining who was actually responsible for Fast and Furious.

The Department has set an arbitrary cut-off date of February 4, 2011, for the purpose of withholding documents pertaining to Fast and Furious – even with respect to documents directly responsive to the Committee's subpoenas. The Department simply cites a "constitutional privilege" of separation of powers as a basis for its decision, without providing any legal basis for doing so. Despite the Committee's emphasis on the importance of these documents to this investigation, the Department has declared that will not provide the Committee with any documents created after February 4, 2011.

In transcribed interviews, the Department has also instructed its witnesses from answering any questions that pertain to the post-February 4, 2011 period. This is unacceptable. The Department provided Congress undeniably false information in its February 4, 2011 letter, which it ultimately had to withdraw – an unprecedented action. It is therefore imperative to investigate when and how the Department learned that information was false and why it refused to acknowledge the information was false until nearly nine months later.

Just last week the Department provided a document showing that Lanny Breuer was *advocating* gunwalking on February 4, 2011.[40] This advocacy came the same day the Department told Congress that it "makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."[41] Breuer, who had forwarded a draft copy of the Department's letter to his private e-mail account the day before, suggested to the Attorney General of Mexico that they *allow* straw purchasers to enter Mexico. His advocacy of this new, sister plan to Fast and Furious demonstrates a critical lapse in judgment. Breuer's failure here stands in stark contrast to his public pronouncements.

V. Justice Department Blaming Everyone Else

ATF witnesses pointed to a Department of Justice Cartel Strategy promulgated by the Deputy Attorney General in late 2009 as the impetus for Fast and Furious. The strategy encourages the utilization of OCDETF cases, and notes that:

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[40] E-mail from Anthony Garcia to Adam Lurie (Feb. 4, 2011) [HOGR 005754].
[41] Letter from Asst Att'y Gen Ronald Weich to Senator Charles E. Grassley (Feb. 4, 2011).

> [M]erely 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.[42]

The Assistant SAC of the ATF Phoenix Field Division pointed to this Justice Department initiative as one of the reasons Fast and Furious came into being.[43] ATF Deputy Director William Hoover also used this strategy to create internal ATF guidelines "that, exactly, fit in with the Department of Justice cartel strategy."[44] The ATF Phoenix Field Division, using both this Justice Department strategy and Breuer's decision to pursue prosecutions in Operation Wide Receiver, believed it had the support of Main Justice to launch Operation Fast and Furious.

A. Gary Grindler, former Acting Deputy Attorney General and current Chief of Staff to the Attorney General

Gary Grindler was the Acting Deputy Attorney General during Fast and Furious from February 4, 2010 until the end of 2010. Currently, he is Chief of Staff and Counselor to the Attorney General. Grindler claims his staff was responsible for alerting him to any problems during Fast and Furious. He testified he knew incredibly little about Fast and Furious, and is aware of only scant details even to this day.

Grindler has made no attempt to find out what actually happened during Fast and Furious, despite having been second-in-command in the Department during the pendency of the operation, and in charge of the office with direct supervisory authority over ATF. Grindler said that during a very detailed March 12, 2010 briefing on Fast and Furious he did not fully appreciate the volume of guns that were being transported to Mexico under the program because he was new to the job.[45] Therefore, he was unable to make the necessary connections, ask the proper questions, and follow up with ATF after the briefing or have his staff monitor the program closely. If Grindler is to be believed, because he was new to the job, he let ATF operate in an uncontrolled manner.

Grindler's management style made it highly unlikely that he would ever discover any wrongdoing. Grindler blames his staff:

> A. The way I organized the office was I had two individuals on my staff who had ATF as a component where they have responsibility. These individuals had other responsibilities, but that was one of their responsibilities. So from a management point of view, they had the responsibility to know more than I knew about ATF, and if there were issues that they believed needed to be brought to my attention, then **I expected them to bring it to my attention.**

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[42] E-mail from [DOJ] on behalf of David Ogden to Kathryn Ruemmler, et al. (Oct. 26, 2009).
[43] Transcribed Interview of George Gillett, at 11-12 (May 17, 2011).
[44] Transcribed Interview of William Hoover, at 139 (July 21, 2011).
[45] Transcribed Interview of Gary Grindler, at 15 (Dec. 14, 2011) [hereinafter Grindler Tr.].

Beyond that, ATF being a law enforcement component works with the United States Attorneys across the country, and if there are issues either way with those relationships, it would be my expectation that either the United States Attorneys would either directly or through the executive office of U.S. Attorneys bring issues to my attention that they thought warranted my attention, and if ATF similarly had issues with United States Attorneys, I would expect it to bring it to my attention. And obviously the head of ATF had a responsibility to bring issues to my attention.

Q. And who were your -- I guess they were associate deputies that had the ATF portfolio?

A. One.

Q. Mr. Siskel was one?

A. Mr. Siskel was an Associate Deputy Attorney and he had ATF as a portfolio.[46]

Ed Siskel now works in the White House Counsel's Office.

Grindler also failed to reach out proactively to Siskel to head off any problems.

Q. And did you have regular meetings with Messrs. Siskel and Michalic about ATF, or did you learn about ATF, manage ATF, only on an as-needed basis?

A. I don't recall a specific meeting with them solely about ATF. I said to my staff if there is an issue I really need to know, they need to come in and tell me.[47]

Grindler delegated responsibility to his subordinates and relied on them to bring any problems to his attention. Despite the disastrous results, he found no fault with this passive approach:

Q. What other types of management decisions have been made at the Department to make sure a case like this will never happen in the future?

A. I don't know whether there are other management decisions. I think to the extent that information comes in regarding this matter

[46] Grindler Tr. at 10 (emphasis added).
[47] Grindler Tr. at 11.

> and to the extent that it gives us a basis to do -- where we think we need to take a management decision. When I say we, again, I am not the decision-maker, but I believe that that is and will be an ongoing process to review that, consider that, in the context of management.[48]

The current Acting Director of ATF, a direct appointee by Attorney General Holder, however, disagrees with Grindler's management approach:

> Anybody, including Mr. Melson, who waits for things to happen or waits for information to come to them, that is something I personally am not a believer in. I'm a believer in management by walking around. **If you're not hearing it, you seek it out. And there are a lot of ways to do that other than sitting in your corner office waiting for memos to come in.**[49]

Grindler frequently deflected all responsibility for learning the gunwalking tactics that ATF used:

> Q. Did you assign Mr. Siskel to keep track of this case on a going forward basis?
>
> A. I don't recall. **Again, ATF is his responsibility.**
>
> Q. Do you recall any specific conversations with Mr. Siskel about the Fast and Furious case outside of this meeting and the other ATF monthly meetings?
>
> A. No.[50]

To this day, Grindler maintains knowing little about Fast and Furious:

> Q. So it is your position that ATF didn't let these guns walk?
>
> A. I don't know all the details of the facts. I believe that there were serious flaws in their operational tactics. But it is a fairly high level understanding that it included dropping of surveillance, maybe not interdicting guns where they had a legal basis to interdict. Exactly how many of the guns fall into those categories and how many don't, **I don't know. I just don't know.**[51]

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[48] Grindler Tr. at 25-26.
[49] Richard Serrano, *Angry Former ATF Chief Blames Subordinates for Fast and Furious*, L.A. TIMES, Dec. 24, 2011 *available at* http://articles.latimes.com/2011/dec/24/nation/la-na-fast-furious-20111225 (emphasis added).
[50] *Id.* at 17-18.
[51] *Id.* at 23-24.

Grindler appeared for a transcribed interview in December 2011 – almost a full year after the scandal broke, and a year after he was informed, in detail, about Fast and Furious and the connection to Brian Terry's death. Amazingly, during the past year he failed to learn anything about the case and failed to re-examine the case in any meaningful way:

> Q. So you haven't done any retrospective work, given the fact that you were the Deputy at the time and now you are one of the principal advisers for the Attorney General?
>
> A. I don't know what you mean by retrospective work.
>
> Q. Well, what the heck happened, and how can we make sure, since you were the Deputy at the time when the Fast and Furious case unfolded, really bad things happened, what can we learn from that to make sure it doesn't happen again?
>
> A. I believe that the Deputy Attorney General's office is engaged in -- has been engaged in considering what steps need to be made and there has been consultation with the Attorney General. It has been taken very seriously.[52]

For nearly a year, Grindler held the number two position at the Department of Justice. Yet after all this time, he pleads ignorance on a number of critical issues:

> Q. Fast and Furious was described by ATF during the pendency of the investigation as a complex firearms trafficking network. We now know it wasn't that complex. There were -- there's 19 indicted straw purchasers. We're told there's 40 more coming. But they all were reporting into Acosta, and Acosta was working with two -- one or two unnamed persons. Those two unnamed persons were working with the Sinaloa cartel. Is that your understanding of the network now?
>
> A. I don't have a detailed understanding now of the network.
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> * * *
>
> Q. Which presents the difficult question. ATF had this, what was described as a promising firearms trafficking case so they can better understand the network and find out who it was, the link to the Sinaloa cartel. And once they find out that link, turns out they are working with the FBI and can't be prosecuted. Is that troubling to you?
>
> A. I just don't know what the facts are so it's impossible for me to respond. I know that's one of the inquiries that the committee has, and I know that people at the

[52] Grindler Tr. at 26-28.

Department are trying -- either have or are trying to get the details of that. **But I just don't know what they are.**

Q. Is that a problem? Does that trouble you?

A. I really would have to sit here and go through the specific facts to understand them. There are a lot of moving parts here. **I just don't feel comfortable opining on it.**[53]

B. Jason Weinstein, Deputy Assistant Attorney General

Even after learning about gunwalking in Wide Receiver, Jason Weinstein failed to ask key questions about Fast and Furious. Yet, Weinstein volunteered to help write the February 4, 2011, letter to Senator Grassley that denied the initial gunwalking allegations. He offered to help even though the Criminal Division has no supervisory authority over ATF and even though he claimed not to know about the tactics used in Fast and Furious. Though the Criminal Division had a prosecutor assigned to Fast and Furious, Weinstein deflected any accountability by blaming ATF and the U.S. Attorney's Office in Arizona for the false information contained in the letter:

> Because of the repeated assurances I and others received in February, 2011, from the then current leadership of the U.S. Attorney's Office in ATF that guns had not walked in Fast and Furious and from ATF that it was making every effort to interdict guns, I did not make any connection between Wide Receiver and Fast and Furious. For that reason, I simply was not thinking about Wide Receiver as I assisted with the February 4th letter which I understood to be about Fast and Furious.[54]

The February 4, 2011 letter states that "ATF makes every effort to interdict weapons that have been purchased illegally. . . ."[55] Weinstein knew at that time that ATF in fact did not make every effort to interdict weapons purchased illegally. He knew about gunwalking tactics in Wide Receiver, and he should have been aware of the details in the Fast and Furious Wiretap Affidavits. Weinstein had access to a great deal of information, but rather than looking internally for answers, he chose instead to go outside his chain of command and accept the representation of the head of the U.S. Attorney's office in Arizona – an individual who was complicit in the failure of the program:

> Given what I know now, of course, I wish I had not placed such faith in the assurances provided to me by the leadership of the U.S. Attorney's Office and ATF. But given what I knew then and given the strength of those assurances I believed at the time that it was entirely appropriate to do so. I trusted what was said to me and I firmly believed at that time that

[53] *Id.* at 110-111 (emphasis added).
[54] Weinstein Tr. at 12.
[55] Letter from Ronald Weich to Senator Charles Grassley (Feb. 4, 2011).

> in fact ATF had not let guns walk in Fast and Furious. Obviously, time has revealed the statements made to me and others to be inaccurate, and that is beyond disappointing to me.[56]

Weinstein went on to hold federal officials in Arizona responsible:

> And it is important to note that I relied on inaccurate information from the U.S. Attorney's Office and ATF not only in assisting with the February 4th letter but also in my subsequent communications with my own chain of command. Just as I would never have intentionally participated in providing inaccurate information to Congress, I certainly would never have intentionally provided inaccurate information to my own chain of command.[57]

Weinstein clearly identified the sources of the so-called bad information he received:

> A. Now, as it turns out, weeks later when I did receive information directly from the people you are talking about, people working with Mr. Burke, I got the same bad information.
>
> Q. And that was Mr. Hurley and those folks?
>
> A. It was Mr. Hurley and his criminal chief.
>
> Q. Mr. Cunningham.
>
> A. Mr. Cunningham.[58]

Weinstein further testified that he was very upset upon learning about gunwalking in Wide Receiver:

> If you look at the April 12th email, you will get that my reaction was I stunned about the tactics. And one of the reasons I was stunned was because in my career as prosecutor we had -- I had always gone to great lengths and taught people to go to great lengths to avoid letting even a single operable firearm to get out of law enforcement's control. So that's the depth of my concern about it, and that's the way I communicated it to the folks from ATF at that meeting. I communicated as clearly as I could that those tactics were inappropriate, albeit under different ATF management and 3 years earlier, they were nevertheless inappropriate.[59]

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[56] Weinstein Tr. at 12.
[57] Weinstein Tr. at 13-14.
[58] *Id.* at 48.
[59] *Id.* at 20-21.

Yet, he never put these serious misgivings in writing. Indeed, not a single e-mail produced by the Justice Department to Congress corroborates his professed outrage. Instead, the congressional inquiry has found only one instance in which he communicated his disapproval – a single meeting with ATF Assistant Director Hoover, after which he considered the matter closed:

> Q. So there is not a single email that shows -- in other words, there is no written record that shows that you were upset over these tactics?
>
> A. No, there's just the meeting itself that I had in which I communicated it face to face.
>
> Q. So there is a single meeting you had?
>
> A. It was a single hour-long meeting in which I communicated my concerns about the tactics.[60]

Weinstein placed blame for Fast and Furious on ATF's Phoenix Field Division – specifically SAC William Newell:

> A. I will say that I have significant concerns based on what I know now about the management, about what appeared to me to be some management issues in the Phoenix field office of ATF. . . .
>
> Q. What about approving the so-called misguided tactics? I mean, isn't that on the SAC as well?
>
> A. Well, again, I don't know what he did, what he didn't do. I don't know if the facts of that have come out yet or will come out. But, ultimately, he is at the top of the management chain in an office, and to the extent that tactics were being used in that office that shouldn't have been used -- it is my view that it is not a terribly large office, but there are a number of levels of supervision between him and the line agent. But at the end of the day the SAC is responsible for what goes on in his office.[61]

Weinstein refuses to accept any responsibility for Fast and Furious. Despite the fact that he was in a unique position to stop the program because of the Intercept Order Applications he approved, he deflects all blame for not stopping it to ATF and the U.S. Attorney's Office. He admitted that "**gun-walking is a pretty extraordinary thing and it's an extraordinarily bad**

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[60] *Id.* at 19-20.
[61] *Id.* at 29.

tactic."[62] Weinstein's unique knowledge of both Wide Receiver and Fast and Furious put him in a position to sound the alarm, yet he did nothing.

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

In late October, Attorney General Eric Holder followed up on a communication from Senator Grassley about whistleblower retaliation by implying that that the Justice Department had held someone accountable for the leak of a document about one of the whistleblowers in Fast and Furious. However, that person turned out to be former U.S. Attorney for the District of Arizona Dennis Burke—who had already resigned of his own accord on August 30, 2011.[63] Burke's lawyers publicly admitted on November 8, 2011 that he had had a role in leaking the document.

In a subsequent second interview with congressional investigators, Burke claimed he had been contacted by a reporter in Washington, D.C. who was apparently already familiar with the contents of the document and asked him for a copy of it.[64] When asked how he provided the document to the reporter, Burke he had a personal friend hand-deliver the document to the reporter instead of e-mailing it to him.[65] Questioned about why, Burke appeared unwilling to acknowledge that it signaled any consciousness of guilt:

> Q. So that you wouldn't -- I don't understand. Why wouldn't you just email it to him? That would be the simplest, easiest thing to do.
>
> A. That would be the simplest, easiest way.
>
> Q. Yeah.
>
> A. And that's when I said, "I can mail it to you," as opposed to it being forwarded around the [reporter's] office, I guess.
>
> Q. So which one of you suggested that it not be emailed?
>
> A. I think I did, but I can't remember the conversation.
>
> Q. So why did you just suggest that?
>
> A. Because he was -- he had initially said something about, "You can email it to me or have it sent to me," and I took the option of having it sent to him. And then he said, "I don't have an address." So I took the option of delivering it to him.

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[63] Mindy Blake, *U.S. Attorney for Arizona resigns*, KOLD/KSMB (Aug. 30, 2011), *available at* http://www.tucsonnewsnow.com/story/15359994/us-attorney-for-az-resigns.
[63] Mindy Blake, *U.S. Attorney for Arizona resigns*, KOLD/KSMB (Aug. 30, 2011), *available at* http://www.tucsonnewsnow.com/story/15359994/us-attorney-for-az-resigns.
[64] Transcribed Interview of Dennis Burke, at 191-192 (Dec. 13, 2011) [hereinafter Burke Tr.].
[65] Burke Tr. at 192-193.

Q. So why did you prefer not to email it directly to him?

A. Probably so it wouldn't be on the system there.

Q. And why? But why? Why did you not want it on the system there?

A. Just for circulation purposes.

Q. What does that mean?

A. What does it mean?

Q. Yeah, what do you mean, "for circulation" -- I don't know what that means, "for circulation purposes."

A. So that he had just a hard copy of the memo as opposed to an email version.

Q. To prevent him from forwarding it as easily, is that what you mean?

A. I guess. Yeah, yeah.

Q. Did you have an arrangement with him that he agreed not to forward it?

A. No.[66]

When asked directly about his motives, Burke denied that it was retaliation for the whistleblowing.[67]

Q. So what was your motivation?

A. That [the reporter] had asked for it, and I figured it was going to be going out anyway, and I would give him a time advantage in getting it.

Q. Are you aware now that it was actually not provided to the Hill?

A. I was told later, yeah.[68]

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[66] Burke Tr. at 192-195.
[67] Burke Tr. at 198.
[68] Burke Tr. at 198-199.

The seriousness of a U.S. attorney seeking to undermine a whistleblower was further underscored by the seriousness of why he had the document in the first place. Burke testified that he became aware of the document only because the Justice Department had provided it to him.[69] He also testified that the Department was providing such documents to other individuals in the Arizona U.S. Attorney's office under investigation, Patrick Cunningham and Mike Morrissey.[70] Although this was ostensibly for review of the documents, Burke testified that the Department never asked him anything about the documents it was providing to him.[71] The Justice Department has yet to provide a reasonable explanation as to why it was providing documents to the very individuals who are under investigation by Congress.

Until July 2011, the Department also maintained a shared drive with key documents that various ATF leadership under investigation had access to.[72] The Department's actions made it less likely that congressional investigators would be able to receive untainted testimony from the leadership of ATF and the Department being investigated, since individuals could consult the shared drive to figure out what Congress already knew from the documents produced under subpoena—and thus what they would have to admit in their congressional testimony.

VI. Conclusion

ATF blames Main Justice for encouraging Fast and Furious. The Justice Department blames ATF and the Arizona U.S. Attorney's Office for the use of misguided tactics. Those who were in a position at Main Justice to stop the program blame their staffs for not bringing issues regarding Fast and Furious to their attention. U.S. Attorney's Office personnel have either taken the Fifth Amendment and refused to discuss the issue with Congress, or have been estopped by the Justice Department from talking to Congress altogether. As the former ATF Acting Director testified in July 2011, it appears very clearly that the Department is circling the wagons to protect its political appointees.

The family of Brian Terry, the families of countless citizens in Mexico slain by weapons purchased through Fast and Furious, and the American people deserve to know the truth. The Justice Department's failure to be forthcoming and cooperate with the Committee's investigation is unacceptable. The Justice Department's failure to fully comply with congressional subpoenas only prolongs the inquiry and damages the public's trust in the Department's leadership.

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[69] Burke Tr. at 195-196, 200.
[70] Burke Tr. at 196.
[71] Burke Tr. at 200.
[72] Letter from Department of Justice to Chairman Issa and Ranking Member Grassley, Sep. 19, 2011, at 2.

Chairman ISSA. I will now recognize myself for 5 minutes—oh, I am sorry. I am a little off on that. To be honest, I just thought I would respond to a few of your things, but that will wait.

Mr. Attorney General, we are pleased to have you here. As the highest-ranking law official in the land, we appreciate your commitment to the time, both here and in the Senate, that you have given.

Contrary to the ranking member, I believe that today will be one of the first times in which you are fully briefed and prepared to answer in detail questions exclusively about Fast and Furious; and I would caution both sides of the aisle to stick to the subject. We are not—and I repeat—we are not the Judiciary Committee. The Attorney General is not here to answer a plethora of questions we may have about the conduct of his office. He is not here to generally tell us about law enforcement. I will assert the gavel if someone goes on a broad expedition beyond Fast and Furious and, as the ranking member said, related activities, including Wide Receiver and others. I think respect for the Attorney General's time and the legitimate portion of the jurisdiction that our committee has taken requires that I ask all of you to please stick to that, particularly since the Attorney General's time is valuable.

Mr. Attorney General, pursuant to the rules of the committee, I would ask that you rise and take the oath.

[Witness sworn.]

Chairman ISSA. Let the record represent an affirmative answer. Thank you, Mr. Attorney General.

In order to allow time for discussion, the committee, like all committees, will tell you to stay within 5 minutes. I in fact have no intention on picking up the gavel as long as you present what you have here today.

I would ask that to the greatest extent possible that you realize that your opening statement in its written form is completely in the record and that you certainly have our permission to include material not in the record in order to further delineate your prepared testimony today.

With that, Mr. Attorney General, you are recognized.

STATEMENT OF ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES

Attorney General HOLDER. Thank you.

I am here today because I understand and appreciate the importance of congressional oversight and because I am committed to ensuring the highest standards of integrity and professionalism at the U.S. Department of Justice. That is precisely what I pledged to do exactly 3 years ago tomorrow when I was sworn in as Attorney General, and it is exactly what I have done over the last 3 years.

My dedication to the Department's mission is shared by an extraordinary group of colleagues, over 117,000 employees, who each day in offices all around the world work tirelessly to protect the American people from a range of urgent and unprecedented threats—from global terrorism and financial fraud, violent crime, human trafficking, civil rights abuses, and more.

Over the last 3 years, we have made a number of significant improvements, including policy and personnel changes that address

many of the concerns that are the subject of this hearing today. Today, I would like to discuss some of these improvements in specific terms and outline the steps that we have taken to ensure that the flawed tactics in Operation Fast and Furious and in earlier operations under the prior administration are never used again.

Now, in some of my comments today, if they sound familiar, it is because this marks the sixth time that I have answered questions about this operation before a congressional committee in the last year. Let me start, however, with something that cannot be said enough: Allowing guns to "walk", whether in this administration or the prior one, is wholly unacceptable. I have been consistent on this. I have said this from day one. The tactic of not interdicting weapons, despite having the ability and legal authority to do so, appears to have been adopted in a misguided effort to stem the alarming number of illegal firearms that are trafficked each year from the United States to Mexico. Now, to be sure, stopping this dangerous flow of weapons is a laudable and critical goal, but attempting to achieve it by using such inappropriate tactics is neither acceptable nor excusable.

That is why, when I learned early last year about the allegations raised by ATF agents involved with Fast and Furious, I took action. In addition to requesting an Inspector General investigation last February, I ordered that a directive be sent prohibiting the use of such tactics. There have also been important personnel changes in the Department, and vital reforms reflecting the lessons that we have learned from Operation Fast and Furious have been implemented.

Today, I want to reaffirm my commitment to ensuring that these flawed tactics are never used again, and I reiterate my willingness to work with Congress generally and with this committee more specifically to address the public safety and national security crisis along our Southwest border that has taken far too many lives.

Congress has legitimately sought answers to questions about law enforcement Operations Wide Receiver and Fast and Furious, and my colleagues and at the Department of Justice have worked diligently to provide those answers. In addition to my frequent testimony before Congress, I have answered and am continuing to answer questions that have been submitted for the record during previous hearings. The Department has also responded to more than three dozen letters from Members of Congress and facilitated numerous witness interviews. We have also submitted or made available for review some 6,400 pages of documents to congressional investigators. This has been a significant undertaking for Justice Department employees, and our efforts in this regard remain ongoing.

We have also provided Congress with virtually unprecedented access to internal deliberative documents to show how inaccurate information was initially conveyed in a letter sent to Senator Grassley on February 4, 2011. These documents show that Department officials relied on information provided by supervisors from the relevant components in the best position to know the facts. We now know that some of the information that they provided was, in fact, inaccurate. We also understand that in subsequent interviews with congressional investigators these supervisors stated that they did

not know at the time that the information that they provided was inaccurate.

In producing internal communications regarding the drafting of the February 4th letter, the Department made a rare, limited exception to longstanding executive branch policy. This decision reflected unusual circumstances and allowed us to respond, in the most comprehensive way possible, to congressional concerns where the Department itself concluded that information in the letter was inaccurate. The documents we produced have answered the question of how that letter came to be drafted and put to rest questions of any intentional effort to mislead. All of our communications to Congress should be accurate, and that is the standard that I expect the Department to meet. At my direction, the Deputy Attorney General has instituted new procedures to increase safeguards in this area.

As I testified in a previous hearing, the Department does not intend to produce additional deliberative materials—I want to emphasize deliberative materials—about the response to congressional oversight or media requests that post-date the commencement of congressional review. This decision is consistent with the longstanding approach taken by the Department, under both Democratic and Republican administrations, and reflects concerns for the constitutionally protected separation of powers.

Prior administrations have recognized that robust internal communications would be chilled and the executive branch's ability to respond to oversight requests thereby impeded if our internal communications concerning our responses to congressional oversight were disclosed to Congress. For both branches, this would be an undesirable outcome. The appropriate functioning of the separation of powers requires that executive branch officials have the ability to communicate confidentially as they discuss how to respond to inquiries from Congress.

Now, I want to note that the separation of powers concerns are particularly acute here, because the committee has sought information about open criminal investigations and prosecutions. This has required Department officials to confer on how to accommodate congressional oversight interests while also ensuring that critical ongoing law enforcement decisionmaking is never compromised and is free from even the appearance of political influence. Such candid internal deliberations are necessary to preserve the independence, the integrity, and the effectiveness of the Department's law enforcement activities and would be chilled by disclosure of such materials. Just as we have worked to accommodate the committee's legitimate oversight needs, I trust that the committee will equally recognize the executive branch's constitutional interests and will work with us to avoid further conflict on this matter.

I know the committee is also keenly interested in the policy changes that the Department has undertaken in the wake of Operation Fast and Furious. The ATF, which is now under the leadership of Acting Director Todd Jones, has implemented a number of key reforms and critical oversight procedures to prevent such a flawed operation from occurring again. These reforms are numerous and include a number of things.

I am also pleased to report that, under the leadership of the Department's Criminal Division, we have bolstered crime-fighting capacity on both sides of the U.S.-Mexico border; and we have done this by doing a number of important things as well.

This is an important start, but we have to do a lot more. And no one knows this better than the members of our Nation's law enforcement community, including—and I want to emphasize this—including the ATF agents who testified before this committee last summer. Not only did these brave agents bring the inappropriate and misguided tactics of Operation Fast and Furious to light, they also sounded the alarm for more effective laws to combat gun trafficking and to improve public safety.

These courageous agents explained that ATF's ability to stem the flow of guns from the United States into Mexico suffers from a lack of effective enforcement tools. Unfortunately, in 2011, a majority of House Members, including all the members of the majority on this committee, voted to keep law enforcement in the dark when individuals purchase multiple semiautomatic rifles, shotguns, and long guns—like AK–47s—in gun shops along our Southwest border states.

In this new year, I hope that we can work together to provide law enforcement agents with the tools that they say they desperately need and that they have requested to protect our citizens and to ensure their own safety. Indeed, incidents of violence against law enforcement officers are approaching the highest level that we have seen in nearly two decades, even though violent crime is down overall.

That is simply unacceptable, and the Justice Department is committed to turning back this rising tide and to protecting those who serve on the front lines. We have designed and implemented a comprehensive new training initiative to provide law enforcement leaders with the information, analysis, and tools they need to respond to a range of threats.

Let me be clear: Nothing is more important than ensuring the safety of the brave law enforcement professionals who put their lives at risk for us each and every day, but we can't make the progress we need and that the law enforcement partners deserve without your assistance and without your leadership.

As I said before, I am determined to ensure that our shared concerns about these flawed law enforcement operations lead to more than worn-out Washington "gotcha" games and cynical finger pointing. The Department of Justice stands ready to work with you not only to correct the mistakes of the past but also to strengthen our law enforcement capacity in the future.

Thank you.

Chairman ISSA. I thank the gentleman.

[The prepared statement of Attorney General Holder follows:]

Statement of
Eric H. Holder, Jr.
Attorney General
United States Department of Justice
Before the
Committee on Oversight and Government Reform
United States House of Representatives

February 2, 2012

Chairman Issa, Ranking Member Cummings, and members of the Committee, I am here today because I understand and appreciate the importance of congressional oversight, and because I am committed to ensuring the highest standards of integrity and professionalism at the Department of Justice. That's precisely what I pledged to do – exactly three years ago tomorrow – when I was sworn in as Attorney General. And it is exactly what I have done.

My dedication to the Department's mission is shared by an extraordinary group of colleagues: the 117,000 employees who – each day, in offices all around the world – work tirelessly to protect the American people from a range of urgent and unprecedented threats – from global terrorism and violent crime, to financial fraud, human trafficking, civil rights abuses, and more. Over the last three years, we've made a number of significant improvements, including policy and personnel changes that address many of the concerns that are the subject of this hearing. Today, I'd like to discuss some of these improvements in specific terms – and outline the steps that we have taken to ensure that the flawed tactics used in Operation Fast and Furious – and in earlier operations under the prior Administration – are never again used.

If some of my comments today sound familiar, it is because this marks the sixth time I have answered questions about this operation before a congressional committee in the last year. Let me start, however, with something that cannot be said often enough: allowing guns to "walk" – whether in this Administration or in the prior one – is wholly unacceptable. This tactic of not interdicting weapons, despite having the ability and legal authority to do so, appears to have been adopted in a misguided effort to stem the alarming number of illegal firearms that are trafficked each year from the United States to Mexico. To be sure, stopping this dangerous flow of weapons is a laudable – and critical – goal. But attempting to achieve it by using such inappropriate tactics is neither acceptable nor excusable.

That's why, when I learned early last year about the allegations raised by ATF agents involved with Fast and Furious, I took action. In addition to requesting an Inspector General investigation last February, I ordered that a directive be sent prohibiting the use of such tactics. There also have been important personnel changes in the Department. And vital reforms reflecting the lessons we have learned from Operation Fast and Furious have been implemented.

Today, I reaffirm my commitment to ensuring that these flawed tactics are never used again. And I reiterate my willingness to work with Congress to address the public safety and national security crisis along our southwest border that has taken far too many lives.

Congress has sought answers to questions about law enforcement Operations Wide Receiver and Fast and Furious. And my colleagues and I at the Department of Justice have worked diligently to provide those answers. In addition to my frequent testimony before Congress, I have answered – and am continuing to answer – questions that have been submitted for the record during previous hearings. The Department also has responded to more than three dozen letters from members of Congress and facilitated numerous witness interviews. We also have submitted or made available for review more than 6,400 pages of documents to congressional investigators. This has been a significant undertaking for Department employees – and our efforts in this regard remain ongoing.

We also have provided Congress with virtually unprecedented access to internal deliberative documents to show how inaccurate information was initially conveyed in a letter sent to Senator Grassley on February 4, 2011. These documents show that Department officials relied on information provided by supervisors from the relevant components in the best position to know the facts. We now know that some of the information they provided was inaccurate. We also understand that, in subsequent interviews with congressional investigators, these supervisors have stated that they did not know at the time that the information they provided was inaccurate.

In producing internal communications regarding the drafting of the February 4th letter, the Department made a rare, limited exception to longstanding Executive Branch policy. This decision reflected unusual circumstances and allowed us to respond, in the most comprehensive way possible, to congressional concerns where the Department itself concluded that information in the letter was inaccurate. The documents we produced have answered the question of how that letter came to be drafted and put to rest questions about any intentional effort to mislead. All of our communications to Congress should be accurate and that is the standard I expect the Department to meet. At my direction, the Deputy Attorney General has instituted new procedures to increase safeguards in this area.

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I want to note that the separation of powers concerns are particularly acute here, because the Committee has sought information about open criminal investigations and prosecutions. This has required Department officials to confer about how to accommodate congressional oversight interests while also ensuring that critical ongoing law enforcement decision-making is not compromised, and is free from even the appearance of political influence. Such candid internal deliberations are necessary to preserve the independence, integrity, and effectiveness of the Department's law enforcement activities and would be chilled by disclosure to Congress of such

materials. Just as we have worked to accommodate the Committee's legitimate oversight needs, I trust that the Committee will equally recognize the Executive Branch's constitutional interests and will work with us to avoid further conflict on this matter.

I know the Committee also is keenly interested in policy changes that the Department has undertaken in the wake of Operation Fast and Furious. The ATF, which is now under the leadership of Acting Director Todd Jones, has implemented a number of key reforms and critical oversight procedures to prevent such a flawed operation from occurring again. These reforms include: clarifying current firearms transfer policies to more effectively prevent the criminal acquisition, trafficking, or misuse of firearms; implementing a new Monitored Case Program designed to facilitate closer coordination on sensitive investigations between ATF field and headquarters personnel; revising policies regarding the use of confidential informants to, among other things, prevent using Federal Firearms Licensees as paid informants except in limited circumstances; and reinforcing the importance of deconfliction and information sharing so law enforcement agencies can investigate subjects more effectively.

I'm also pleased to report that, under the leadership of the Department's Criminal Division, we've bolstered crime-fighting capacity on both sides of the U.S./Mexico border. We've done this by creating new cartel-targeting prosecutorial units; developing new procedures for using evidence gathered in Mexico to prosecute gun traffickers in U.S. courts; training thousands of Mexican prosecutors and investigators; extraditing more than 300 defendants wanted by U.S. law enforcement; successfully advocating for enhanced sentencing guidelines for convicted traffickers and straw purchasers; and pursuing coordinated, multi-district investigations of gun-trafficking rings.

This is an important start, but we have more to do. And no one knows this better than the members of our nation's law enforcement community – including the ATF agents who testified before this Committee last summer. Not only did these agents bring the inappropriate and misguided tactics of Operation Fast and Furious to light, they also sounded the alarm for more effective laws to combat gun trafficking and improve public safety.

These agents explained that ATF's ability to stem the flow of guns from the United States into Mexico suffers from a lack of effective enforcement tools. Unfortunately, in 2011, a majority of House Members – including all members of the majority on this Committee – voted to keep law enforcement in the dark when individuals purchase multiple semi-automatic rifles, shotguns, and long guns – like AK-47s – in gun shops in four southwest-border states.

In this new year, I hope we can work together to provide law enforcement agents with the tools they desperately need – and have requested – to protect our citizens and ensure their own safety. Indeed, incidents of violence against law enforcement officers are approaching the highest levels we've seen in nearly two decades, even though violent crime is down overall. Last year, a total of 177 federal, state, and local officers lost their lives in the line of duty – a 16 percent increase over 2010. More than 70 of these deaths involved firearms – 20 percent more than the previous year. And, since the beginning of this year, an additional 14 officers have been killed – half of them in gun-related incidents.

That is unacceptable. The Justice Department is committed to turning back this rising tide, and to protecting those who serve on the front lines. We've designed and implemented a comprehensive new training initiative to provide law enforcement leaders with the information, analysis, and cutting-edge tools they need to respond to a range of threats – including ambush-

style assaults. We've developed and distributed 8,000 Officer Safety Toolkits, and have partnered with public safety professionals at every level to make sure our officers have the communications platforms necessary to share information more quickly – and to more effectively identify and combat threats. And we've built a robust network of relationships – between state, local, and tribal authorities; key federal partners; private sector stakeholders; and Cabinet-level agencies – to explore new strategies, invest in critical research, and ensure that this vital work remains a top priority. Let me be clear: nothing is more important than ensuring the safety of the brave law enforcement professionals who put their lives at risk for us each and every day.

But we can't make the progress we need – and that our law enforcement partners deserve – without your assistance and your leadership. As I have said before, I am determined to ensure that our shared concerns about these flawed law enforcement operations lead to more than worn-out Washington "gotcha" games and cynical finger pointing. The Department of Justice stands ready to work with you – not only to correct the mistakes of the past, but also to strengthen our law enforcement capacity in the future.

I look forward to discussing this, and I would be pleased to answer your questions.

Chairman ISSA. Before I begin my questioning, Mr. Attorney General, would you agree to release to us legal opinions on the constitutionality of the material that you have thus far refused to supply the committee?

Attorney General HOLDER. To the extent that there are legal opinions, I will look at them; and to the extent that they can be provided, I have no objection to that. I don't know if these are OLC opinions that OLC would have an objection to providing. But to the extent that I can, I will make those available to you.

Chairman ISSA. Okay.

I will begin my questioning I guess by following up.

Mr. Attorney General, you have—the executive branch has executive privilege. It is narrow. It is well defined. There is case law. If you do not find a legitimate basis to deny us the material we have asked for, we will seek the remedies necessary to compel.

Having said that, I appreciate your being here today; and I don't want to waste any of your or my time on this at this point.

Let's go through a couple of items here.

First of all, it is reported through discovery that we have received that Mr. Monty Wilkinson may have informed you of Agent Terry's murder in a timely fashion. Is that true?

Attorney General HOLDER. He may have. I know the murder occurred December 14th. I heard about it I think probably within 24 hours. I don't know if it came from Monty Wilkinson or from some other member of my staff, but I knew about the murder within 24 hours of its occurrence.

Chairman ISSA. When you were informed about that within 24 hours, did anyone inform you or allude to the fact that the weapons found at the scene were from Fast and Furious?

Attorney General HOLDER. No. I didn't know about Operation Fast and Furious until the beginning parts of 2011 after I received that letter from Senator Grassley I guess at the end of January, and then that was about Operation Gunrunner. I actually learned about the Fast and Furious operation in February of that year.

Chairman ISSA. Would you make available to us through whatever records you can find the name of the person who informed you so that we can ascertain why that individual would not or did not tell you what was widely known almost immediately, that in fact law enforcement allowed weapons walked—basically, that these were Fast and Furious weapons? The emails that we have received through whistleblowers show us extensively that law enforcement was aware and concerned about it. We would like to know why someone kept that from you.

Attorney General HOLDER. I am not sure that anybody kept it from me. I mean, I found out about it, as I said, I think in January-February 2011, and I am not even sure how I found out about it. It might have been either through a letter I received from Senator Grassley on February 9th—I am not sure if it was contained in there. There were certainly media reports about it in February. Again, I am not sure exactly how I found out about the term "Fast and Furious."

Chairman ISSA. Would it be fair from your own knowledge to say that neither Lanny Breuer as head of the Criminal Division nor

Jason Weinstein did anything to stop the program after they learned of what it was about?

Attorney General HOLDER. Stop the program——

Chairman ISSA. Fast and Furious, prior to Brian Terry's death.

Attorney General HOLDER. I mean, they both admitted that they were aware of Operation Wide Receiver and never connected the techniques that were used in Wide Receiver to Operation Fast and Furious and, as a result, did not take any action in that regard; and both have admitted that that was a mistake.

Chairman ISSA. Let's go through this. I think in my limited time I want to make sure that we do deal with Wide Receiver versus Fast and Furious.

As of today, do your law enforcement authorities such as the ATF have the ability to see a straw purchase—believed straw purchase—and, rather than arrest them at the door with no evidence, follow them to the next location?

Attorney General HOLDER. See them——

Chairman ISSA. In other words, does law enforcement have the ability to follow suspected gun traffickers with the weapons in their car from location to location?

Attorney General HOLDER. And keep them under constant surveillance?

Chairman ISSA. Yes.

Attorney General HOLDER. They certainly have that capacity.

Chairman ISSA. Okay. So as far as we have been reported, every piece of evidence shows that in Wide Receiver every effort was made, unsuccessfully in many cases, which is one of the things that concerns us, to follow the weapons. To your knowledge, was there ever an order under Wide Receiver to abandon following the weapons and let them walk?

Attorney General HOLDER. Well, I would say, you know, during the early—as I have seen more on Wide Receiver as we have provided materials——

Chairman ISSA. A yes or no would be a good start, Mr. Attorney General. Do you know of any time in which people were ordered to peel off and let the guns walk under Wide Receiver?

Attorney General HOLDER. I am not sure about whether they were ordered to or not, but I do know that in the early phases of the investigation observations were made of people buying guns and decisions made not to surveil them after those purchases were made. And, as a result, 100, 400—I am not sure exactly what the number is—of guns walked; and there were complaints raised by people connected to the investigation about the fact that guns were walking in Operation Wide Receiver.

Chairman ISSA. Since it was never allowed to simply let known straw buyers, known guns fall into illicit criminals' hands, have you taken any action to fire anyone or discipline anyone from Operation Wide Receiver?

Attorney General HOLDER. Operation Wide Receiver occurred in the prior administration. I don't think that——

Chairman ISSA. We are not talking about political appointees. We were talking about people who would transcend the transition. Have you, to your knowledge, disciplined anyone from Wide Receiver?

Attorney General HOLDER. No, I have not.

Chairman ISSA. Have you disciplined anyone from Fast and Furious?

Attorney General HOLDER. No, I have not, as yet. As yet. There have been personnel changes made at ATF. We obviously have a new U.S. attorney in Arizona. We have made personnel switches at ATF. People have been moved out of positions.

I am certainly going to wait and see what I get from the Inspector General, the report that we have from the majority. I don't know if the minority is going to produce—from the minority. I don't know if the majority is going to produce a report. And I will be taking all that into consideration, in addition to all these things I am able to find out on my own, and make personnel changes as I think they are appropriate.

Chairman ISSA. My time has expired. I will say that I don't think the minority report is going to do you a whole lot of good since it seems to say more or less nothing happened.

With that, I recognize the author of the minority report, Mr. Cummings, for his round of questions.

Mr. CUMMINGS. Thank you very much, Mr. Chairman, and I respectfully disagree with what you just said. Our staff worked very hard on that report. And, by the way, it is based upon the evidence that the majority presented, that the majority presented. You all heard the same evidence that we heard, and we basically looked at the facts and presented them.

Mr. Attorney General, I want to thank you again; and I am sorry my colleagues on the other side of the aisle have made completely unsubstantiated allegations against dedicated and hardworking FBI agents, DEA, officials and others. And I want to thank all of them for what they do every day to protect the American public.

I face a real challenge today. I have to ignore the political sideshow and keep my focus on the very real problems that led to these flawed operations.

As our report explains, we have no evidence that you approved gun-walking. We have no evidence that you knew about it. The same can probably be said of former Attorney General Mukasey. I assume that if either of you actually heard that gun-walking was taking place, you would have put a stop to it.

As I review this report from my staff, however, I get a little bit upset. First I get upset that this happened. Hundreds of weapons went to criminal networks on both sides of the border because agents did not arrest suspects when they could have.

I also get upset that this went on for so long. We identified four different operations in Phoenix over 5 years across two administrations involving hundreds of weapons, and these weapons put law enforcement agents in danger.

In your written statement you noted that 177 officers lost their lives in the line of duty last year, and 70 of those deaths involved firearms. As the country's chief law enforcement officer, what is your reaction to the fact that these operations continued for so long?

Attorney General HOLDER. Well, it bothers me a great deal when one sees the death toll that we have seen in Mexico, 40–50,000 people have been killed over the last 5 years, 64,000 guns traced from

the United States into Mexico, and that is traced, which means there are probably substantially greater numbers of guns that have gone from the United States into Mexico. And the concern I have is that with these guns going into Mexico and cartel activities that reach into the United States that at some point these guns will be trained on law enforcement officers.

Though we have seen an historic drop in the crime rate to 40- and 50-year lows, we have seen a rise over the last 2 years in the number of police officers, Federal enforcement agents, who have been killed. I have been to far too many funerals, I have had to write far too many letters, talk to far too many widows about the death of brave people who have died in service to their country, and we have to do something about it. We have to.

Mr. CUMMINGS. The ATF Deputy Director William Hoover, an experienced career ATF officer, became concerned in 2010 about the number of weapons involved in Fast and Furious. He told us he did not know about gun-walking, but he ordered an exit strategy based on his overall concerns. He told the Phoenix office to end this operation within 90 days and bring indictments, but they didn't do it. They did not like ATF headquarters running their cases, and they continued for months to encourage gun dealers to sell to straw purchasers without arrest.

During his interview, Mr. Hoover also told us that he never told anyone at the Department of Justice about his general concerns with the operation or his order for an exit strategy, and our interviews with Justice Department officials confirm that.

So I have two questions. I understand that field agents don't like bureaucrats in Washington looking over their shoulder, but how can a field office effectively ignore the directives of ATF headquarters in this way? And, second, what specific reforms are now in place or should we consider to ensure better coordination and oversight?

Attorney General HOLDER. Well, there is a tension between the field and headquarters. I have been in the field, I have been in headquarters, and depending on where I sit, I think greater wisdom exists in that place. We have to come up with ways in which we make clear what the policies are.

After I heard about gun-walking—I don't know about Attorney General Mukasey, but after I heard about gun-walking, I was very firm. I had a directive sent out by the Deputy Attorney General to the field that indicated that those kind of techniques were simply unacceptable, were not to be used by the Department of Justice.

Now, Todd Jones, the Acting Director at ATF, has instituted a number of reforms. I want to say that the report that you have put out contains at the back a number of suggestions with regard to reforms, and I think—I don't remember what the number is, but a substantial number of those have been instituted by Todd, among them coming up with ways in which we ensure that the trafficking of guns, the gun-walking, does not occur, that more levels of review have to occur.

I think also significant, given the fact that Agent Dodson is here, is that we have to have ways in which at ATF people who have concerns about ATF operations have a greater ability, don't have any concerns for their careers about surfacing things within ATF,

so that the leadership at ATF and ultimately back at headquarters can take the necessary corrective actions. But I would salute the minority report for the management changes and policy changes that are included in that report.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. My time is up.

Chairman ISSA. Thank you.

We now go to the former chairman of the full committee, Mr. Burton, for 5 minutes.

Mr. BURTON. Nice seeing you again.

Attorney General HOLDER. It has been a while.

Mr. BURTON. Yes, it sure has.

You know, it is very interesting, Mr. Attorney General, for 6 years I remember when you were with Janet Reno and the Deputy Attorney General, and we fought to get documents, and we had a difficult time. You have said here today that there are certain documents that you will not give us because of the separation of powers. Now, we have been down that road before and we got them, but we had to threaten that we would have a contempt citation in Congress. This is not just during the Reno administration but during Gonzales as well. And we got the documents. So I think you are hiding behind something here that will not stand up. So you ought to give us the documents.

Now, we received 6,000 documents with redactions. And I know that is an old school policy, you know. Send them up here and cross out everything of relevance and let us try to figure out what it is. And you dump them on us on Friday night so that the staff here can't do anything with them unless they stay over the weekend and work 10, 12, 14 hours. I have been down that road, too.

Now, there are 93,000 documents—93,000 documents that you are not giving this committee; and you are saying, well, the separation of powers prohibits you from doing that. That is baloney. That is just baloney. And I have worked with you for 6 years—well, I wouldn't say "with" you. I have worked for 6 years when you were the Deputy Attorney General.

So why don't you give us those documents? The conclusion that I come to is there are some things in there that are being hidden that you don't want us to see. I don't know if it involves you or some other ATF agents or some other members of the Justice Department. But this committee is the Oversight Committee, and we have every right under the Constitution to check on what you are doing. We are supposed to oversee the executive branch, and you are part of that branch.

So for you to deny this committee anything like that is just dead wrong, and I don't think you are going to find any way that you can do it, and I would urge the chairman to move a contempt citation against you if you don't give them to us.

Now, let me just ask you a couple of questions.

Why won't you let Patrick Cunningham, the head of the Criminal Division in Phoenix, and Emory Hurley, a line prosecutor, why won't you let them come and talk to the committee? If you can't let them do it publicly, you ought to let them do it in a private setting. Why won't you let them do that?

Attorney General HOLDER. Well, a couple of things.

Just for the record, I was only a Deputy Attorney General for 4 years. It seemed like 6.

Mr. BURTON. Okay. Well, 4 years. It seemed like longer than that for me.

Attorney General HOLDER. All right, longer than 6 for me as well then.

Chairman ISSA. Would the gentleman yield?

Mr. BURTON. I would be happy to yield.

Chairman ISSA. Since Mr. Cunningham has now taken the Fifth, I would say none of us have that direct authority.

But to add to the gentleman's question, would you make all testimony and information on Mr. Cunningham immediately available to us unredacted so we may evaluate to a great extent what you know about why he took the Fifth?

Go ahead. I yield back.

Attorney General HOLDER. Well, in terms of making available—I am not sure where you get the number of 93,000 documents. Those redactions that have occurred are only because there are things that are either not relevant or are protected by grand jury secrecy rules, court orders that have sealed material. We have provided to this committee material that is relevant and only redacted that which is necessary, and there is a key that tells you why something was redacted.

With regard to the two people you have talked about, Hurley—Mr. Hurley is a line prosecutor, and we never make line prosecutors available. That is every Attorney General that I know has followed that policy. Mr. Cunningham no longer works in the Justice Department, and so I don't have the ability to compel him to testify. He left the Justice Department I think this past Monday or last Friday.

Mr. BURTON. You asked him to leave, I guess, didn't you?

Attorney General HOLDER. No.

Mr. BURTON. You didn't?

Attorney General HOLDER. No.

Mr. BURTON. He left on his own after he took the Fifth Amendment?

Attorney General HOLDER. He had planned to leave well before he invoked his Fifth Amendment privilege to take a job in private practice—or at a company.

Mr. BURTON. As I understand it, the IG has 80,000 documents, and you have given us 6,000. So whether we are talking about 93 documents or 80,000, this committee has asked for those and has not gotten them, and it appears as though we are being stonewalled and there is something that is being hidden.

Let me ask you another question: Have you apologized personally to the whistleblowers who were in effect called liars by those within your own agency, when we now know they were telling the truth and we wouldn't know any of this today if they hadn't come forward? I am talking about people like John Dodson, who is here today, and Peter Forcelli. Have you apologized to them personally?

Attorney General HOLDER. I have not apologized to them.

I spoke to Mr. Dodson, Agent Dodson, at the beginning of the hearing when the chairman was kind enough to bring him by. I

gave him my telephone number and told him to give me a call if he wants to talk about the way——

Mr. BURTON. Give you a call?

Attorney General HOLDER. Give me a call.

Mr. BURTON. Why don't you call him and apologize? Because you are the Attorney General of the United States, and you are in charge of these people, and they were in effect called liars, and they were telling the truth. And I think, as the head of that agency, it should be your responsibility to say hey, guys, I am sorry that you were called liars when you did tell the truth.

Attorney General HOLDER. I am not aware of them being called liars.

But, beyond that, what we have tried to do is treat them with respect. I don't think any adverse action has been taken against any of the people who came here and testified before this committee.

To the extent that there are concerns that Mr. Dodson has, I will be more than glad to talk to him about them. I will note, however, that he has had a meeting with the Acting Director of ATF and I think he has expressed whatever his thoughts were, at least at that time. If that has not been sufficient, as I said, I am more than glad to have a conversation with him.

Mr. BURTON. I wish you would call him.

Thank you, Mr. Chairman.

Chairman ISSA. The gentleman's time has expired.

Did you want to answer on the Cunningham question of materials in your possession now that he has left under this cloud?

Attorney General HOLDER. Yes. I wouldn't say it was "under a cloud". But, anyway——

Chairman ISSA. Taking the Fifth is not a cloud?

Attorney General HOLDER. I don't know why he took the Fifth. There are a variety of reasons, not the least of which was that apparently there was a report issued by this committee or a statement by this committee that he had acted inappropriately. I don't know why he invoked his Fifth Amendment privilege. That is certainly his right as an American citizen.

We have provided already 153 documents with regard to Mr. Cunningham that entails about 387 pages of material. We will continue to look at that material; and to the extent there is information that is relevant, we will provide it to the committee.

Chairman ISSA. I thank you.

We now recognize the other former chairman of the committee, Mr. Towns, for 5 minutes.

Mr. TOWNS. Thank you very much, Mr. Chairman.

This committee has not obtained one shred of evidence that would contradict your testimony, Mr. Attorney General, not one witness, not one document, not one email; and still some continue to suggest that you did personally authorize gun-walking and the tactics in Operation Fast and Furious. I hope this will be the last time you have to answer this question: Did you, Mr. Attorney General, ever authorize gun-walking?

Attorney General HOLDER. I did not, and I will say it that way. I am from New York, and I would say it in a different way, but

I am going to have great respect for this committee and simply say I did not.

Mr. TOWNS. I am from New York, so I would understand your answer. And, of course, my colleague next to me would, also.

Did you ever authorize the controversial tactics employed in Operation Fast and Furious, the non-interdiction of illegal firearms, in order to build a bigger case?

Attorney General HOLDER. Not only did I not authorize those tactics, when I found out about them I told the field and everybody in the U.S. Department of Justice that those tactics had to stop, that they were not acceptable, and that gun-walking was to stop. That was what my reaction to my finding out about the use of that technique was.

Mr. TOWNS. To your knowledge, did Deputy Attorney General Gary Grindler or Assistant Attorney General Lanny Breuer ever authorize gun-walking or the tactics employed in Fast and Furious?

Attorney General HOLDER. To my knowledge, they did not.

Mr. TOWNS. Let me ask this: If you had been asked to approve of gun-walking, what would you have done or said?

Attorney General HOLDER. No. Simple.

You know, there are questions that you have in public corruption cases when you are trying to decide are you going to let the money walk. There are questions that you have in narcotics cases if you are going to let the drugs walk so that you can make a case. You have spirited conversations about that, and I can understand how there will be differing opinions.

The notion that you would let guns walk in a firearms case is for me absurd, absurd, and it was the reason why I said it cannot happen. While we stopped it, it is not DOJ policy, and anybody who does it now is breaking a direct directive from the Attorney General of the United States.

Mr. TOWNS. So if you had been asked or told by ATF or the U.S. Attorney's Office about the tactics in Operation Fast and Furious, how would you have acted or responded?

Attorney General HOLDER. In the same way that I did I think in early March 2011, by telling everybody in the Justice Department, don't do this. It is unacceptable, it is stupid, it is dangerous, and not something that this Department of Justice can ever do.

Mr. TOWNS. You know, I want to thank you for coming up and, of course, thank you for your testimony. I think it is pretty clear that the attempts to tarnish your reputation with these unsubstantiated allegations is pure politics and this definitely has a political flavor, and that is unfortunate.

So, on that note, I will yield back.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from North Carolina, Mr. McHenry, for 5 minutes.

Mr. MCHENRY. Thank you, Mr. Chairman.

Thank you, Attorney General Holder, for being here.

Listening to the answer you had from the former chairman, it seems to me when you see that folks did not follow policy, did not follow your directives, and we are here 13 months after you found out that an agent was murdered for policies that you did not support, and we find out you have not fired a single individual, we find

out that you have not rebuked any staff members—heck, you haven't even put a letter in people's personnel files saying that they on their watch acted and an agent was murdered. That is absolutely absurd from this side of the dais. So I ask you, why have you not taken steps to make sure this doesn't happen again?

Attorney General HOLDER. Well, I have taken steps. Certainly with regard——

Mr. MCHENRY. Yes, you told people you were mad, you were upset. That to me is silly. You have not taken action. You have not fired anybody. You haven't changed policy. Because it is clear you didn't enforce the policy before. You didn't know—you are saying you didn't even know about it. So it strikes me as incompetence in terms of management.

Attorney General HOLDER. Well, I am not sure you understand how the Justice Department works. I didn't express the fact that I was mad or that I thought it was silly. I issued a directive that said that the Attorney General of the United States that says this policy, this kind of technique, is inappropriate and should not be followed.

We are still in the process of trying to determine, the Inspector General is trying to determine, where this policy originated. We know that it started probably in the ATF office in Phoenix. It was approved by the U.S. Attorney's Office in Phoenix. Now, exactly who the people were who actually approved the technique we are still in the process of trying to work through.

But that is not all that I have done. I have made personnel changes with regard to leadership positions. We have moved people around. We have instituted a series of policies now that I think are designed to make sure that that doesn't happen again.

Mr. MCHENRY. So an agent was murdered, and your action is to move people around. That seems to me to simply inconvenience people, not to rid them of Federal employment.

Attorney General HOLDER. Well, to the extent that we find out who precisely was involved in this or who gave that order, I can assure you that, unless there is some truly compelling circumstance, that person, those people will be removed from Federal service.

But that is not all we have done with regard to the murder. We are in the process of investigating that murder, and the people who are responsible for it will be held accountable, and I expect that you will hear something about that relatively soon.

Mr. MCHENRY. Relatively soon. Thirteen months later.

Attorney General HOLDER. No. Well, these matters——

Mr. MCHENRY. It is 13 months after the fact, sir. That is what I am saying. At what point are you going to take action?

Attorney General HOLDER. As soon as we are in a position to make arrests and hold people accountable, put them in a court of law and try them with maximum charges. These are not cases——

Mr. MCHENRY. Is that likely this year?

Attorney General HOLDER. I think that is likely this year.

Mr. MCHENRY. Is it likely in the next 6 months?

Attorney General HOLDER. Yes, I think it is likely in the next 6 months.

Mr. MCHENRY. Could you see this happening this quarter?

Attorney General HOLDER. When does this quarter end? I don't know.

Chairman ISSA. March 31st.

Attorney General HOLDER. It is possible.

Mr. MCHENRY. It is possible. Okay, 13 months later we have the possibility of somebody actually being punished for an agent being killed. This is absolutely absurd.

Mr. Chairman, I yield the balance of my time.

Attorney General HOLDER. No, it is not absurd. It takes time to build a case that you are going to be able to take before a jury with a high standard of proof, convict somebody, hold them accountable. You don't want to go into court and put yourself on a time limit and at 3 months say let's take whatever we have and get into court and, because some critics are going to say we are not acting fast enough, end up losing the case and then the people who are responsible for this heinous act are not held accountable.

We go into court when we think we have cases that are ready to go. I am not putting any pressure on people in that regard, other than to do it as quickly as they can but to do it as thoroughly as we can so that we bring the best possible case that we can.

Chairman ISSA. I thank the gentleman for yielding.

Quickly following up—no, it isn't—Mr. Lanny Breuer is not going to be criminally indicted or anything else, but when Mr. McHenry was asking about holding people accountable, he was really asking about people that work for you. Now, is your management style a hands-off or is it a hands-on? Do you want to know what is going on or do you want others to handle it and brief you at relatively high level?

Attorney General HOLDER. I think I have a hands-on style.

Chairman ISSA. If you have a hands-on style, have you read any of or been fully briefed on any of the wiretaps, including the March 10th wiretap in this case?

Attorney General HOLDER. These wiretaps are very voluminous, read well kind of things. I have not read them.

Chairman ISSA. Okay. Kenneth Melson told us—and this has been publicly reported—that in fact he was sick to his stomach when he discovered it. This was approved by Lanny Breuer's office. Indications are that your chief deputy knew about this. I mean, it comes through Criminal Division at some point.

The question is, will you or isn't it appropriate that you know about these wiretaps so that you could know what former ATF, acting ATF Director knew, which was these wiretaps are reasonably believed to be sufficient in what they disclosed, that many parts of this operation should have stopped, should have stopped sooner, and that people were saying that at DEA and other places, and that the Office of Criminal Division, Lanny Breuer's division, if you will, knew or should have known that?

That is the kind of thing Mr. McHenry was asking about, is holding people accountable, whether they are career professionals or political appointees. Are you prepared to do any of that prior to the Attorney General's final report? Because you haven't done any so far, as far as we can tell.

Attorney General HOLDER. I think you mean the Inspector General's report.

Chairman ISSA. I am sorry, the Inspector General's. I am sorry, Mr. General. I keep confusing the two generals.

But, yes, I very much note your Inspector General's report, which seems to be the reason for the delay in executing on disciplinary actions.

Attorney General HOLDER. Well, I mean, you have packed a lot into that question.

I think, first off, there is no indication that Mr. Breuer or my former deputy were aware of the tactics that were employed in this matter until everybody I think became aware of them, which is like January-February of last year. The information—I am not at this point aware that any of those tactics were contained in any of the wiretap applications.

I will say this: To the extent that those wiretap applications have been shared, that is in direct violation of court orders, and if I find—if I find that somebody in the U.S. Department of Justice has shared the contents of a wiretap application, that will be something that will have to be looked at.

There is a wide variety of things, information that we can share, but I am not going to go against sealing orders by a court with regard to a wiretap application, and anybody who leaks that material or submits that material for people to examine does so at their peril.

Chairman ISSA. I appreciate that. For the record, Members of Congress are not covered by that prohibition. Members of Congress are not in any way under that order. In fact, if we receive the information from whistleblowers, just like the press, it is in fact legitimate for us to know it and to act on it in our investigation. We are not covered by that Federal Court order.

Your law enforcement people related—before I yield, did you want to respond after you got a note on that?

Attorney General HOLDER. With all due respect, Mr. Chairman, I think that direction that you just said about the media and Congress and court orders is really incorrect, and I think you act at your peril if you think that is the truth.

Chairman ISSA. Well, certainly we would say that the release of information from our testimony of Kenneth Melson that appears to have been leaked to your people also would be inappropriate, but we will get to that at another time.

With that, we recognize the gentlelady from New York for 5 minutes, Mrs. Maloney.

Mrs. MALONEY. Thank you. I would like to respond to my good friend and colleague, Mr. McHenry's statement that the AG had not responded to Agent Terry's death. He responded immediately, and has expressed his concern for the other agents that are being killed at a higher rate than ever in our history.

Mr. MCHENRY. If the gentlelady will yield.

Mrs. MALONEY. No, I will not yield. I will not yield.

And not only did he do that, he immediately took swift action to stop gun walking, which did not happen in the prior administration, and established reforms to prevent this type of flawed operation from ever happening again. He further called for—and we could all help him do this, particularly the Republican majority—to confirm a permanent ATF director. That would help more than

anything. He also called for a Federal firearms trafficking statute. He called for appropriate funding, for the ATF to do its job and increase penalties for straw purchasing. So these are some of the concrete actions that he has taken in response to that tragic death.

And once again today, this investigation continues on its vast and curious mission to fix the symptoms rather than the cause of so much deadly gun violence on the southern border. And this committee has unfortunately refused time and again to examine the serious underlying problem that so heavily contributed to a series of ill-conceived, fatally flawed programs, such as Fast and Furious. And as this committee well knows, and everyone should know in America, Fast and Furious was not the first, but the fourth investigation to use gun walking as a tactic to go after bigger fish. And the gun walking strategy dates back to 2006, the prior administration. And just to underscore how vast and curious this investigation is, let's review that——

Is this the sixth occasion, Mr. Attorney General, that you have been before Congress on this issue?

Attorney General HOLDER. It's the sixth time I have testified about Fast and Furious.

Mrs. MALONEY. This is the sixth time he has testified on Fast and Furious. And he handed out a list of what his responsibilities are, which I would like him to be able to do. And I want to add to that one that I'm grateful for, and that is implementing the 9/11 health and compensation bill, on which your whole unit is doing such a brilliant job. Thank you so much. We appreciate it.

Also, over 6,400 papers and ongoing IG review, all of this is taking place. But in your testimony today, I appreciated your tribute to the courageous agents that work in the ATF. And you spoke about the whistleblowers and how courageous they are. And I wanted to point out the testimony of Special Agent Peter Forcelli, who called the current laws against gun trafficking "absolutely toothless." And he went on to testify that there was no enforcement and he went on and said all kinds of things.

Do you agree that there's no enforcement, that law enforcement really doesn't have the tools to do the job to crack down on gun trafficking?

Attorney General HOLDER. I really agree with Agent Forcelli. I mean, there's really a need, I believe, for a Federal firearms trafficking statute. We need increased penalties for straw purchasers who engage in that kind of inappropriate activity. And I think that we would like to work with Congress so that we can put in place these measures that will ultimately help ATF and the Federal Government be more effective in the fight that we all say we want to have, which is to stop the flow of guns into Mexico.

Mrs. MALONEY. After that hearing with Special Agent Forcelli, I worked with Ranking Member Cummings and also with Congressman Towns and Congresswoman Norton, and we drafted a bill which is to crack down on illegal trafficking conduct, not law-abiding gun owners, but would go after those illegal activities. And we should get busy working on helping to give them the tools. We know that we do things that are far more helpful than going on a politically motivated fishing trip, which I feel this is what we are doing today. And the real agenda of this investigation does not aid

or honor those who risk their lives every day, working to keep Americans safe from gun violence.

And I must say that this is getting out of hand. The AG's testimony that over 60,000 guns, I believe you said, have been traced in Mexico that are directly tied to having been gotten there from America. And I must say that one chilling example was an ad that al Qaeda put on their Web site saying, Go to America. Get guns. It's so easy to do. Get guns for your illegal activities.

So I want to congratulate you for your vision and mission of wanting to give law enforcement the tools to get the job done, to have a Federal statute banning gun trafficking with increased penalties.

Chairman ISSA. Would the gentlelady yield?

Mrs. MALONEY. Yes. I most certainly will.

Chairman ISSA. I join with you in believing that Andrew Traver who, I believe, is the November 2010 designate should in fact be given an up-or-down vote, should, in fact, be given an opportunity to be confirmed. I would note that he wasn't put up. No one was put up for the first 2 years of the Obama administration. And it's sad that they didn't have somebody in the queue earlier.

I thank the gentlelady for yielding.

Mrs. MALONEY. I want to thank the chairman for supporting the confirmation, and you certainly can help us make that happen.

Chairman ISSA. We'll do what we can.

Mrs. MALONEY. I appreciate that.

Chairman ISSA. I thank the gentlelady.

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

Mr. CHAFFETZ. Thank you, Mr. Chairman. Thank you, Mr. Attorney General, for being here. I had an opportunity on the Judiciary Committee to ask you questions on December 8, 2011. I had asked you if you had spoken to President Obama, Secretary Clinton, or Secretary Napolitano. You said that you had not spoken to either of those three about Fast and Furious. Is that still true today?

Attorney General HOLDER. With regard to Secretary Napolitano, yes. Secretary Clinton, yes.

Mr. CHAFFETZ. I'm sorry. Secretary Clinton, you have spoken with her about Fast and Furious?

Attorney General HOLDER. No. Well, I should say no. Secretary Napolitano, no. Secretary Clinton, no. And I've had passing conversations with the President just about the fact of my testifying in connection with Fast and Furious.

Mr. CHAFFETZ. On Wednesday, February 16th, you issued a press release along with Secretary Napolitano saying that you had met together. This is on the heels of Jaime Zapata. He had just been killed in Mexico. There were questions as to whether or not there were ties to Fast and Furious. You say that you didn't have any interaction with Janet Napolitano about Fast and Furious. My question is about Secretary Clinton. What sort of interaction did you have with the State Department?

Attorney General HOLDER. I'm not sure at what lower levels, if there was interaction between the Justice Department and people at the State Department. I know that I have not interacted with Secretary Clinton with regard to Fast and Furious.

Mr. CHAFFETZ. I was questioning whether or not you had actually had some interaction, or the words Fast and Furious came up. You had some interaction. You said, "You have to understand something about the way Washington works." Explain that to me and the interactions that your department or agency has had with the State Department.

Attorney General HOLDER. Well, one of the things that I was saying—I was trying to say and I got cut off, was that when people know that I'm going to be the subject of these kinds of hearings—you know, six times and all that—nobody necessarily wants to get involved in these kinds of things or get dragged into it and then have some interaction, conversation that I had with them be made more than it is. And I understand when people don't necessarily want to talk to me about Fast and Furious, knowing that at lower levels——

Mr. CHAFFETZ. You know that they're withholding information from you.

Attorney General HOLDER. No, they're not.

Mr. CHAFFETZ. Well, you just said that they're not going to provide you the information because they don't want to drag you into it.

Attorney General HOLDER. I said they didn't want to have conversations with me.

Mr. CHAFFETZ. Isn't that withholding information? If you can't tell the boss what's really going on, you are going to be oblivious to what's going on.

Attorney General HOLDER. We are talking about cabinet-level people. And I'm saying that the people who work under them, either DHS, State other executive branch agencies, are certainly providing information to the Justice Department so that we have access to whatever information——

Mr. CHAFFETZ. And is the Justice Department providing that information to, say, the State Department or Homeland Security? You may say, we're not having face-to-face discussion which troubles me—I don't care whether you are a Democrat or a Republican, the idea that you are not being informed and not having conversations because you are afraid of coming to Congress is troublesome, at the least.

Attorney General HOLDER. I'm not afraid to come to Congress. I have been here six times.

Mr. CHAFFETZ. I know. But if you are not being informed so you purposely can claim ignorance on the issue, that's a problem. My question is, at the lower level, is there an expectation on your part that there is interaction between these departments and agencies?

Attorney General HOLDER. Well there is not only an expectation. I know that, in fact, there is that kind of interaction because with regard for instance to the death of Agent Terry, I know that DHS is working with the FBI, State Department and Justice.

Mr. CHAFFETZ. What about the State Department?

Attorney General HOLDER. State, you know, doesn't have as direct a role. Obviously we interact with our counterparts in Mexico, and we talk to the State Department, inform them of contacts that I have. In fact, I will be speaking to the attorney general from Mexico in the latter part of—well, I guess, early this afternoon.

Mr. CHAFFETZ. In paragraph five of your testimony today, you talk about the national security crisis along the border. I guess my concern, Mr. Attorney General, is, you have an expectation that there's interaction between the Department of Justice and the State Department, correct?

Attorney General HOLDER. Oh, there certainly is, through the Merida Initiative, if nothing else. And through other ways in which our law enforcement components talk to one other——

Mr. CHAFFETZ. I am sorry. My time is so short.

Chairman ISSA. Would the gentleman suspend? Do you have a point of order?

Mr. TOWNS. Mr. Chairman, I think that if he is asks a question, he should have an opportunity to answer it. I am trying to follow it. But the point is that without him being able to respond, what are we really doing?

Chairman ISSA. The gentleman's point is valid, and I appreciate that both under your leadership and hopefully under mine, we make sure that all witnesses get to answer.

Mr. MCHENRY. Mr. Chairman, may I ask for 1 additional minute for the gentleman?

Chairman ISSA. Without objection, so ordered.

Mr. Attorney General, at the end of any round of questioning within a reasonable period of time by yourself, if you feel you have been unable to answer a question—and I would like you to be succinct—we will give you the additional time at the end so you may answer. I do respect the fact that a Member may want to go on to a next question. So you may have to wait until the end to sort of revise and extend briefly. And with that, I mean no disrespect. The gentleman was fully within his rights. But I wanted to make that clear because the past chairman and my policy are to make sure that people get to make full answers, even if it's not during the 5 minutes.

Mr. CHAFFETZ. Mr. Chairman, I would ask that without the starting of the clock—again, if he wants to fully answer that. With concern to Mr. Towns, I just want to be able to do the followup question.

Chairman ISSA. The gentleman is absolutely right. The gentleman will continue.

Mr. CHAFFETZ. If you want to more completely answer that, please.

Attorney General HOLDER. I'm not sure where I was.

Mr. CHAFFETZ. The interaction between you—the Department of Justice and the State Department on Fast and Furious, and that's the concern here is Fast and Furious.

Attorney General HOLDER. Right. We work together with our State Department counterparts on a number of things in connection with Mexico. There is the Merida Initiative that really kind of is the umbrella way in which we operate in Mexico in a law enforcement way. So there is a lot of contact at the lower levels and not so lower levels. I know our Deputy Attorney General speaks a great deal with his counterpart at the State Department.

Mr. CHAFFETZ. My question, Mr. Attorney General, is the testimony from October 27th of this year that Secretary Clinton gave over in the Senate where she said, "I can tell you that based on

the information on the part of the State Department that would deal with this kind of issue, we have no record of any request for coordination. We have no record of any kind of notice or heads up."

How is it that the Secretary of State is saying, we've never been involved in any way, shape, or form in Fast and Furious and you are testifying that it's happening on a regular basis?

Attorney General HOLDER. Well, you have to put this in the appropriate context. What I'm saying is that we interact with them in a number of ways. Now Fast and Furious might not be a primary thing that we are talking about with the State Department. We are certainly working more closely with DHS when it comes to Fast and Furious. But those kinds of things are discussed. It might not be, you know, a primary thing that exists between a topic of conversation between State and——

Mr. CHAFFETZ. And I guess that's the concern, Mr. Attorney General. We have 1,500 weapons. We've got 300 dead people in Mexico. We have a dead U.S. agent. We've had an untold number of hearings and discussions and press reports. And yet, you had the people at the highest level of the government saying, well, we don't talk to each other because our people don't tell us information because we've got to remain ignorant because we're going to have to testify and they don't want to get me involved. And at the same time, you're telling me that they are interacting with the State Department on a regular basis, and the State Department, the Secretary, is telling us, it isn't happening. And Janet Napolitano is saying very similar things at the Department of Homeland Security. If we're going to solve this problem and make sure it never happens again, we have to solve these challenges. And I have no confidence that you've addressed it or offered anything to actually solve it.

I yield back.

Chairman ISSA. The gentleman's time has expired. Did the gentleman want to follow up?

Attorney General HOLDER. I'm not sure about the context in which that remark was made by Secretary Clinton, but I can tell you that when it comes to the issue of violence in Mexico, the problem of guns going to Mexico, we are joined with our partners at the State Department——

Mr. CHAFFETZ. Mr. Chairman, Mr. Chairman, can I read the question?

Chairman ISSA. Does the gentleman want the question read back?

Mr. CHAFFETZ. No. The question that Secretary Clinton got. You asked a legitimate question. I don't know what context Secretary Clinton asked——

Chairman ISSA. The gentleman will suspend. If you make that question available to the Attorney General's staff so they can brief him, we will return to that out of order to get an answer. But I think, in fairness, we've given sufficient time. If you will make it available to staff, we'll make sure we get to it before the end of the hearing.

With that, we go to the gentlelady from the District of Columbia, Ms. Norton, for 5 minutes.

Ms. NORTON. Thank you, Mr. Chairman. Mr. Chairman, I don't know if conversations with the Secretary of State, with Secretary

Clinton, or Secretary Napolitano are of major importance here. But I do know this, that after calling the Attorney General of the United States six times before the Congress, I think the public would have expected that we would have begun to talk about remedy by this time; and yet there has been no remedy to give the Justice Department the tools it needs to prosecute straw purchasers or gun trafficking. But here we go again with the sixth hearing.

Mr. Attorney General, I want to commend you for the changes you have made, the multiple changes you have made while this matter was unfolding and the facts were coming forward, recognizing full well that until you get the inspector general's report, particularly considering that this is the Justice Department, to proceed without due process would be fairly unseemly. You have to understand that when there's an issue like this and it was very important because of the death of an agent, there is an incentive for the committee, if it can get a hold of a highly placed government official, to call on as much as you can because with him comes the press and the public.

My concern, I must say, for the Attorney General today, who has foreign and domestic matters of great moment on his plate, that at least a remedy come out. And we certainly haven't seen anything even approaching that.

I would like to go through the 5 years of gun walking because they all get merged. We have 3 years of gun walking, or so-called gun walking in the Bush administration, 5 years total, two in this administration, beginning with the Arizona U.S. attorney Paul Charlton. Now we haven't had the opportunity to have him before us. But the problem emerged out of his office, and with warnings, apparently, in his office at that time, that there were real issues that the ATF—at least his legal counsel raised issues, including what he called moral objections.

Now Mr. Charlton, we do know—even though we haven't had the opportunity to speak with him—was briefed and continued to allow hundreds of guns to walk across the border to Mexico. The notorious Hernandez case arose during the Bush administration when the effort of coordination failed and yet the gun walking continued.

Now we come to this administration. When you became Attorney General in 2009, were you aware that ATF had this long history of gun walking in its Phoenix office?

Attorney General HOLDER. No. I didn't become aware of gun walking at all until the beginning of 2011.

Ms. NORTON. Mr. Attorney General, if every attempt at coordination—and remember, Mr. Hernandez was never arrested. Those authorities were never—no one was ever taken into custody. But if every attempt at coordinating fails, do you think the agent should have stopped authorizing further attempts to coordinate between Mexico and the United States and allow the gun walking to proceed?

Attorney General HOLDER. Do I think they should have allowed that?

Ms. NORTON. Do you think that given the repeated attempts of failed coordination that the agents should have stopped authorizing it or simply continued to allow further attempts, even as they saw

the attempts of coordination fail with no arrests being made on the Mexican side?

Attorney General HOLDER. Yeah. I think both experientially, based on what you have noted, I think there was no basis for a continuation of gun walking. But then even conceptually, as I think I testified before, the notion that you would let guns walk is simply not something that I think is a sound law enforcement technique.

Ms. NORTON. So when does it become gun walking, Mr. Attorney General?

Attorney General HOLDER. When you have the ability to arrest somebody for some firearm transaction that they have engaged in and you make the determination not to make the arrest, and then they proceed from that site, and you don't surveil them, you don't take any kind of affirmative action, and you allow that person who has committed a firearms offense to simply walk away with the firearm. That, from my perspective, is gun walking. And conceptually, experientially, it is simply not a good thing to do.

Ms. NORTON. That should have stopped even before even this administration took office.

Attorney General HOLDER. Sure. I think so.

Chairman ISSA. I thank the gentlelady. I would note for the record that the Attorney General has testified as to Fast and Furious on November 8th before the Senate, on December 8th before the House. The other previous testimonies were not on the subject of Fast and Furious. And he was not briefed and able to answer it properly during those times. I just wanted to make sure. This is also the first time before our committee. So Judiciary, quite frankly—and particularly in the House—has not taken the lead the way this committee has on both sides of the aisle.

Attorney General HOLDER. If I could just maybe correct the record——

Chairman ISSA. Of course.

Attorney General HOLDER [continuing]. I certainly did speak in those—the number five or six is, in fact, correct.

Chairman ISSA. The times that you were asked, not the times you were brought to answer questions that were prepared.

Attorney General HOLDER. Whether it was Senate Appropriations, Senate Judiciary, I was asked questions about Fast and Furious and answered those questions.

Chairman ISSA. With that, the next gentleman will be the gentleman from Michigan, Mr. Walberg, for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman. And thank you Mr. Attorney General, for being here today.

I'm tempted to ask your opinion on former Penn State coach Joe Paterno. It might be an interesting conversation, but we don't have time for that in the questioning. But I would state that Joe Paterno reported allegations of child molestation to his superiors but did nothing else because he didn't want to jeopardize university procedure. Jason Weinstein, a senior official in the criminal division, knew about gun walking as early as April 2010. After a single meeting with ATF about it, he then failed to follow up or take action. Joe Paterno, a legend in his sport, and yet he was unceremoniously fired. Weinstein continues on in his current position even though Fast and Furious has held deadly consequences,

most importantly, to Agent Brian Terry, a proud son of Michigan, my State.

My question for you is, what's the difference between the case of Joe Paterno at Penn State and the Justice Department under your leadership?

Attorney General HOLDER. Well, I'm not going to get into the Paterno case. I will talk about Jason Weinstein. He knew about wide receiver and he told Mr. Breuer about it. He met with ATF. He has indicated that he did not know about the tactics, the inappropriate tactics, the gun walking tactics involved in Fast and Furious until later on and didn't connect those tactics with the ones that were used in wide receiver and has admitted that what he did was a mistake and has indicated that he was, you know, that he failed in not making that connection.

Mr. WALBERG. And so he continues on, as do other senior officials moved around as chessmen on a board with no consequences of a significant nature at this point in time, no admission, other than now when brought on the carpet and brought into the public life that this thing has gone wrong, was set up to go wrong and, frankly, I believe was set up to go wrong in order to deal with Second Amendment liberties of law-abiding citizens and pushing into a perception that it was a problem of the Second Amendment as opposed to law enforcement. And more importantly, Mr. Attorney General, your oversight of an agency, of a department, of individual leaders in that department that have not been held accountable.

Attorney General HOLDER. Well, with all due respect—and I mean this with great respect—the notion that this was an operation set up to do something to impinge upon the Second Amendment rights of my fellow citizens is absurd. The operation that was put together here was an attempt to stop the flow of guns from the United States into Mexico, something I think we should all agree upon.

Mr. WALBERG. And it wasn't effective, was it?

Attorney General HOLDER. It was not effective. In fact it was flawed, fundamentally flawed.

Mr. WALBERG. Very flawed.

Attorney General HOLDER. I have said that from day one. But the notion that somehow or another this was a setup to come up with measures that would impinge upon Second Amendment rights is simply not substantiated by the facts. And I think in some ways—again, with all due respect, I think that's almost irresponsible.

Mr. WALBERG. Well with all due respect, I would concur that your mention today of the necessity for impinging upon Second Amendment liberties of law-abiding citizens still further brought that question up. Let me move on here. An article yesterday by former CIA director Michael Hayden noted that you "launched a reckoning of CIA renditions detentions and interrogations of terrorists by directing the Justice Department to reopen investigations closed years before by career prosecutors." This decision was opposed by Leon Panetta and his seven predecessors. The article notes that you reportedly made the decision without reading detailed memos prepared by those career prosecutors, declining to pursue further proceedings.

And further, Mr. Attorney General, you are well known in this town for not reading memos. You admitted you failed to read memos addressed to you in Fast and Furious; you failed to read memos before the Mark Rich pardon. You failed to read memos or even the law related to the Arizona immigration law. What does that say about your leadership and management that you consistently fail to read extremely important papers placed on your desk?

Chairman ISSA. The gentleman will suspend.

As I previously said—although you can certainly talk about your management style—this hearing is limited to Fast and Furious, so I would ask that you limit your answers to the management style as it may relate to Fast and Furious and not to any other cases unrelated to our investigation.

Mr. WALBERG. Thank you, Mr. Chairman.

Attorney General HOLDER. Well, I disagree with that. Given the decision to almost engage in character assassination, I will respond to at least some of that.

I'm the Attorney General of the United States, okay? And when it comes to deciding what I'm going to investigate, how I'm going to investigate, I take into account a wide variety of things. The decision I made to open up those CIA matters—and I was an aware that this was something that was opposed by a great many people. I read a great deal before I made that determination. I had access to material that other people who criticized that decision have never had access to.

Now I have great respect for the people, the men and women of the CIA who put their lives on the line and who protect this Nation in a way that many of you don't, because I see a briefing every day at 8:30 about the great work that they do. But there were things done, things that were done during the course of those interrogations that were antithetical to American values, that resulted in the deaths of certain people and that justified my decision to order an investigation. That investigation has run its course. We are at a point where we are about to close those investigations. It would have been irresponsible for me, given the new information that I had a chance to review, not to order that investigation.

With regard to your more general point about me reading or not reading memos, I read those things that are brought to my attention or things that I think I need to read in order to make appropriate decisions. I'm confident that the management style that I have, the involvement that I have is adequate to allow me to make appropriate decisions based on facts, based on interpretations of the law. And I have a good staff that brings to my attention those things that I need to read.

Chairman ISSA. The gentleman's time has expired. Before I go to Mr. Tierney, I would like to make—and we are sort of speaking to your staff to a certain extent—the staff aware of the CRS report that on numerous occasions, Congress has interviewed line attorneys, including in the Rocky Flats investigation, the early 1990's under obviously a Republican administration. So I would ask that your staff review that so that you may correct your statement, that it never happens.

With that, we go to the gentleman from Massachusetts next, Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman. Mr. Attorney General, indulge me, if you will, on this for a second. This committee's obligation is to the family of the deceased, to the other law enforcement officers involved, to the citizens of this country. And this committee is charged with first finding out what happened; and then once we determine that, making sure we can work on practices so that it never happens again in a flawed situation like this. Members of both parties—and our staff did a great deal of work in determining the facts, and I think the ranking member has already gone on a great deal about the number of interviews that staffs of both parties and the number of documents that they reviewed went on, and also laid out a number of actions that were recommended for the future. And I know that you have taken some actions and the new ATF director has set out some actions as well.

So at this stage, it seems to me we have a couple of alternatives. We could further explore on how the program of gun walking began back in 2006; it repeated itself in 2007; it repeated itself again in 2008 and 2009; and it repeated itself again in Fast and Furious. But to do that, we would need to talk to Mr. Mukasey, I should think, and the majority is not willing to bring Mr. Mukasey forward.

As far as I know, he is the only Attorney General that had documents in front of him that even mentioned the programs, or some of those programs, although that doesn't indicate that he authorized it or even condoned it. But certainly if that alternative of trying to find out more facts about what happened, he would be somebody I think would be worth talking to, and we have not been given that opportunity. We could explore reforms, necessarily beyond those that you've implemented and the ATF director's implemented and what statutory changes about gun trafficking and things might be involved. But the committee doesn't seem—at least the majority doesn't seem interested in doing that. Or unfortunately, as we seem intent on doing here at this hearing put by the majority we could continue to chase what seems to be a political agenda of trying to find out that somebody in the administration—you, in particular, somehow had knowledge or authorized or condoned this operation.

If that were the case it would seem to me that a good witness for us to talk to would be Mr. Melson, who was the then-acting ATF director. Mr. Cummings has asked the chairman to bring Kenneth Melson as a witness. Mr. Melson indicated he is willing to come as a witness. In fact, he even testified or talked, was interviewed in a closed interview with staff from both parties. They asked him if he had ever approved gun walking. He said he had not. They asked if he had ever been briefed about gun walking. He said no. They asked if he was aware if the senior Justice Department officials had ever authorized gun walking. He said no.

Surely if the details of Operation Fast and Furious were approved at the highest levels of the Department of Justice, as has been accused, then Mr. Melson, the director of the ATF presumably would have known about it. This is however, what he said in that interview, "I don't believe I had knowledge of the specific tactics used in Fast and Furious until the facts began to be disclosed in the media."

So Mr. Melson told the committee he never authorized gun walking, the Justice Department never authorized it. He wasn't aware of it in the Fast and Furious operation, and he never briefed the Attorney General or anyone else at the Department of Justice about it. I think that's pretty valuable information if the focus of this inquiry is going to be who knew what when and where.

This interview with Mr. Melson took place 7 months ago. Chairman Issa has refused to let him answer those questions in public before our Members. We can draw some conclusions of our own as to why that case's testimony directly contradicts the assertions that the operation was approved at the highest levels of the Justice Department.

So that leaves us with only, I guess, to find out whether or not there were any bad actions by people at higher levels of asking you yet again, Mr. Attorney General, did Mr. Melson, the director of ATF, ever raise any issues to your attention about gun walking or the conduct of Operation Fast and Furious?

Attorney General HOLDER. No he didn't.

Mr. TIERNEY. Do you rely on your component heads to bring significant issues within their agencies to your attention?

Attorney General HOLDER. Sure. That's one of the responsibilities that they have. And I hope I have the kind of relationship with them so that they feel free to bring to my attention issues like that.

Mr. TIERNEY. Are you disappointed that neither Mr. Melson nor anyone else at ATF raised concerns about Fast and Furious to your attention or to anyone else at the Department's headquarters?

Attorney General HOLDER. Yeah. I am disappointed not only in Mr. Melson, but other people within the Department who were seized with this knowledge and who did not bring it to my attention and who have admitted they made mistake in not bringing it to my attention or to the Deputy Attorney General's attention the fact that gun walking existed in at least some of these operations.

Mr. TIERNEY. And have you or has anybody held Mr. Melson accountable for not bringing these issues to your attention?

Attorney General HOLDER. Well, Mr. Melson made the determination and we agreed that it would be better for him to leave ATF to allow ATF to get a fresh start and to allow him to get a fresh start as well.

Mr. TIERNEY. Mr. Chairman, at this time, I ask unanimous consent to enter into the record the transcript of the interview by Republican and Democratic staff.

Chairman ISSA. I object. You know that's grossly inappropriate.

Mr. TIERNEY. Well, I think, Mr. Chairman, it's grossly inappropriate to have a pertinent witness who is not allowed to come before this committee and testify. And I thought, since you don't seem willing to do that, then maybe we'd go to the next best thing where both parties had an opportunity to interview Mr. Melson and talk about issues that seemed to be right at the core of what you are alleging over and over again.

Chairman ISSA. The gentleman's unanimous consent is not—okay, I will be even kinder. I reserve.

Now speaking on my reservation, does the gentleman really believe that that is the right thing to do, to make public an ongoing

investigation that includes a number of officials, includes a situation in which an official has taken the Fifth and left the Justice Department to make any of those documents publicly available at this time when, in fact, it is pursuant to our investigation? Does the gentleman actually believe that?

Mr. TIERNEY. Mr. Chairman, I withdraw my request at this point in time. But I hope we've made the point here that what is important is for you to change your mind hopefully and allow Mr. Melson to come here and testify in public and answer the questions which have been the core of the matter there and the allegations that you continuously make apparently erroneously but refuse to acknowledge.

Chairman ISSA. I appreciate the gentleman's comments. I would note for the record I have not called for the Attorney General's resignation. I have not said the Attorney General knew. I certainly have—and I think many of us are making the point that people didn't know that should have known things that, in fact, we are trying to find out where the failures were made other than the local level, which we have begun describing in the case of the acting—and it's in his testimony, obviously, which will not in its entirety made available today. But the acting director, in fact, is culpable for not knowing more of what a director should know or ensure that people know that make stoppage.

So I join with the gentleman in saying that, in fact, it does concern me that someone who is supposed to direct over 1,800 individuals did not know that this, in fact, involved gun walking. But remember, on February 4—well after many of these events—the Attorney General's office prepared a document, gave it to us which said we never let guns walk. That is of concern too. And the committee is not shy about having additional hearings. The Attorney General made himself available at this date pursuant to a request. We did not and are not saying this is the culmination or we are taking him in lieu of less significant——

Mr. TIERNEY. Mr. Melson's interview was some 7 months ago. And a direct quote from you, Mr. Chairman, on a television show, the Roger Hedgecock Show—there was a radio back there—you said, "ATF people and Justice people are telling us, this goes all the way to the very top. It goes all the way to the ATF Office of the Director and obviously goes to the Office of the Attorney General. This is the approved plan that you know is basically at the highest levels of the Obama appointees."

If those are allegations that you are going to make, then it would be important to have Mr. Melson come in here and testify as part of that instead of blocking his testimony and continuing to make those assertions which now apparently are obviously not correct.

Chairman ISSA. I appreciate the gentleman giving Roger Hedgecock a plug. The fact is that those allegations were made with a number of other false allegations. I might note for the record that we were given statements, allegations that the ATF director was viewing on closed circuit Internet connection the actual purchases being made. After receiving testimony and multiple checks, we discovered that although he inquired about the capability of viewing these surveillance as they occurred, that no such event occurred. This often happens in investigations.

Mr. TIERNEY. Well Mr. Chairman I am glad that you recognized that those comments that you were amplifying at the very least are false and now maybe we can move on to the business of determining what we can do as a government——

Mr. CUMMINGS. Mr. Chairman, just to follow up on what you just said. I know you are reserving, Mr. Chairman.

Chairman ISSA. Actually the gentleman withdrew.

Mr. TIERNEY. I withdrew.

Mr. CUMMINGS. I was just wondering if there was a way that we could have a portion of that document that goes to Mr. Melson's testimony where he clearly states that he never told the Attorney General about these tactics in Fast and Furious where he says that he did not—he, himself, did not know. I mean, the staff worked together——

Chairman ISSA. The gentleman from Massachusetts has done a very good job of making that available, and I certainly——

Mr. CUMMINGS. I just want to make sure that the record is complete. The Attorney General has been accused of—some very unkind things have been said about him. His reputation hangs in the balance, and I think that we've got Mr. Melson, the former ATF director, who clearly stated that he never said anything about these tactics to the Attorney General. And he even said that he didn't even know about them himself. I was just wondering if we could just have that portion of the transcript as a part of the record. I'm not trying to——

Chairman ISSA. I will work with the ranking member to find appropriate portions that seek your concerns that can be made available. I might note that my side has quoted repeatedly—and this is why I want to make sure we are fair on both such quotes. My side has quoted where he said he was sick to his stomach when he read the wiretaps and discovered what he didn't know. So although I think it is inappropriate to release the entire transcript, I will work with the gentleman. We will hold the record open to make appropriate statements that you believe are necessary to make the record complete. And I will be glad to do that.

Mr. CUMMINGS. Just 30 seconds. What you just said is one of the reasons why I want to make sure it's a part of the record. When Mr. Melson said as he sat at his kitchen table—and I read it 50 million times. And he said his stomach got in knots when he found out about it, basically his point was that he didn't know about it before then.

So if he didn't know about it, it was impossible for him to tell the Attorney General about it. And that's all.

Attorney General HOLDER. If I could——

Chairman ISSA. Well, I'm not going to allow—and I apologize Mr. Attorney General. I'm not going to allow this to turn into a sequence of those because I think both sides could get into various testimonies. I will work with the gentleman. He has a valid point. We will now return to regular order.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman ISSA. You're very welcome.

Attorney General HOLDER. Could I just say one thing?

Chairman ISSA. The gentleman is recognized.

Attorney General HOLDER. When Mr. Melson indicated that he became sick to his stomach, he did not—it was not when he was reading the wiretap applications. He was reading reports of investigations. And I think that's an important distinction.

Chairman ISSA. I appreciate that.

We now go to the gentlelady who has been waiting patiently from New York, Ms. Buerkle for 5 minutes.

Ms. BUERKLE. Thank you, Mr. Chairman. And thank you Mr. Holder for being here this morning. I just want to make a couple of comments to start out because we've heard it from the other side of the aisle and even yourself with regards to this being a Democratic or a Republican issue, whether this is a, you know, political game, if this is an election year charade.

I think it's very important to recognize that you, as the Attorney General, with all due respect, need to be held accountable, or someone does, as to what happened.

Now I'm amazed that of all the issues that face this country, this is the issue that I hear from my district so frequently about. And, in fact, today—and I will enter them into the record—I have no fewer than 30 questions from folks in my district who want to know what happened, why it happened, and who is going to be held accountable to us. And I was taken aback just a little bit with your response to my colleague, Mr. Walberg, when you sort of declared that I am the Attorney General.

Well, with all due respect, sir, yes, you are, but you are also accountable to not only the folks in my district, but the American people. And I just want to—if you would indulge me—just play a recording because most importantly—and as you are well aware of, we had a hearing here in June with Brian Terry's family. And in that hearing, I specifically asked his mother—and we'll play that hearing, if you would, please.

[Video shown.]

Ms. BUERKLE. So Mr. Attorney General, on behalf of Mr. Heyer, who is Brian Terry's cousin and actually the spokesperson for his mother and his sister, I would ask you, to what lengths has your investigation into Operation Fast and Furious gone? And will everyone in that operation that had to deal with those specific weapons be brought up on charges facilitating the murder of Brian Terry?

Attorney General HOLDER. Well, we are certainly working now to—I mean this is an ongoing investigation. It's actually a very sensitive time. I'm not sure I can talk an awful lot about where the investigation is. I have indicated that I think we are pretty close to making some announcements. And we will hold accountable, seek to hold accountable those people who are responsible for Agent Terry's death. With regard to people who were involved in Operation Fast and Furious, we are endeavoring to find out who made the determinations to allow guns to walk. I'm not really at liberty to talk about the weapons that we used in the actual incident. That goes to ballistics reports, and I don't think I can comment on that here. That will obviously come out during the course of the trial. But we will hold accountable people who were involved in—as I have described, this flawed investigation.

And one other thing. I did not mean to imply the comments that I made there that I should not be held accountable. But I also think that there's a certain fairness component to this as well. And I ought to be held accountable for those things that are within my area of responsibility. I should be held accountable for things that are factually correct as opposed to those things that are politically desired. And I'm more than willing to admit mistakes when I have made them. But I also think that if we are going to really get ahead here, if we are really going to make some progress, we need to put aside the political gotcha games in an election year and focus on matters that are extremely serious. When one looks at the death toll in Mexico, when we look at the guns——

Ms. BUERKLE. Excuse me, sir. My time is ticking away. I just have one more question. Unlike the chairman, I was one of the Members of Congress who called for your resignation. I feel that the Department of Justice—that you are responsible for all of the activities that fall under your umbrella. And I think that you have denied knowledge of the program and that accordingly, you should not be held accountable.

My question to you today is, what more could have possibly gone wrong that you would have been held accountable? And before you answer that, I would suggest that the President has been eerily quiet about coming to your defense. So let me ask it this way: How many more Border Patrol agents would have had to die as a part of Operation Fast and Furious for you to take responsibility?

Chairman ISSA. The gentlady's time has expired. The gentleman may answer, or not.

Attorney General HOLDER. You know, that's the kind of thing, you know, you wonder why you are getting those calls. I mean, people will focus on a question as much as an answer. And as a Member of Congress, I mean, really—is that the way in which you want to be seen, you want to be known?

You know, I should be held accountable for—certainly my role in whatever I did or didn't do in connection with the supervision of Fast and Furious. But, yeah, I'm Attorney General of the United States, and I should also be held accountable and perhaps even given some credit—imagine that—given some credit for the things that this Justice Department has done under my leadership, whether it deals with national security, revitalize antitrust, revitalize civil rights enforcement efforts. And so one has to balance all of these things.

I'm not claiming to be a perfect person or a perfect attorney general. I get up every day and try to do the best job that I can. I have great faith in the people who work in the Department. And you know, that kind of question I think is, frankly—and again, with respect—I think that's beneath a Member of Congress.

Chairman ISSA. The gentleman has concluded I think. We now go to the other gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman. And I want to thank the Attorney General for helping the committee with its work. I know this is your sixth time.

If I could, I would like to try to put the political part of this aside and really out of respect for Agent Brian Terry and his family and

the other 117,000 people who work for you, try to look at some reforms that actually might go to the core of what went wrong here.

Now I know you have referred repeatedly to a tactic, the tactic of gun walking. But really, when you drill down on that, what we are allowing here—in this case, in Fast and Furious at least, and in the earlier cases under the Bush administration, basically what the Department of Justice did was authorize criminal activity to allow folks that they knew—they knew these 20 dealers were buying hundreds of guns—heavy arms, shipping them into Mexico.

In my city, in Boston, through the Office of the FBI, through the confidential informant program, we had folks that were allowed to commit 19 murders under the care and protection of the FBI. I've got a situation right now that's in court where another individual, a confidential informant, has killed at least—alleged to have killed at least a half dozen people. The problem here is that this tactic actually authorized—it puts the law enforcement, Federal law enforcement in a position of authorizing criminal activity. They become complicit in it. That's very troubling, especially when it results in the death of a very brave, courageous agent or to innocent American civilian citizens.

And what is especially troubling is that I believe that you didn't know about it. I believe that you didn't know about it. But that's not a comfort to me. It is unbelievable that either the Phoenix field office or the Boston office of the FBI can authorize criminal activity, not just a mere tactic, but a whole strategy of using that outside the law, and then having innocent civilians killed.

So I actually think one of the solutions might be for Congress to pass a law that says, if there are those limited occasions where we are going to authorize criminal activity to go on in our society under the cover of law enforcement's authority, then either yourself, as the Attorney General, or the director of the FBI or the head of the ATF has to sign off on it because here, everyone escaped responsibility because of plausible deniability. They can say, I didn't know about it.

Well, that's troubling. That scares the hell out of me when I think that there's just a local office of the ATF or the FBI that is authorizing criminals to engage in this typed of activity, taking AK–47s and letting them get smuggled into Mexico, or, you know, southern California on our side of the border.

What are you prepared to do? Look, I know that's a blunt instrument, saying that you have to sign off on any of these clandestine operations where we are allowing people to engage in criminal activity that puts the public at risk. What do you propose to do to make sure we don't have this "I didn't know about it" approach or the "I know nothing" Sergeant Schultz defense for law enforcement's "I didn't know about it?" What do you propose, sir?

Attorney General HOLDER. I think that's a legitimate question. I think we don't want to go too far in this sense in that law enforcement will engage in illegal activity in an attempt to solve crimes. We engage in illegal activity when we are—when we buy drugs from people who are selling drugs. We engage in illegal activity when we pay corrupt public officials money, when we go into undercover operations. But we have to have that ability. It is an extremely important law enforcement technique. But I think the

point that you raise is a good one, and that is, that the approval to do these kinds of activities can't rest at the line level. There has to be supervisory responsibility. And the question is, where do you draw that line?

It is not realistic for the Attorney General to sign off on every one of those things. We have mechanisms within the Department when it comes to undercover operations that rise to a certain level where an undercover review committee actually has to approve them. There's a committee that does that. The reforms that have been put in place by Todd Jones at the ATF requires greater supervisory responsibility for approving those things.

But even with all those approvals—as I said before, you know, letting drugs walk, letting money walk, that's one thing. But letting guns walk, I simply don't see—I just don't see how that's an appropriate law enforcement technique. If you balance the potential gain against the potential harm, the harm is too great to justify the use of gun walking.

Chairman ISSA. I would ask unanimous consent that the gentleman have an additional 30 seconds.

Mr. LYNCH. I thank the gentleman. Where do we draw that line though? There has to be some accountability here. There has to be. And again, I go back to the very nature of this tactic. It is putting law enforcement—and the confidential informant arrangements are especially troubling. These folks operated for years. We are taking taxpayer money to pay confidential informants at a very generous lifestyle, and it seems to be all clandestine. At least in the Boston office, the higher-ups didn't know anything about it.

Chairman ISSA. Would the gentleman yield?

Mr. LYNCH. Sure.

Chairman ISSA. I agree with the gentleman that we need to do more oversight over the FBI and other entities that have this authority. I also agree with the gentleman that there has to be a congressionally stated level that we are comfortable with that can approve this, particularly in light of Fast and Furious, recognizing that cartel members are unindicted and in fact, were part of this operation that led to Brian Terry's death. So I join with the gentleman in support of Congress doing oversight and taking that role.

Mr. LYNCH. I thank the gentleman, and I yield back the balance of my time. Thank you, sir.

Chairman ISSA. I thank the gentleman for yielding back.

We now go to the gentleman from Arizona, Mr. Gosar.

Mr. GOSAR. Thank you, Attorney General, for coming today. There is no secret about how I feel, absolutely no secret. And I am appalled, absolutely appalled. And I am appalled even further about the discussion today, because if this same thing had occurred on the east coast, how much more of a ruckus we would have heard. How much more we would have actually taken into consideration.

I am the only member on this committee that is from Arizona. Yes, we lost a border agent. But we are further impugned because these guns are going to show up at crime scenes, particularly in Arizona, from here to whenever, as well as the Mexican government, and the Mexican people who have lost over 300 people.

And I think that I am very taken aback by when you said, you know, we shouldn't be doing this. We shouldn't be gun walking. And everybody knows that that is inappropriate. Well, I tell you what. That shows me exactly why I am so appalled, because if there was a doctrine out there that said listen, if you walk guns, you are going to do time, that is the penalty that should be placed here, because that is what we are going to have to endure. And I am finding it very upsetting that Arizona is taking this on the face and we trivialize what is going on here.

I think we should be able to share all information to find exactly who exactly authorized this. We talked about in-line, people that have been moved from Arizona up the line to DOJ, having that discussion to find out how this came about, because this is in our backyard. Don't you agree?

Attorney General HOLDER. Agree—you have said a lot.

Mr. GOSAR. Don't you agree that we shouldn't trivialize this.

Attorney General HOLDER. No, and it has not been trivialized. This is obviously—at least not by me.

Mr. GOSAR. Do you think it is appropriate that we just say don't do it. You shouldn't be doing gun walking. Or do you say it shouldn't be done, and if it is done and you are found culpable and you are a participant in this, that you should be held to the same standards as the rest of us are?

Attorney General HOLDER. What I did after I found out about gun walking was to issue a directive that said this is unacceptable, don't do it, and you will be held accountable if, in fact, you do do it.

Mr. GOSAR. So you will agree with me that if they do this, and they are put before a jury of their peers, that they would do criminal time?

Attorney General HOLDER. Well, I don't know about criminal time. I mean, one has to look at the facts of a particular case, and if somebody did something with criminal intent, sure, that would be appropriate. But if somebody did something with criminal intent. I mean, you have to get past, you know, beyond a reasonable doubt. There is a whole variety of things——

Mr. GOSAR. You just can't slap somebody's hand on this and just say don't do it again. What I am seeing here is it is something inappropriate, and that is in Main Street America, we don't get these same kind of privileges to make mistakes. And we are dealing with people's lives.

Attorney General HOLDER. Well, you know, we actually do have a situation in which people who engage in straw purchasing and in some forms of gun trafficking actually do get slaps on the wrist and that is why we need a stronger gun trafficking law and we need greater penalties when it comes to straw purchasing. Because we have as I think Agent Forcelli described people who essentially are being charged as if they were speeding. That is unacceptable.

Mr. GOSAR. So straw purchasing, so let me ask you with the FFLs, the Federal firearms licensees, no new regulations on them? They did everything that they were told to do and then some. They kept even pounding people saying, this is ungodly. This same guy is coming in here and we got ATF saying sell guns. Sell the guns. Something is wrong here. So putting additional restrictions on

FFLs is not the protocol. It is further disseminating what is going on and than having a higher cognizance, won't you say?

Attorney General HOLDER. I am not sure what additional restrictions you are talking about when it comes to FFLs.

Mr. GOSAR. Obviously right now, down in Arizona we have further paperwork to fill out if you are selling long guns. How did that come about?

Attorney General HOLDER. Well, four States, the border States have been asked if you sell long guns, like AK–47s, more than two guns in a 5-day period, that ought to be reported to ATF, which is what is consistent with what they have to do now when it comes to the sale of handguns. That is all we have asked. And that is a nationwide thing that has been in effect, the handgun restriction, since the 1980's, I think probably since the Reagan administration.

All we have said is the four States, the four States along with the border where the greatest amount of trafficking occurs into Mexico, that you have this additional requirement, and a Federal judge here in Washington has said that that is appropriate.

Mr. GOSAR. I find it interesting that back here on the east coast dictating west coast. But you know, a hypothetical. So what do you think the penalty should be for a cabinet member, a sworn officer of the law, who comes to testify before Congress and knowingly lies?

Attorney General HOLDER. Well, hypothetically, there is a perjury statute. There is a false statement statute. I don't know what the penalty is. It is 10 years. I am not sure. Whatever. We have something in Title 18 that already answers that question.

Mr. GOSAR. Well, I am one of those people that I find it disdainful about how we have conducted business over this. If it were any other State than Arizona, I think we would have seen different results and different penalties and different critical people and manpower put toward this to find this and being much more cooperative, and I am very disturbed by that.

Attorney General HOLDER. We have talked an awful lot about during the Republican primary——

Chairman ISSA. The gentleman's time has expired. Is there a pending question you are answering, Mr. Attorney General?

Attorney General HOLDER. I think I was.

Chairman ISSA. Okay, feel free to answer the question.

Attorney General HOLDER. I was just saying that, you know, the notion that we are somehow looking at this in a regional way and that a particular region of the country is not getting the attention that it deserves or it is not being taken as seriously as it might if something happened back on the east coast, your reference to a judge here in Washington, this is an American problem. This is an American problem. And what I have tried to say is that, you know, we too often think about these things as border problems, when the reality is what happens in Arizona, what happens in New Mexico, California, Texas, will have a direct impact in Chicago, New York, other parts of California, Washington State, here in Washington, DC.

Chairman ISSA. I thank the Attorney General. I don't think there really is a pending question that that is responsive too. But I appreciate your comment.

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

Mr. CONNOLLY. Thank you, Mr. Chairman, and welcome, Mr. Attorney General, and thank you for being here and showing such dignity and honor in the face of some attempts to suggest you are other than a dignified and honorable Attorney General serving his country well. And I just think for the record, welcome on Groundhog Day. We heard that Punxsutawney Phil saw his shadow, so we have 6 more weeks, and it is fitting you are here for the sixth time before Congress with repeated attempts to try to pin something on you and this President that cannot be pinned, and it is my firm hope that at some point the majority would actually acquiesce to the request to have your predecessor Mukasey come here and talk about Wide Receiver and his knowledge of that program and gun running.

Mr. Holder, I assume there is a law that specifically forbids the trafficking of firearms, particularly if that trafficking ends up arming drug cartels, or if the weapons are subsequently found at crime scenes. Is that not the case?

Attorney General HOLDER. We don't have a Federal trafficking statute, and that is one of the things that we are working for.

Mr. CONNOLLY. I am sorry. Forgive me for interrupting. We don't have such a law?

Attorney General HOLDER. No. And that is one of the things that we have been trying to get Congress to consider and to pass.

Mr. CONNOLLY. Well, now, you have appeared before Congress many times, six on this subject. Has any of the congressional committees summoning you to testify had a hearing on that law, the need for such a law?

Attorney General HOLDER. No.

Mr. CONNOLLY. Despite our concern about deaths and violence and an operation gone bad, we haven't had a hearing on trying to forbid the trafficking of firearms and making it a Federal penalty?

Chairman ISSA. Would the gentleman yield?

Mr. CONNOLLY. I would prefer not to, Mr. Chairman.

Please, Mr. Holder, answer the question.

Attorney General HOLDER. No, we have not had that hearing. I have tried to raise it as part of one of the reasons—part the things that I think we ought to be considering as a means to deal with this issue, to deal with this problem. There is clearly a need for a Federal trafficking, a firearms trafficking statute.

Mr. CONNOLLY. Isn't that interesting that in the majority in this Congress we haven't had a hearing on that subject. Well, if there isn't a strong penalty for firearms trafficking, surely there is some kind of harsh penalty for straw purchasers of guns?

Attorney General HOLDER. I would like to be able to say the answer to that question is yes, but, unfortunately, the answer to that question is also no. As I indicated before, I go back to him only because he has great—more experience than I do, Agent Forcelli who testified previously before this committee, likened the Federal straw purchasing penalties to a speeding ticket.

Mr. CONNOLLY. At this very committee?

Attorney General HOLDER. Right. Yes. At this committee, and that I think is obviously unacceptable.

Mr. CONNOLLY. And the testimony of that agent called by this committee, by the majority in this committee, was actually interrupted and chastised for the nature of his answer because it actually dared to talk about the need for stricter gun enforcement and tougher penalties. Is that your recollection, Mr. Attorney General?

Attorney General HOLDER. I believe Ms. Maloney was asking a question in that regard, and I don't know what the technical term was, but it was ruled out of order or something.

Mr. CONNOLLY. When I was in Mexico on a bipartisan leadership trip to talk about this and some other difficult topics with the Attorney General of Mexico at the time, we asked the Attorney General, if there was one thing the United States could do to help you in your battle against drug cartels in the north of your country, violence that has gotten unbelievably, unspeakably out of control, what would it be? And his answer was, reinstate the assault weapons ban as American law. Your view on that?

Attorney General HOLDER. This administration has consistently favored the reinstitution of the assault weapons ban. It is something that we think was useful in the past with regard to the reduction that we have seen in crime, and certainly would have a positive impact on our relationship and the crime situation in Mexico.

Mr. CONNOLLY. Well, surely we have had a hearing on that though. I mean, you have been up here six times. This is all about trying to protect that border with Mexico and to try to help Mexico as well as protect U.S. security of U.S. citizens. Surely, we have at least had a hearing on that subject, have we not?

Attorney General HOLDER. Not to my knowledge. Not a hearing that I participated in.

Mr. CONYERS. Really? It makes one wonder what this hearing is actually all about. I yield back.

Chairman ISSA. Would the gentleman yield?

Mr. CONNOLLY. I certainly would, Mr. Chairman.

Chairman ISSA. By the way, we are happen to entertain all suggestions for hearings. I will note that you keep saying six——

Mr. CONNOLLY. Reclaiming my time just for a second there, Mr. Chairman. I am delighted to hear that you are happy to entertain such requests. I would then formally request that the former Attorney General, Mr. Mukasey, be invited to the committee to testify about what he knew and when he knew it about the program analogous to Fast and Furious in the Bush administration.

Chairman ISSA. We will attempt to glean that information. I don't know if it will be by personally having somebody come, but we do intend to glean information from prior administrations as to the level of coverage, and I will work with the gentleman on that. I might, though, note that of the six times the Attorney General has appeared, for example, to the Appropriations Committee, he may have been asked a question related to Fast and Furious, but that wasn't the purpose for which he came.

And I would only note that as far as I can tell, the Department of Justice has not submitted a request for a Federal firearms law to Congress. So I know that the gentleman is very concerned about these laws. Asking Congress to sua sponte come up with ideas for laws is actually seldom the way the administration would like it.

And I might mention to the gentleman that if the Attorney General and Justice came up with a proposed firearms law, that might be a good start to answering your concerns.

I yield back.

Mr. CONNOLLY. Mr. Chairman, if you would just indulge, because I would like to follow up on that, that is a very good point.

Chairman ISSA. I ask unanimous consent the gentleman have an additional 30 seconds.

Mr. CONNOLLY. I would just take our joint question then if you would, Mr. Chairman, and ask the Attorney General to comment. Why hasn't the administration, in fact, made the request the chairman just referred to with respect to toughening gun laws?

Attorney General HOLDER. Well, we have certainly requested it in the past. I will be more than glad to submit something for consideration. We would love to work with this committee, the Judiciary Committees in both Houses in that regard. I believe that Mrs. Maloney actually has a bill that I think would be a good starting point for us. There is something that exists there that would be the basis for that conversation.

Chairman ISSA. Does the President support Mrs. Maloney's bill?

Attorney General HOLDER. We would certainly want to work with her on that bill. I mean, obviously there are going to be some things we want to work on, but I think that is certainly a good starting place.

Mr. CUMMINGS. Would the gentleman yield? I know we are out of time. But I just want to make sure that is my bill and Mrs. Maloney's bill.

Attorney General HOLDER. I am sorry.

Chairman ISSA. That will probably help the President like it even more.

Mr. CUMMINGS. And we welcome your support.

Chairman ISSA. All right. I thank all of the gentlemen and lady. With that, we go to one of the most experienced members of the committee, although a freshman, the gentleman from Pennsylvania, Mr. Meehan, for 5 minutes.

Mr. MEEHAN. Thank you, Mr. Chairman, and thank you, Mr. Attorney General. I know I sent you a letter some time ago and I appreciate your coming to our committee. Look, I am going to try to do my best to work as we try to do with the facts that are before us, as limited as they are based on the discovery. But what I have been able to glean, as everybody agrees, is the tactics of the ATF are not to be supported or condoned.

But if you heard testimony that was given from the U.S. attorney in Arizona, Paul Charlton, in 2007, that he disagreed and approved of those tactics and declined the request to prosecute the cases of Wide Receiver, would you dispute that at all?

Attorney General HOLDER. I am not aware of Mr. Meehan's—Mr. Charlton's testimony.

Mr. MEEHAN. It is his testimony that he declined to prosecute those cases. And just so you know, the other facts that I have been able to glean is that Kevin Carvell, who is a DOJ Criminal Division gang unit supervisor in September 2009 called it a semi-dormant investigation, gun trafficking investigation by ATF. And in 2012,

Jason Weinstein called it a case from years earlier, which, in my mind, suggested it was not something which was current.

Attorney General HOLDER. But Wide Receiver was dormant and then was brought back to life.

Mr. MEEHAN. Well, I want to know why. That is a pretty good question, because—who is Laura Gwinn?

Attorney General HOLDER. I don't—I am not sure. I don't know.

Mr. MEEHAN. Well, let me tell you who Laura Gwinn is again, going back. Apparently Laura Gwinn was an attorney from main Justice who was sent by Lanny Breuer to prosecute gun cases, and around 2009, September 2009, she was sent to Arizona to prosecute gun cases. In her e-mail, September 2, 2009, she sends an e-mail to Jim Trusty in the U.S. Department of Justice in Washington and it says "it is my understanding a lot of those guns walked."

So we had an attorney from your Department sent to Washington who sends a communication back to mid-level or senior level people in the criminal department saying it is my understanding, I am on the scene, guns walked. And I want to know why, when a former U.S. attorney based on those opinions, declines to prosecute cases because he does not like the procedures of the ATF, and an attorney who goes and identifies gun walking, why would a subsequent administration send down attorneys and resurrect these cases for prosecution?

Attorney General HOLDER. Well, I mean, we want to try to hold accountable the people who were responsible for crimes that were committed, and I would guess that people took into account the techniques that were used in making the determination as to which cases would, in fact, be prosecuted.

Mr. MEEHAN. Well, I sure do think that that is correct. And who do you think the people are who sit there and take into account the techniques that were used? Those people in ATF that are looking for the determinations from the Department about what tactics are appropriate. And what signal does that send when the prior previous U.S. attorney declines and says those aren't appropriate tactics, but the new one comes down and says no, we believe that we are going to prosecute these cases in which those tactics were used.

But this was simultaneous as well, I know, to an effort in 2009 when Lanny Breuer actually went down and discussed the idea of traveling to Arizona to meet and plan ways to coordinate gun trafficking. So I just wanted to know why that determination was made.

Let me switch to one other thing, because again, it comes back to the idea of who knew what and when. Was Fast and Furious an OSADEF case?

Attorney General HOLDER. Yes, I think it received an OSADEF designation.

Mr. MEEHAN. And, you know, I am holding in hand the U.S. attorney manual, and we have all lived with this, and I know you know it——

Attorney General HOLDER. You have, certainly.

Mr. MEEHAN. We have spent our time. I look and it says, I am talking about the places, authority of the U.S. attorney and what needs to be approved by the Department of Justice. Approval is required for organized crime strike force cases, of which Fast and Fu-

rious was. Every significant action in the investigation and prosecution from case initiation, court-authorized electronic surveillance, witness immunity, witness protection, and other important events must be approved in advance by the organized crime and racketeering section, which is in Washington, DC, the last I looked, correct?

Attorney General HOLDER. That is correct.

Mr. MEEHAN. So we have the Department in Washington who is actually making determinations about the sufficiency of the new investigations that are taking place, the OSADEF investigations that are taking place, correct, which became Fast and Furious.

Attorney General HOLDER. Well, I am not sure exactly—it is one of the things we have to try to, again, figure out, who exactly——

Mr. MEEHAN. Well, Mr. Holder, I am figuring it out. I am watching the documents. I am giving you that route.

Attorney General HOLDER. Well, there is clearly—I understand the regulation that you have read. Now the question is who actually made the necessary approvals, who was involved, why did they do something that might have been contrary, as you say, I don't know, to what the previous U.S. attorney did. These are the kinds of things that I think we are going to find out from the Inspector General. I have not done a top-to-bottom review yet. I haven't been allowed to do that. I can't do that.

Mr. MEEHAN. One of the things we know is there are approvals as well for wiretaps, and in the conclusion of approval for a wiretap, we know that we have to put together a document which is an affidavit from law enforcement, an affidavit in which to be approved, it has to suggest that all other law enforcement options with respect to investigative techniques have been exhausted and are not—so I don't have access. I would ask, but I suspect you are not going to let former Federal prosecutor and myself, Mr. Gowdy, have access to the seven separate affidavits that were included as part of the wiretap authorizations that were approved by your Department. Would we be allowed to have access to them?

Attorney General HOLDER. You know, I am not sure what the history is in that regard——

Mr. MEEHAN. They are sealed. I know they are sealed.

Attorney General HOLDER. They are sealed. And I don't know whether or not as part of our interaction with Congress historically, the Department has sought unsealing orders in that regard. I just don't know.

Mr. MEEHAN. I would like to know what was in those wiretap affidavits with respect to which we know there needs to be the articulation of the investigative steps that were taken. And if I am——

Attorney General HOLDER. I am sorry, go ahead.

Mr. MEEHAN. I would like to know if we would have the ability to be able to review those, and even in some context in which we could negotiate. The only thing we want to see is the extent to which there may be references to tactics that were used by ATF with respect to gun walking.

Attorney General HOLDER. Well, as you and Mr. Gowdy will know maybe better than anybody else on the committee, these

kinds of applications don't always go into all of the techniques that are used in a particular investigation.

Mr. MEEHAN. But I don't know that, and I would like to know that.

Attorney General HOLDER. I am just saying generally. So that there is the possibility that a review of the material submitted by the field in Washington would not contain something that would say guns were allowed to walk, or however it might be described.

Mr. MEEHAN. But there is also the possibility that it would, and what I want to know, because I do know that your authorities would have from OEO, and it would actually go up higher to Mr. Weinstein, if I am correct, who would have to review that affidavit. So it would be for a pretty serious high level guy in the criminal division that would have in his hands that affidavit if he so choose to read it.

Attorney General HOLDER. A Deputy Assistant Attorney General has to ultimately approve a wiretap before it goes—a wiretap application before it goes before a court, and we have tried to put in place some new measures with regard to OEO and how these things are handled. But I will, you know, I will look and see what we have done historically with regard to these wiretap applications and see how we will proceed, given the request that you have made.

Mr. MEEHAN. Thank you. My time has expired.

Chairman ISSA. I thank the gentleman. We now go to the gentleman from Illinois, Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Mr. Chairman, as someone who has gone through about 200 trials myself, I know there are a lot of experienced trial attorneys in this courtroom. I appreciated the novel, Bonfire of the Vanities. The best line I have read——

Chairman ISSA. Say that again, Bonfire——

Mr. QUIGLEY. Bonfire of the Vanities.

Chairman ISSA. I would ask unanimous consent that the gentleman have 15 more seconds to educate us as to that.

Mr. QUIGLEY. Well, there is a wonderful scene in which Judge White talks to the district attorney about prosecuting defendants for opportunistic reasons. He concludes wonderfully by saying, so go tell your boss, the district attorney, Captain Ahab Weiss, that I know he is out there looking for the great white defendant, who Mr. Williams over there is not it.

Much the same is today. We come to the conclusion after nearly six hearings that I note there are those looking for the perfect case to embarrass the Attorney General and the President, but after six hearings, this is not it. I say so respecting and understanding that this is a great tragedy, a great loss that requires change and accountability. But if it is done in a way with a Hollywood-type persona, it is opportunistic.

Frankly, it took the minority staff to write a pretty good detailed analysis of what happened and what needs to change. And now, Mr. Attorney General, it is incumbent upon all of us to make sure that happens, and as you suggested there is accountability.

But if it is just deflection, we fall into the other movie trap of the day, which, Mr. Chairman, you referenced, and that is Ground-

hog Day. Let's remember what happened in that movie. The character Bill Murray lives the same day over and over again until he reaches his own reality and comes to terms with it.

We do as well. We have to come to terms with the reality that in this country we let something that is dastardly take place and it wasn't corrected fast enough. And we need to make changes. And while they are started, we still need accountability. But it can't be a deflection.

Now, Mr. Attorney General, you mentioned some of the issues, the lack of a firearms trafficking statute. We talked about the long arm reporting requirement to a certain extent. You mentioned testimony at a previous hearing from agent Peter Forcelli. His exact quote, by the way, was "Some people view this as being no more consequential than doing 65 in a 55." That was his testimony about punishment for straw purchases. He also said something else that is related to this issue and where we go from now on. He said, "I have less than 100 agents assigned to the entire State of Arizona. That is 114,000 square miles. So do we have enough resources? So do we have the resources? No, we don't. We desperately need them."

I also would note toward that end that appropriate funds for additional ATF personnel in this fiscal 2012 year, Congress' appropriations for ATF was $57 million below the agency's modest request, resulting in increased layoffs and early retirement for critical personnel. ATF plans to reduce its work force by about 5 percent to comply with these budget constraints, leaving fewer agents to pursue traffickers and inspect the small handful of dealers who repeatedly violate these gun laws.

Mr. Attorney General, if you could briefly comment on the resources needed to do this job?

Attorney General HOLDER. Yes. I think that if we are serious, as we all say we are about dealing with this problem of guns going to Mexico, we have to have an ATF agency that is staffed well, that has the appropriate leadership and that has sufficient resources. We have asked for, with regard to these teams that ATF puts on the border funding for 14 of them. We only got funding for nine. We need more people than we have now in ATF in order for them to do the job in the way they want. We need a permanent head of ATF. There is something that comes with a Senate-confirmed head that is different from somebody who acts in an acting capacity, even though Todd Jones, I think, is doing a great job.

We need all of these things in order for ATF to be as good as it can be with regard to the work that it does along the border, and the decision by whoever to keep this agency not as strong as it possibly might be is something that I think does a great disservice to the American people, and certainly to the law enforcement effort that we all think is important.

Mr. QUIGLEY. Mr. Chairman, my time has expired.

Chairman ISSA. I thank the gentleman. We now go to the gentleman from Tennessee, Mr. DesJarlais. Would the gentleman yield for 5 seconds?

Mr. DESJARLAIS. Yes, sir.

Chairman ISSA. Mr. Attorney General, I would like to make sure we make clear, for 2 years, the President didn't put up a nominee

for that position nor did he take advantage of recess appointment. So I know the gentleman was well-meaning, but perhaps ill-informed as to the facts related to the director.

Mr. DesJarlais.

Mr. DESJARLAIS. Mr. Attorney General, thank you for being here. If we resolve nothing else here today, we made it painfully clear that you have been here at least six times. I don't think there is any question about that. But why, why have we been here six times and why is it taking so long to get the answers that we need, and how could we have made this process more simple?

If you will indulge me for a minute, let's just take a hypothetical that I come home from work 1 day and my kitchen window is broken out and my boys are there all day playing baseball and I know it. Well, you know, I ask them how the window is broken. They don't know. There is a bat laying in the driveway, there are gloves laying on the table, but they are just not going to fess up. So I kind of think I know what is going on, but we can't be sure, because they are not being straight with me.

So maybe my wife is a little uncomfortable and she says, well, someone could have tried to break in. Maybe we should call the police and have them come out and investigate to make sure someone didn't try to break in. So this process goes on and on, even though we know that something isn't right. So, at any rate, I just use that loose parallel, and I think you know where I am going.

So you are here multiple times, and you opened your statement with that you are the Attorney General and that you operate under the highest standards of integrity and professionalism, and that is exactly what you have done and what you are doing, and I really have no reason to question that. But when we started asking for information, and if they could put up the slide about the Stonewall City, if we look at this, these are some of the things we have asked for to expedite this process, some of the evidence, if you will, the number of documents that we have asked be turned over and what we have, the number of witnesses that we have asked to talk to and what we have actually gotten.

These are the kind of things that I guess are frustrating for us as we try to get to the bottom of this for Agent Terry's family, and so that these kind of things don't happen again. Now, you said that you were notified probably within 24 hours of Agent Terry's death, was that what I heard you say? Sir?

Attorney General HOLDER. I am sorry?

Mr. DESJARLAIS. You were notified——

Attorney General HOLDER. I was looking at Fortress Holder there. I was kind of interested. That is not my house, by the way.

Chairman ISSA. Actually, I think it is closer to Disneyland. We are a little concerned that it looks a little too grand for anything in our government.

Mr. DESJARLAIS. Did you say that you were notified about 24 hours after Agent Terry's death?

Attorney General HOLDER. I am sorry, yes.

Mr. DESJARLAIS. And when you were notified, did they mention the Phoenix project to you?

Attorney General HOLDER. No.

Mr. DESJARLAIS. You had no knowledge that that death was, in any way, linked to what went on in Phoenix. There was no mention made of that?

Attorney General HOLDER. Well, Phoenix, I am sure there was some kind of geographic reference. But with regard to Fast and Furious, I didn't know about Fast and Furious until later, January, early February.

Mr. DESJARLAIS. So there were no bells going off or any concern about the gun running or anything at that point?

Attorney General HOLDER. No. None of the people who were told of the murder were made aware of the tactics.

Mr. DESJARLAIS. Okay. Let me reference a letter that was dated February 4th, and I think the author is sitting behind you today, Assistant Attorney General Ronald Weich.

Attorney General HOLDER. Maybe he ought to sit here.

Chairman ISSA. With all due respect, he has had this hot seat for real more than you have, Mr. Attorney General.

Mr. DESJARLAIS. He submitted a letter to the committee that denied that ATF sanctioned or knowingly allowed the sale of assault weapons and allowed them to be walked, and I think your Department had this letter withdrawn, is that correct?

Attorney General HOLDER. That is correct.

Mr. DESJARLAIS. How long did it take to withdraw the letter?

Attorney General HOLDER. It was formally withdrawn in December, December 2nd. Prior to that, there were a number of indications by me, by Mr. Weich, by Mr. Breuer, that we were not satisfied with the assertions that were contained in that February 2nd letter. But it was formally withdrawn on December 2nd.

Mr. DESJARLAIS. It wasn't a deliberate attempt to deceive Congress? The letter?

Attorney General HOLDER. No. I mean, if you look at the materials that we made available, the deliberative materials that we made available, you can see how people were, I think, really struggling to try to get the best information they could to Congress as quickly as they could, but I think they made a couple of mistakes. They needed to take more time and they needed to drill down further.

Mr. DESJARLAIS. Inaccurate information.

Attorney General HOLDER. They didn't go down to talk to the line people. They stopped at the supervisory level.

Mr. DESJARLAIS. Well, it is amazing how quickly 5 minutes goes. But I guess as a parent, I want my kids to do the right thing, and I am sure as the Attorney General, you want the people who work under you to do the right thing. So I guess moving forward, how do you feel that you can regain the trust of the American people in light of all that has happened with Fast and Furious?

Attorney General HOLDER. Well, I will take issue with you again, respectfully. I am not sure I have lost trust of the American people with regard to this issue. This has become a political thing. I get that. That is fine. So there is a certain segment of the American people, certainly a certain segment of this Congress that has lost faith in my abilities as a result of what has happened in Fast and Furious. But I think the way in which to the extent that there are people who are willing to be persuaded and who have a contrary

view now, I think they need to look at the way in which I reacted to this, the steps that I have taken, the procedures that I have put in place, the personnel changes I have made, and ultimately what I am going to do when I have the ability to look at the minority report, I assume there will be a majority report, the Inspector General's report, and judge at that point whether or not I have reacted appropriately to what was a flawed investigation, both in concept and in execution.

Mr. DESJARLAIS. And with all due respect, sir——

Chairman ISSA. The gentleman's time has expired, so please be brief.

Mr. DESJARLAIS. Okay. With all due respect, with what we see here on your house, not your house, but the letter that was sent in, what may appear as political appears now somewhat as a cover-up——

Chairman ISSA. The gentleman's time has expired.

Mr. DESJARLAIS. And a lot of information here doesn't seem to be accurate and I think that is why the number of hearings continue to go on us, because I don't think we are getting the full information. I apologize.

Attorney General HOLDER. Wait a minute.

Chairman ISSA. If you want to react to something very quickly, please.

Attorney General HOLDER. Well, I have heard the magic word here, "cover-up," and I want to make clear that there is no attempt at any sort of cover-up. We have shared huge amounts of information. We will continue to share huge amounts of information.

There is a misperception as I think was indicated in the Deputy Attorney General's letter that maybe I can clear up now, that we are not going to be hiding behind any kind of privileges or anything to not provide this committee with information that it wants. We are talking about not providing deliberative material, and that is consistent with what executive branch agencies beyond the Justice Department always do.

But with regard to things post-February 5th, February 4th, if there is a relevant request, we will respond to that request. The only thing we are not talking about responding to is with regard to deliberative material. That was a great little diagram that you had up there, inaccurate in some pretty glaring ways, but it is not up there now.

Mr. DESJARLAIS. And that is what my boys with the baseball implied as well.

Chairman ISSA. I thank the gentleman, and we can have a later discussion on how many witnesses and how much information and so on.

For the Attorney General's edification, and I know Mr. Ron Weich will help you, we have published two majority interim reports, and hopefully he can bring those to your attention. Additionally, this committee is investigating a number of things post-February 4th including related to the false response, and we hope that that will be cleared up once you give us or fail to give us a constitutional basis for withholding.

With that, we now go to the gentleman from Illinois, Mr. Davis is next in order.

Mr. DAVIS. Thank you very much, Mr. Chairman. I notice that we have heard the terminology "cover-up" a great deal, not only during this discussion, but prior to now, and I think there is no doubt that there is not a single member of this committee who does not recognize the need for some serious change.

At the outset of this inquiry, Justice Department officials sent a letter to Senator Grassley denying that gun walking occurred in Fast and Furious. However, the Department has, since then, said that the letter contained inaccurate information and that senior Department officials relied on adamant denials by ATF and the Arizona U.S. Attorney's Office.

Mr. Attorney General, to your knowledge, did anyone at the Department of Justice headquarters intend to mislead Congress in responding to Senator Grassley's inquiry?

Attorney General HOLDER. No, I don't believe that. We submitted inaccurate information, but it was based on attempts to get that which was accurate, and people simply did not have access to it. People who we relied on and who we thought were in possession of the most accurate information were, in fact, not. There was no intention to deceive, but the information provided was regrettably inaccurate, and that is why we withdrew the letter.

Mr. DAVIS. And you have taken action to hold the personnel within ATF and the U.S. Attorney's Office accountable for conveying inaccurate information to the Department?

Attorney General HOLDER. We have certainly looked at those places where personnel changes could be made. Some have been made. It is possible that others will have to be made. There are reports that are going on. I will wait for those and see what happens, although I have an independent responsibility, separate and apart from whatever the Inspector General generates, to make up my own mind about what kinds of personnel decisions we need to make, I need to make.

Mr. DAVIS. The committee has also interviewed a number of—numerous witnesses, involved in compiling and reviewing the response to Congress. The Department has also produced more than 1,300 pages of correspondence relating just to the issue of how the original letter to Senator Grassley came to be drafted. These documents support the account of senior Department of Justice officials that they relied on factual assertions from the U.S. Attorney's Office in Phoenix and from ATF. Within 2 months of the February 4, 2011 letter to the Senator, Department officials told committee staff that the letter was unintentionally inaccurate and stated that the Department would cooperate with the committee's investigation. The Department has now produced over 6,000 pages of documents and made 18 witnesses available for transcribed interviews, and, of course, you have testified on matters relating to this issue six times. Is the Department cooperating with Congress?

Attorney General HOLDER. I think we are. I think that we are trying to meet the legitimate requests that have been made by this committee. This is a legitimate hearing. This is a legitimate concern that Congress is raising and I think what we have tried to do is respond as best we can to the requests that we have made as quickly as we can while, at the same time, making sure that we don't do things that will have a negative impact on our ability to

do our jobs, and that is with regard to that small amount of information that deals with deliberative materials.

Mr. DAVIS. What categories of information are being held and why?

Attorney General HOLDER. The material being held and I think things that we are going to have to try to work our ways through are, as I have described, deliberative materials, where we have eight people within the Justice Department talking to one another about how we are going to respond to a congressional request or a media request. That kind of—that is the kind of material that we are talking about. We have made available huge amounts of other material. We are still in the process of processing other things that we will make available. We are acting in a way that executive branch agencies have always acted.

Now, you know, again, we can continue to have conversations about even this deliberative material and see if there are ways in which we can share it. One of the things I think that we have to take into account, and I am not sure anybody has ever done this, we made deliberative material, wholesale deliberative material available with regard to that February 4th letter, as you say about 1,300 pages of material. I am not sure I know any Attorney General who has ever done that before to that degree, and I thought it was the appropriate thing, given the inaccuracies that were contained in that letter.

Mr. DAVIS. Thank you very much. I appreciate, Mr. Chairman, that we are dealing with Fast and Furious, but I also think we got to make sure that we are fast and accurate, as accurate as we can possibly be. I yield back.

Chairman ISSA. I thank the gentleman. I might note for the record that the delivery of the February 4th related material occurred only after I threatened a criminal referral for its inaccuracy. It was at that point that we began getting some cooperation, and not before. With that, we recognize the gentleman——

Attorney General HOLDER. Well, Mr. Chairman, our view is that we can disagree on this. We think that the provision of that February 4th material was done voluntarily, not under coercion.

Chairman ISSA. All right. My threat of criminal prosecution isn't coercion. It is a fact that we were given false information and it was subject already to a subpoena. Cooperation subject to a subpoena—by this committee's standards, we asked for things long before we issued a subpoena. We were told no. We issued a subpoena and we were at the level of going next before we got there. So I appreciate that everyone on both sides of the aisle has a different opinion, but the timeline is undeniable that we have never received voluntary cooperation until we had elevated it considerably in any case here. And certainly Senator Grassley would say the same thing when, in fact, he was told he didn't have subpoena authority, he wasn't the chairman. That is the reason he originally came to this committee, so we could begin the process of getting what he was denied in the Senate.

Attorney General HOLDER. Well, I can say this. I was the one who made the determination that we were going to release that February 4th material, the deliberative material, and it was never brought to my attention that we had the things that you have just

said. The decision that I made was based solely on what I felt was the right thing to do and without any notion in my mind that there was coercion or—I don't mean coercion in a negative way—that there was the threat of criminal prosecution or anything like that.

My determination was made only on what I thought was right, given the provision, the regrettable provision of inaccurate information. Others might have known about that. I did not. And I was the one who made the call.

Chairman ISSA. I don't want to belabor this point, but I do want to make a point. I signed a subpoena October 12th. It was to you. So the cooperation came after your office in your name as you as the recipient received a subpoena. I hope that you read the subpoenas that come with your name on it.

Attorney General HOLDER. But the subpoena, we would not have replied in response to that subpoena, we would not have given you the deliberative information. That would not have been something that we would have provided.

Chairman ISSA. We are entitled to it and we are not going to debate that any further. Case law is on our side.

With that, we go to the gentleman from South Carolina, another constitutional officer in this branch of government, for 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Holder, it is provable beyond a reasonable doubt in my judgment that main Justice had actual or constructive knowledge of gun walking, both in Fast and Furious and beforehand, and I am going to prove it to you.

March 2010, DOJ, not U.S. Attorney's Office in Arizona, DOJ assigned a prosecutor to Fast and Furious. March 2010, Gary Grindler, who I believe is your chief of staff, knew about straw purchases in Fast and Furious and seizures in Mexico, and it doesn't take a very good prosecutor to ask how weapons got from Phoenix to Mexico.

July 2010, a memo to you through the acting deputy AG, that memo specifically mentioned Fast and Furious. It specifically mentioned straw purchasers. It specifically mentioned 1,500 firearms supplied to Mexican drug dealers. That is July 2010, 1,500 firearms.

April 30, 2010, a memo from main Justice employee Weinstein to Lanny Breuer, "ATF let a bunch of guns walk." Then the rest of the email is worrying about the negative press connotations that may have come from that. Not how to fix the policy, but how to mitigate negative press consequences.

October 2010, Jason Weinstein and James Trusty swapped emails, and specifically mentioned gun walking. And, Mr. Attorney General, that email is so illustrative of our frustration with the notion that main Justice did not know about this. I am assuming that James Trusty is a main Justice employee, am I correct?

Attorney General HOLDER. I believe that is correct.

Mr. GOWDY. All right. This is the email, and they are specifically talking about Fast and Furious, and in fairness, they also mention Laura's Tucson case. They say it is a tricky case given the number of guns that have walked, but it is a significant set of prosecutions.

The email back to that is I am not sure how much grief we are going to get from gun walking. It may be more like people are fi-

nally going to say we went after the people who sent guns down there.

Now, lay aside the merits of that argument. How can you deny that people in main Justice knew gun walking was going on before that February 4th letter was sent to a Member of Congress? That doesn't even get into the wiretap applications. That doesn't get to the factual predicate that a member of main Justice would have had to have read—all of this is before February 4th. That whole series of evidence predates Mr. Weich sending a letter to Congress denying the tactic.

So my question to you is this: Who participated in the drafting of the letter?

Attorney General HOLDER. Well, first, again, you know, this is going to be one of those rare instances, you are right. There was knowledge within the Justice Department of gun walking. It was related to Wide Receiver.

Mr. GOWDY. Mr. Attorney, with respect, I don't like interrupting people, but with respect, several of these emails specifically mention Fast and Furious. I am not talking about Wide Receiver. I would love to have that conversation some other time. These emails and memos specifically mention Fast and Furious.

Attorney General HOLDER. They mention Fast and Furious, but do they mention gun walking and Fast and Furious.

Mr. GOWDY. Yes, they do. That is my point.

Attorney General HOLDER. I would like to see those. Those I would like to see.

Mr. GOWDY. We got them from you. I mean, we got them from main Justice.

Attorney General HOLDER. Let's do this: I promised to give you all some information. I would really like to see a memo that says gun walking and Fast and Furious. I would like to see that.

Mr. GOWDY. Well, if you are looking for a videotaped confession, I probably can't give you that. But what I can give you is an email from two main Justice employees back and forth specifically mentioning Fast and Furious. "It is a tricky case, given the number of guns that have walked." I don't know how it can be any clearer than that, Mr. Attorney General. And my point is this: The February 4th letter——

Chairman ISSA. The gentleman will suspend. In order to get to the truth, we are going to take a 5-minute recess and have the documents given to the Attorney General. I have too many people behind him trying to give him instructions on what it was and what it wasn't. Nobody leave. Please get the documents to the Attorney General. Take what time you need. Use my conference room if you need it.

Attorney General HOLDER. I can stay here.

Chairman ISSA. A short recess for 5 minutes.

[Recess.]

Chairman ISSA. Would everyone take their seats. We are going to reconvene as soon as the ranking member is back.

As we reconvene, I understand that the Attorney General's people are comfortable with what the document is and the source. I would ask for an additional 1 minute for the gentleman to go through, restate the document, the source and so on. This is impor-

tant, that all sides know what is being asked, whether there are assumptions of validity, truth and so on, and testimony that may accompany it. So, with that, the gentleman from South Carolina may resume.

Mr. GOWDY. Thank you, Mr. Chairman. And in keeping with my open file discovery policy, I gave him my documents. They have my notes on them. I will go back through the list again. And I would also point out, Mr. Attorney General, there are several memos and emails I did not include because reasonably, it could be argued that they dealt with something other than Fast and Furious. Although keep in mind, my question, what I said I was going to prove is that DOJ knew Fast and Furious, and beforehand, that gun walking was a tactic, because the letter Mr. Weich wrote was not specific with respect to gun walking.

True or false: DOJ assigned a prosecutor to Fast and Furious.

Attorney General HOLDER. I believe that's right. There were people that went down—one or two, I'm not sure.

Chairman ISSA. The microphone.

Attorney General HOLDER. I believe that that is right, that there were people who went down, one or two, I am not sure, who went down to help with regard to that prosecution, that matter.

Mr. GOWDY. True or false that Mr. Grindler attended a debriefing on Fast and Furious where his own notes indicate the seizure of weapons in Mexico.

Attorney General HOLDER. That—if you are talking about debriefing, if you are talking about the meeting he had with the folks from ATF, I guess, in March 2010, 2010——

Mr. GOWDY. Yes, sir, it is March, and there is a note in cursive handwriting, "Fast and Furious," and there was a map attached to that of the seizure of weapons in Mexico. And my point was, it doesn't take a very good prosecutor to ask how the guns got from Phoenix to Mexico.

Attorney General HOLDER. Mr. Grindler has testified and indicated that what happened in that meeting was that he was briefed on the operation and was told that it was essentially a successful operation, and no mention of tactics came out of that meeting.

Mr. GOWDY. All right. There was a memo to you through the acting deputy AG from the National Drug Intelligence, I can't recall his name because I don't have my copy of it. Fast and Furious is mentioned specifically, straw purchasers are mentioned specifically, and 1,500 firearms are mentioned specifically.

Attorney General HOLDER. This is what we call a weekly report, and I have testified about this I don't know how many times. There are a number of these that coming from NDIC. And for the record it is from Michael Walther, who is the Director of the National Drug Intelligence Center, and these things just talk about what is going on with regard to operations. Again, there is no mention of tactics in any of these. There is no indication that inappropriate tactics are being used in connection with the underlying investigation, and that is why these things were not brought to my attention by my staff.

Mr. GOWDY. Well, it mentions 1,500 firearms and it mentioning straw purchasers. And, Mr. Holder, despite the protestations of some of your staff behind you that you are being treated unfairly,

I never once said that you were aware of it. I said that main Justice was aware of it. I suspect you didn't draft the letter on February 4th. My question is, who participated in the drafting of it? And I'm out of time, so I will go ahead and ask the second question. After that, I would hope perhaps at some point, Mr. Chairman, I could ask the rest of the questions I have.

But here of my two questions. Who participated in the drafting of it? Because the criminal chief head, Lanny Breuer, was in Mexico contemporaneous with the drafting of the February 4th letter advocating gun walking. Get that image, that visual image of a letter being drafted denying gun walking while the criminal chief at main Justice is in Mexico advocating for gun walking.

Chairman ISSA. The gentleman's time has expired. The Attorney General may answer.

Attorney General HOLDER. In terms of who drafted the February 4th letter, that is obvious from the materials we shared from with you, those 1,300 pages or so. I mean, I don't—I can't recall all their names, but you will really see, I think, virtually everybody, if not everybody, who was involved at the Justice Department in the creation of the February 4th letter, so you could review that.

I don't think it is correct to say that while the letter was being drafted that Mr. Breuer was in Mexico advocating for gun walking. He was in Mexico. And I think you are talking about a February 2nd email or report, I guess, from the State Department that indicated that what he was talking about was the possibility of a surveilled delivery of weapons to people who would take them to the border and an arrest made at the border, and interestingly, on the Mexican side of the border, because the penalties that exist in Mexico for gun trafficking, for straw purchasing, are higher than they are here in the United States.

That is what he was proposing. Not gun walking, but something very, very different. It was something that was raised, ultimately never carried out.

Chairman ISSA. I thank the gentleman. I apologize. There is no additional time at this time. We now go to the gentleman from Vermont, Mr. Welch, for 5 minutes.

Mr. WELCH. Thank you very much, Mr. Chairman.

Two things. Number one, I want to express appreciation for the hard work of the people of the ATF. This is an incredible challenge that they have. We lost a revered officer, Officer Terry, in the service of his country, and it is because there is a huge problem with guns going from the southwest into Mexico. In the past 5 years, 94,000 guns recovered in Mexico, over 64,000 are traced to the United States, and every year, thousands are transported across the border. You have very few tools at Justice to try to deal with that. You have spoken about that so I won't ask you.

But I think it is important for us to ask the question whether the point of this hearing is to try to do something that is going to help the men and women of law enforcement deal with the major problem, or it is going to be something that is going to run into one dead end after another without any good outcome.

Second, we get in our own way a little bit here with the investigation because it goes off into many different directions, largely because we make some allegations that as we investigate them and

take up staff time, they don't go anywhere. And I have great affection for my chairman, who is a hard-charging man, but in my experience, sometimes you get ahead of yourself on some of the allegations you make. I will just mention a few.

You had indicated, let me get it, one of your allegations was that, and I quote, you said that folks made a crisis and they are using this crisis to somehow take away or limit people's Second Amendment rights. That this hearing has nothing to do with that, this whole investigation has nothing to do with that.

Chairman ISSA. Would the gentleman yield?

Mr. WELCH. I would be glad to yield.

Chairman ISSA. I will be very brief. When the ATF began asking and the Justice began asking for additional directly related enforcement, including the idea that every two-rifle purchase in fact build to a data base that Congress has repeatedly limited in statute on request, it did seem and does still seem to this Member as though a crisis created by gun walking and Brian Terry's death was, in fact, being partially justified by this new requirement at a very inappropriate time, at least the optics of it.

Mr. WELCH. I will reclaim my time, but thank you. I would disagree. But some of the unsubstantiated allegations though were, for instance, the allegations that your office and you made—accused Mr. Holder of "authorizing every aspect of this." There is no shred of evidence to back that up.

Last October, an allegation was made that there was a third gun because there was an item of evidence marked number 2 and number 3. Those were two guns. It turned out item of evidence was number one was not a gun, it was I think a blood sample. So every time any one of us makes an allegation that is theory and conjecture but not based on any solid foundation, it creates a lot of consternation among the public, takes staff time and ends us into a blind alley.

Now, the real question has always been what did the Attorney General know and when did he know it. In the six investigations that we have had or the six that have been ongoing, the answer to that is the Attorney General was unaware of this activity at ATF.

Now, Mr. Gowdy has raised a good question here, and I want to give you a good chance to answer that. But my understanding about Mr. Weinstein is that the discussion there was about activities that were taking place during the Bush administration, not during this administration, and the fact that this tactic may have been used in the Bush administration doesn't mean that you knew that it was an ongoing tactic that was used in Fast and Furious.

So I want to just give you an opportunity to try to elaborate whatever answer you want to give to the question that's been raised by Mr. Gowdy.

Attorney General HOLDER. Yeah. The email that I had I guess from Mr. Gowdy, and I gave it back, is from Jason Weinstein, and he has indicated that the reference that he makes in there is not to Fast and Furious but it is to Wide Receiver. He testified that it is his email.

You know, I think in some ways he's the best person to determine what his own words meant. I mean, I've looked at it, and I

appreciate the chairman giving us the opportunity to look at it over the course of that couple of minutes. But the email is, as I said, Jason's email—Jason Weinstein's email where he indicated that he was talking about Wide Receiver and not Fast and Furious.

Mr. WELCH. Thank you, Mr. Holder.

I yield back the balance of my time.

Chairman ISSA. I thank the gentleman.

If you will yield, I would like to explain something.

Mr. WELCH. I'm out of time. But the chairman, as I understand it, has some prerogatives.

Chairman ISSA. Well, I think in the case of an accusation of a false statement, I will, briefly.

Brian Terry's mother and father were told by a law enforcement official that they believed there was a third gun. The missing number that was later explained seemed to corroborate it. Ultimately, though, three people have reported that they were told there was a third weapon.

Now we don't know there was or wasn't. Justice has not confirmed whether or not there's a ballistic match on the two Fast and Furious weapons there, nor have they confirmed they're looking for an additional weapon or an additional shooter.

I take very seriously getting the facts right. The fact is, we report in a limited basis things which in this case the press was way ahead of and we said, yes, we're looking into it. We did—and I will admit, we did and do get things wrong during an investigation. We do go down blind alleys regularly. Certainly that's the case. Today's hearing and the 1,300 pages out of 6,000 that were directly related to a response to a false statement made to us in writing on February 4th is an example where a lot of time has been spent going down a false thing.

The gentleman, though, is correct, and this chairman will admit, during this investigation, for more than a year, there have been times in which we did not get the information right. So, while correcting you, I'm not going to say we get it all right. Our goal is to get it all right before we publish; and, hopefully, each of our publications, majority and minority, is where we make sure we only state that which we can substantiate with footnotes.

Mr. WELCH. Thank you, Mr. Chairman.

Chairman ISSA. Thank you.

We now go to the gentleman from Florida, Mr. Ross.

Mr. ROSS. Thank you, Mr. Chairman.

Mr. Attorney General, I want to make sure I understand your testimony today and the facts as well. You've indicated today that you were not aware of any gun-walking at all until you were briefed in, it looks like, 2011. That would have been January or February 2011?

Attorney General HOLDER. Yeah, January, February 2011.

Mr. ROSS. And you are specifically speaking of gun-walking, not just Fast and Furious?

Attorney General HOLDER. No, I didn't become aware of Fast and Furious until about the same time period.

Mr. ROSS. So you were not aware of any gun-walking, including Wide Receiver, prior to the end of January 2011?

Attorney General HOLDER. No. I learned of Wide Receiver, actually, later on. I became aware of Wide Receiver as we were preparing documents to be submitted to this committee.

Mr. ROSS. And without regard to Mr. Weinstein's memo, which you were not aware of, so you did not know anything about Wide Receiver? I just want to make sure that that's clear.

Attorney General HOLDER. No.

Mr. ROSS. So when you said earlier that you were not aware of the term Fast and Furious being used, were you aware at the time of Mr. Terry's death of any investigation or program that was going on as a result of his death?

Attorney General HOLDER. As a result of his death. I certainly was aware of the fact that there was an investigation into who killed him. There was a criminal investigation that started December—right at the time of his death, December 14th, 15th. I was aware of that.

Mr. ROSS. And in fact you testified today that you were notified the date of his death, is that correct?

Attorney General HOLDER. Yes.

Mr. ROSS. And was that by Mr. Wilkinson?

Attorney General HOLDER. I don't know. I'm not sure who told me.

Mr. ROSS. If I might refresh your recollection, because, pursuant to some of the documents that we received Friday evening, we did receive some emails; and one of which was an email sent on December 15th. It was an email exchange that began from somebody to Dennis Burke, your U.S. attorney in Arizona at the time, saying, our agent has passed away. Dennis Burke then forwarded that to Monty Wilkinson, who was acting as your deputy chief of staff I believe at the time.

Attorney General HOLDER. Deputy chief of staff.

Mr. ROSS. On December 15th, at 9:41 a.m., Mr. Burke said: Not good, 18 miles within. Thereafter, at 10:04 that morning, your deputy chief of staff, Monty Wilkinson, then said in an email to Mr. Burke: Tragic. I have alerted the AG, the Acting DAG, Lisa, etc.

Would it then be correct to assume that the way you learned of Brian Terry's death was from Mr. Wilkinson himself as a result of his statement that he notified you?

Attorney General HOLDER. Well, he notified me, but I'm saying it's entirely possibly that I knew about it before Monty told me.

Mr. ROSS. You have no reason to dispute that Monty told you about it?

Attorney General HOLDER. I suppose he did. But I'm just saying that when it comes to that—when a law enforcement death, especially involving a Federal law enforcement officer, that's the kind of information that gets to me very, very quickly.

Mr. ROSS. And it should.

Attorney General HOLDER. Yes, and from a variety of places.

Mr. ROSS. In fact, to follow up on that, in the email exchange later at 11:15 a.m. That morning, there was another email from Mr. Wilkinson to Dennis Burke saying, please provide any additional details as they become available to you, asking the U.S. attorney in Arizona, please tell us, Mr. U.S. Attorney, we want to know more.

Later that day, in an email from Mr. Burke, the U.S. attorney in Arizona, to Mr. Wilkinson, your deputy chief: The guns found in the desert near the murdered BP officer connect back to the investigation we were going to talk about. They were AK–47s purchased at a Phoenix gun store.

My question to you, Mr. Attorney General, were you aware of this email exchange? Were you aware of an investigation ongoing that involved a Phoenix gun store and specifically AK–47s at the time?

Attorney General HOLDER. No, I wasn't. But what's interesting—listen to what you just said. He said that we were going to talk about, we were going to talk about, which implies that they did not talk about.

Mr. ROSS. Not prior to but subsequent to. Subsequent to the death. Mr. Wilkinson has already told you about Brian Terry's death. Now he's being informed about an investigation involving the slain officer, involving a gun store in Phoenix. Did that not raise any sense of awareness? Did it not raise any sense of intrigue—if not from Mr. Wilkinson, at least from you—to say, what investigation then is ongoing?

Attorney General HOLDER. I was not told about this. I was unaware of this. And unless there was some indication that——

Mr. ROSS. I appreciate that. But you've testified today that you are a hands-on manager.

Attorney General HOLDER. What I was saying was that, unless there's some indication that the tactics that we are so against were employed there, all we know is that this was something—this was a tragic event connected to an ongoing investigation.

Mr. ROSS. Involving a gun store and an AK–47. What else do we have to say, involving a cartel?

I mean, come on. From December 15th until the end of January, you don't learn about a gun-walking operation ongoing in your Department? And I'm supposed to go home and tell my constituency that that's the facts? Mr. Attorney General, I have a hard time believing that.

And if you are, if you are responsible for those underneath your direction, I would assume that those underneath your direction would make sure you are fully informed of all incidents of significance, including an ongoing investigation subsequent to an agent's death.

Attorney General HOLDER. What I would say is that, in the absence of an indication that these inappropriate tactics were used, you have here a tragic death connected to an ongoing Federal matter, an ongoing investigation. You know, unfortunately, that happens all the time, too many times.

What makes this case, this situation unique are the inappropriate tactics. And I don't think there's any indication that Mr. Wilkinson or anybody else was aware of these tactics until the January, February timeframe—late January, early February timeframe.

Mr. ROSS. So you made no inquiry as to whether this investigation involved gun-walking?

Attorney General HOLDER. I'm sorry?

Mr. ROSS. You made no inquiry as to the investigation involving Brian Terry's death involved gun-walking?

Attorney General HOLDER. That information was not brought to my attention, so I would not have——

Mr. ROSS. But you made no inquiry.

Chairman ISSA. The gentleman's time has expired.

Mr. ROSS. I'm not asking if it was brought to your attention. You yourself made no inquiry with regard to that.

Attorney General HOLDER. There was no indication. There was no basis for us to believe that gun-walking was at all a part of any of this stuff. I didn't know anything about gun-walking or the use of that technique until February. And by February the 28th, in early March, I said, guess what, we're not doing gun-walking. It took me a month—or less than a month—to say the gun-walking was inappropriate. Brought to my attention, fairly rapid response to say, don't ever do this again.

Chairman ISSA. I thank the gentleman.

We now go to the gentlelady from California, Ms. Speier, for 5 minutes.

Ms. SPEIER. Mr. Chairman, thank you.

Over here, Attorney General. Last person on the totem pole, so to speak.

Chairman ISSA. She will be moving up in future years.

Ms. SPEIER. Don't count on it.

In any case, first of all, let me say that I think we can stipulate for the record that this hideous chapter in the Attorney General's Office dating back to 2006 is one that we never want to see repeated. But I think it's important for us to recognize that this has been going on for a long time; and, but for the death of Agent Terry, would it still be going on today? And that's one of the things that continues to trouble me.

For the record, Mr. Chairman, I would like to ask unanimous consent to put into the record a memo provided to then Attorney General Mukasey in November 2007 in which it specified to him, of particular importance ATF has recently worked jointly with Mexico on the first-ever attempts to have controlled delivery of weapons being smuggled into Mexico by a major arms trafficker. While the first attempts at the controlled delivery have not been successful, the investigation is ongoing and ATF would like to expand the possibility of such joint investigations and controlled delivery.

Chairman ISSA. I'm more than happy to have that piece of discovery placed in the record. No objection.

Ms. SPEIER. Thank you.

[The information referred to follows:]

MEETING OF THE ATTORNEY GENERAL
WITH MEXICAN ATTORNEY GENERAL MEDINA MORA
Attorney General's Conference Room
November 16, 2007
(Friedrich, O'Connor/Roth, Swartz)

PURPOSE

Mexican Attorney General Eduardo Medina Mora wishes to meet with you to reaffirm the high importance he places on continuing the close bilateral law enforcement relationship he established with Attorney General Gonzales. Attorney General Medina Mora's visit coincides with the fall meeting of the US/Mexico Senior Law Enforcement Plenary ("SLEP"), chaired by DOJ/CRM, which brings together a number of working groups that focus on US/Mexico law enforcement issues.

BACKGROUND

RC-2

[redacted]

RC-2

[redacted]

G. Arms Trafficking

Mexico has repeatedly expressed concern regarding the smuggling of weapons from the US into Mexico, which the Government of Mexico asserts has fueled the violence of Mexican drug cartels. See, e.g., "US Guns Behind Cartel Killings in Mexico," *Washington Post*, 10/29/07, A01 (noting the 9/24 assassination of a Mexican state police officer, and an attack on the same day on a federal police office in Tijuana, and stating: "The high-powered guns used in both incidents on the evening of Sept. 24 undoubtedly came from the United States, say police here [in Mexico], who estimate that 100 percent of drug-related killings are committed with smuggled US weapons.")

In response to these concerns, DOJ's ATF has committed significant resources to address the issue of gun smuggling into Mexico. ATF has three attaches in Mexico City, and two TDY agents in Monterrey. During this past week, more than 30 ATF agents and analysts have been meeting at the El Paso Intelligence Center ("EPIC") as part of the Southwest Border Initiative's "Project Gunrunner." ATF's goals are to coordinate Federal law enforcement activities on the U.S. side of the border involving gun smuggling, and to work cooperatively with its counterparts in Mexico to improve information sharing, assist them in improving their training and technological capacity, and increase the number and quality of firearms trace requests from Mexico. One critical part of this effort is to for the USG to fund Spanish E-trace, which would allow Mexican law enforcement submit firearms trace requests to ATF's National Tracing Center.

Of particular importance, ATF has recently worked jointly with Mexico on the first-ever attempt to have a controlled delivery of weapons being smuggled into Mexico by a major arms trafficker. While the first attempts at this controlled delivery have not been successful, the investigation is ongoing, and ATF would like to expand the possibility of such joint investigations and controlled deliveries - since only then will it be possible to investigate an entire smuggling network, rather than arresting simply a single smuggler. To that end, it is essential that a Mexican vetted unit be assigned to work with ATF in this regard. ATF's attache in Mexico City has briefed Attorney General Medina Mora on this attempted controlled delivery, and stressed the importance of such a vetted unit being assigned.

H. Asset Forfeiture/ Money Laundering

Ms. SPEIER. Attorney General, were you ever told about General Mukasey's briefing regarding controlled deliveries, another word for gun-walking?

Attorney General HOLDER. I didn't find out about that until late in this process as we were developing documents to submit to this committee with regard to operation Wide Receiver. I didn't know before that.

Ms. SPEIER. All right.

This committee is Government Oversight and Reform, so I would like to spend a couple of minutes on the reform side. Hopefully, we are not just having these hearings to continue to beat up on what is an atrocious chapter in our history, but how do we make sure that it doesn't happen again? So speak to me about the fact that we do not have a Federal statute on gun trafficking.

Attorney General HOLDER. We don't have a tool that we really need. We need to have an ability to say that gun trafficking is inappropriate, it's wrong, and there's a Federal criminal penalty for it. And a statute can be drawn in such a way that it is respectful of the Second Amendment rights that all American enjoy. What I'm talking about are people who are doing things for criminal, illicit purposes that put the American people at risk and put at risk our colleagues, our neighbors south of the border, in Mexico.

Ms. SPEIER. What other things do we need in place to avoid this kind of activity? From your own testimony, you said that you could trace 60,000 weapons, but that's just a small percentage of what's really being trafficked from the United States into Mexico.

Attorney General HOLDER. Well, I think that's right. Sixty-four thousand weapons have been traced from the United States to Mexico. But those are the ones that have been traced. There are substantially a greater number of guns that have not been traced. We need to have a statute that will make meaningful what I think as a crime straw purchasing and make meaningful a penalty for people who engage in straw purchasing to get around the rules that this Congress enacted and that I am charged with enforcing.

We need to have an ATF head who is confirmed. I'm glad to hear the chairman say that he would support that.

There are other management changes that we have made and, as I said before, that are consistent with the minority report; and I think that you all have done a really good job in making that list—there are actually a couple that we didn't think of that I am looking at that I think we will try to implement as well.

There are a whole variety of things that can be done in a way that, if we are truly going to put partisan concerns aside, put lobbying concerns aside, and have some courage—because it will take some courage, because this will not be universally approved—we can really make a difference in the lives of the American people and protect the lives of law enforcement officers.

Ms. SPEIER. Have you developed a statute that you could provide to the committee around penalizing straw purchasers and gun trafficking?

Attorney General HOLDER. I can check with our legislative affairs folks and see exactly what it is that we have there.

As I indicated before, Congresswoman Maloney and Congressman Cummings have actually put something on paper that I think

is a good place for us to start, but I can also check and see what it is that we have and that we can share with this committee.

Ms. SPEIER. All right. I would appreciate that.

My time has expired.

Chairman ISSA. I thank the gentlelady.

I now ask unanimous consent that discovery documents HOGR DOJ 005752, 53, and 54 be placed in the record along with the gentlelady's documents from earlier, just immediately before. These show Lanny Breuer lobbying for gun-walking in a coordinated fashion across the border for people to be arrested in Mexico on February 4.

Without objection, so ordered.

[The information referred to follows:]

RC-1 [redacted]

From:	Garcia, Anthony P (Mexico City) [RC-1 redacted]
Sent:	Friday, February 04, 2011 3:49 PM
To:	Lurie, Adam
Cc:	Swartz, Bruce; Blanco, Kenneth; Weinstein, Jason; Warlow, Molly; Rodriguez, Mary; McMillen, Jerold; Snyder, Christopher A (Mexico City); Wyatt, Arthur
Subject:	AAG Breuer visit to Mexico
Attachments:	[Untitled].pdf

Adam,

Below is a synopsis of Assistant Attorney General (AAG) Lanny Breuer's meetings with the Mexican Attorney General's Office (PGR), Mexico's Federal Police (SSP), and the Secretary of Foreign Relations (SRE). Sr. RLA Kevin Sundwall (OPDAT) will cover the SWB US Attorneys' Conference.

AAG Breuer met with PGR Attorney General Arturo Chavez Chavez, SSP Secretary Genaro Garcia Luna, and SRE Undersecretary Julian Ventura on Wednesday, February 2.

Meeting with PGR

AAG Breuer, Deputy Chief of Mission (DCM) John Feeley, DAAG Blanco, Kevin Sundwall, and I met with AG Chavez Chavez, Deputy Attorney General (DAG) Jorge Lara, DAG Marisela Morales, Chief of Staff Enrique Barber, and International Coordinator Guillermo Valls.

CJ Murder Investigation

RC-2 [redacted]

SIU Program

RC-2 [redacted]

US Extradition Requests to Mexico

RC-2 [redacted]

Mexican extradition cases to the US

RC-2 [redacted]

RC-2 [redacted]

RC-2 [redacted]

E-Trace
RC-2 [redacted]

Meeting with SSP
AAG Breuer, DCM Feeley, DAAG Blanco, Kevin, and I met with Secretary Garcia Luna, Lic. Jose Polo Oteyza (Chief of Staff), and Lic. Ramon Eduardo Pequeno Garcia (Chief of Counter-Narcotics).

SSP Wire Tapping Authority
RC-2 [redacted]

Sharing Evidence
RC-5 [redacted]

SIU Program
RC-2 [redacted]

E-trace
RC-2 [redacted]

Meeting with SRE
AAG Breuer, DCM Feeley, Kevin, and I met with Ambassador Julian Ventura, Chief of Staff Enrique Rojo Stein, Director General for Judicial Affairs Sandra Hernandez, and others.

US Extradition Requests to Mexico
RC-2 [redacted]

Merida Initiative
RC-2 [redacted]

Public/Press Announcements
RC-2 [redacted]

Arms Trafficking
Ventura stated that greater coordination and flow of information would be helpful to combat arms trafficking into Mexico. Ventura suggested a High Level meeting in the Spring to address the arms trafficking issue. (Please note that the idea of holding a High Level Meeting in the spring also came up during Secretary Clinton's visit to Mexico last week).

US Sentencing Guidelines
AAG Breuer told Ventura that there has been a proposed increase in the US Sentencing Guidelines for straw purchasers. AAG Breuer suggested that a letter from the SRE or PGR in support of increased sentencing guidelines for straw purchasers may be useful.

Proposed Cross-Border Operation
AAG Breuer suggested allowing straw purchasers cross into Mexico so SSP can arrest and PGR can prosecute and convict. Such coordinated operations between the US and Mexico may send a strong message to arms traffickers. RC-6 [redacted]

Accreditation for DOJ Attorneys assigned to Mexico
RC-2 [redacted]

Please let me know if you have additional questions regarding the meetings.
Tony

Tony Garcia
DOJ Attache
US Embassy - Mexico City
RC-1 [redacted]

SBU
This email is UNCLASSIFIED.

Mr. CUMMINGS. Mr. Chairman, I would just reserve because I don't think that accurately describes that document.

Chairman ISSA. Well, the document speaks for itself.

Mr. CUMMINGS. He's not talking about gun-walking. I thought he was talking about a coordinated effort with the Mexican Government to follow those guns and then make a cooperative effort——

Chairman ISSA. Which is what——

Mr. CUMMINGS. Not letting it just walk but——

Chairman ISSA. Right. But the definition of gun-walking which the minority has chosen to put on Wide Receiver—Wide Receiver was a coordinated effort where they followed to the border the guns. The problem with Wide Receiver and the reason it had to be abandoned is that they found that, as it crossed the border, repeatedly they lost control of the guns.

The program described here in the email related to Mr. Breuer is exactly the same program. Now maybe if you do something enough times you might get it different in the outcome. But the program, the attempt to follow from the store to the border and then pass off to Mexican authorities is, in fact, Wide Receiver. That was that program which differs from Fast and Furious, where in Fast and Furious, they told people to peel away and they'd find the guns later.

There is a distinct difference, but there is no difference between what this document shows and the stated Wide Receiver. The fact is Lanny Breuer in this document was clearly trying to say, let's do Wide Receiver again, but let's get it right this time.

Mr. CUMMINGS. Mr. Chairman, I reserve. I would like to see the document.

Chairman ISSA. You have the document. This is DOJ 0057–54.

Mr. CUMMINGS. Go ahead.

Chairman ISSA. No. You have reserved. I will wait.

Mr. CUMMINGS. Mr. Chairman, again, I think we have a differing opinions of what gun-walking is. I will withdraw my reservation.

Chairman ISSA. I thank the gentleman.

And you are right. We can disagree as to what the document means. My discussion was what I believe it means. But you are absolutely right. Ms. Speier and myself could both be wrong about what the document means, but I appreciate your allowing it to be placed in the record.

I'm going to ask unanimous consent that DOJ 0058–11 and 12 be placed in the record, but I will reserve myself until the minority has a chance to see it and be comfortable with it.

[The information referred to follows:]

From: Cunningham, Patrick (USAAZ)
To: Burke, Dennis (USAAZ); Clemens, Shelley (USAAZ); Morrissey, Mike (USAAZ); Scheel, Ann (USAAZ); Hurley, Emory (USAAZ); Woolridge, Angela (USAAZ); Evans, John (USAAZ) 3; Hernandez, Rachel (USAAZ); Sherwood, Robert (USAAZ) <Contractor>
Sent: 3/10/2011 10:53:32 AM
Subject: RE: Follow Up From Conference Call

Dennis: I will call Bill, Matt, Nate and Doug Coleman. We do not want this email circulating, correct? PJC

From: Burke, Dennis (USAAZ)
Sent: Thursday, March 10, 2011 7:35 AM
To: Clemens, Shelley (USAAZ); Cunningham, Patrick (USAAZ); Morrissey, Mike (USAAZ); Scheel, Ann (USAAZ); Hurley, Emory (USAAZ); Woolridge, Angela (USAAZ); Evans, John (USAAZ) 3; Hernandez, Rachel (USAAZ); Sherwood, Robert (USAAZ) <Contractor>
Subject: Re: Follow Up From Conference Call

Thx.

From: Clemens, Shelley (USAAZ)
Sent: Thursday, March 10, 2011 09:32 AM
To: Burke, Dennis (USAAZ); Cunningham, Patrick (USAAZ); Morrissey, Mike (USAAZ); Scheel, Ann (USAAZ); Hurley, Emory (USAAZ); Woolridge, Angela (USAAZ); Evans, John (USAAZ) 3; Hernandez, Rachel (USAAZ); Sherwood, Robert (USAAZ) <Contractor>
Subject: RE: Follow Up From Conference Call

Pat,

I am assuming your group will notify the Phoenix federal agencies. I will notify our local RAC, ASACs, and DSAC.

Shelley

From: Burke, Dennis (USAAZ)
Sent: Wednesday, March 09, 2011 6:27 PM
To: Cunningham, Patrick (USAAZ); Morrissey, Mike (USAAZ); Scheel, Ann (USAAZ); Clemens, Shelley (USAAZ); Hurley, Emory (USAAZ); Woolridge, Angela (USAAZ); Evans, John (USAAZ) 3; Hernandez, Rachel (USAAZ); Sherwood, Robert (USAAZ) <Contractor>
Subject: Fw: Follow Up From Conference Call

Interesting.

I was not on the call.

From: Cole, James (SMO)
Sent: Wednesday, March 09, 2011 08:21 PM
To: Moreno, Angel (USATXS); Murphy, John E. (USATXW); Burke, Dennis (USAAZ); Gonzales, Kenneth (USANM); Duffy, Laura (USACAS)
Subject: Follow Up From Conference Call

Dear USAs:

Thank you for your time this evening, I wanted to send this just to summarize our telephone conversation and inform those of you who were unable to participate.

First, thank you for the work you do to fight gun trafficking. It is very important.

As I said on the call, to avoid any potential confusion, I want to reiterate the Department's policy: We should not design or conduct undercover operations which include guns crossing the border. If we have knowledge that guns are about to cross the border, we must take immediate action to stop the firearms from crossing the border, even if that prematurely terminates or otherwise jeopardizes an investigation.

We know you have difficult jobs to do and we fully support and appreciate your efforts to stop the flow of firearms through the apprehension and prosecution of all responsible parties.

As I said on our call, please make sure the SACs in your districts understand the policy.

Jim

Chairman ISSA. And, with that, we now go to the gentleman from Texas who has patiently been waiting down in the cheap seats, Mr. Farenthold.

Mr. FARENTHOLD. Thank you very much, Chairman Issa.

Mr. Attorney General, I want to follow up on something Mr. Ross said, because I think we're looking at management and how the DOJ is managed. I think you told him that you were informed about Agent Terry's death but never heard anything back about it being associated with the guns that walked.

I'm the kind of person—maybe our management styles are different—that if an employee under my charge was killed in the line of duty, I would want to be briefed almost on a daily basis as to how that investigation is going. I'm asking again, you didn't hear for quite some time that the Fast and Furious guns were involved in this?

Attorney General HOLDER. Well, no. That's correct. I didn't hear about that for a while.

I mean, you know, to draw a distinction here—and I'm almost hesitant to do this—we are talking about a brave law enforcement officer. Well, it wasn't a part—that doesn't matter.

I was brought up to date about, you know, the ongoing investigation, what we were doing at the Justice Department but did not hear anything about the connection between that death and the gun-walking tactics until, as I said, February 2011.

Mr. FARENTHOLD. All right. Well, we've been investigating Fast and Furious for some time. Y'all have been looking at it internally. You've constantly blamed the ATF or the U.S. Attorney's Office in Arizona, I think. Mr. Gowdy's made it clear through some of his questions that it actually has gone up to Main Justice. But I just don't see y'all doing anything.

There were several questions earlier about what you've done. And nobody's been disciplined. Nobody's been fired. There hasn't even been a letter put in. I don't think that's good management, and I think that's the reason that many of my colleagues—myself included—have suggested it might be time for you to resign.

My question is that, knowing what you know about the handling of Operation Fast and Furious, do you believe you're capable of running the top law enforcement agency in this country? And can you tell the taxpayers that you're the most qualified person to manage the Department of Justice?

Attorney General HOLDER. First off, let me just say we have not blamed—I have not blamed the people in Phoenix, either ATF or the U.S. Attorney's Office there. I mean, they're good people down there. They work hard. And I'm not going to allow that to stand in the record. I'm not blaming anybody. We want to find out who in those offices might have been responsible as well as who at Main Justice is responsible.

Mr. FARENTHOLD. Don't you think 13 months is a little long to run that investigation?

Attorney General HOLDER. You have to understand something. I don't have the ability to do a top-to-bottom investigation here because of the Inspector General's investigation, and I have to respect that.

Now with regard to my capacities to run this Department, you know, I'll let the record speak for itself. People have differing views in this room about Fast and Furious and my role in it.

Mr. FARENTHOLD. I just have a limited amount of time.

You've indicated——

Attorney General HOLDER. You asked a question, I mean, questioning whether or not I should resign. And I don't have a chance to respond to that?

Mr. FARENTHOLD. That's fine.

Attorney General HOLDER. Thank you.

So if you are going to judge me and ask me to resign, as you have and as have some of your colleagues, you know, you've asked a broad question. And how you judge that, well, you look at everything that I've done in this Department for the past 3 years and you look at the Department and the state that it was in when I got here—a dispirited Department that had gone through scandals, that had the traditions of the Department turned on its head. It had been politicized.

I will stand on what I've done with regard to the Criminal Division, the Antitrust Division, with regard to the Civil Division and the fraud money that we've brought in, the great work we've done on national security. And if you want to say that I am a person not qualified to be Attorney General you take that into account as well.

Mr. FARENTHOLD. Well, then why are we withholding some of the deliberative documents, too? That's another one of my concerns. Really, a lot of times here in Washington it's not what actually happens that you get hung on. It's the cover-ups. So I'm concerned that some of those documents are going to show some of the theories that have been floated around that maybe some delays were put on stopping Fast and Furious based on some of the things that the people on the other side of the aisle are calling for now in additional and more stricter laws.

I mean, if there was a political purpose to that, I think the American people have a right to know about that. So I would urge you to release those documents. Let us look at them and let the American people make that decision.

But I'm almost out of time, and I've learned from the testimony here that things tend not to bubble up to your desk very often. I did want to make sure that you were aware of an operation with the DEA that has two Houston, Texas, based pilots being detained in Panama over money laundering. I realize that's out of the scope of this investigation. You can choose to comment on it or not. But I did want to make sure it bubbled up to your level.

And my time has expired.

Chairman ISSA. I thank the gentleman.

Will the gentleman yield?

Mr. FARENTHOLD. Yes.

Chairman ISSA. Just quickly, the minority's not objecting to the Cole document from March 10, 2011. So that is placed in the record.

I thank the gentleman.

[The information referred to follows:]

From: Cunningham, Patrick (USAAZ)
To: Burke, Dennis (USAAZ); Clemens, Shelley (USAAZ); Morrissey, Mike (USAAZ); Scheel, Ann (USAAZ); Hurley, Emory (USAAZ); Woolridge, Angela (USAAZ); Evans, John (USAAZ) 3; Hernandez, Rachel (USAAZ); Sherwood, Robert (USAAZ) <Contractor>
Sent: 3/10/2011 10:53:32 AM
Subject: RE: Follow Up From Conference Call

Dennis: I will call Bill, Matt, Nate and Doug Coleman. We do not want this email circulating, correct? PJC

From: Burke, Dennis (USAAZ)
Sent: Thursday, March 10, 2011 7:35 AM
To: Clemens, Shelley (USAAZ); Cunningham, Patrick (USAAZ); Morrissey, Mike (USAAZ); Scheel, Ann (USAAZ); Hurley, Emory (USAAZ); Woolridge, Angela (USAAZ); Evans, John (USAAZ) 3; Hernandez, Rachel (USAAZ); Sherwood, Robert (USAAZ) <Contractor>
Subject: Re: Follow Up From Conference Call

Thx.

From: Clemens, Shelley (USAAZ)
Sent: Thursday, March 10, 2011 09:32 AM
To: Burke, Dennis (USAAZ); Cunningham, Patrick (USAAZ); Morrissey, Mike (USAAZ); Scheel, Ann (USAAZ); Hurley, Emory (USAAZ); Woolridge, Angela (USAAZ); Evans, John (USAAZ) 3; Hernandez, Rachel (USAAZ); Sherwood, Robert (USAAZ) <Contractor>
Subject: RE: Follow Up From Conference Call

Pat,

I am assuming your group will notify the Phoenix federal agencies. I will notify our local RAC, ASACs, and DSAC.

Shelley

From: Burke, Dennis (USAAZ)
Sent: Wednesday, March 09, 2011 6:27 PM
To: Cunningham, Patrick (USAAZ); Morrissey, Mike (USAAZ); Scheel, Ann (USAAZ); Clemens, Shelley (USAAZ); Hurley, Emory (USAAZ); Woolridge, Angela (USAAZ); Evans, John (USAAZ) 3; Hernandez, Rachel (USAAZ); Sherwood, Robert (USAAZ) <Contractor>
Subject: Fw: Follow Up From Conference Call

Interesting.

I was not on the call.

From: Cole, James (SMO)
Sent: Wednesday, March 09, 2011 08:21 PM
To: Moreno, Angel (USATXS); Murphy, John E. (USATXW); Burke, Dennis (USAAZ); Gonzales, Kenneth (USANM); Duffy, Laura (USACAS)
Subject: Follow Up From Conference Call

Dear USAs:

Thank you for your time this evening, I wanted to send this just to summarize our telephone conversation and inform those of you who were unable to participate.

First, thank you for the work you do to fight gun trafficking. It is very important.

As I said on the call, to avoid any potential confusion, I want to reiterate the Department's policy: We should not design or conduct undercover operations which include guns crossing the border. If we have knowledge that guns are about to cross the border, we must take immediate action to stop the firearms from crossing the border, even if that prematurely terminates or otherwise jeopardizes an investigation.

We know you have difficult jobs to do and we fully support and appreciate your efforts to stop the flow of firearms through the apprehension and prosecution of all responsible parties.

As I said on our call, please make sure the SACs in your districts understand the policy.

Jim

Chairman ISSA. And with that, we go——

Mr. FARENTHOLD. Excuse me. Did you wish to answer? You are welcome to or not.

Chairman ISSA. The gentleman may respond.

Attorney General HOLDER. There is a limited amount of information I can talk about that.

The DEA leadership has told my staff that the incident you described in your letter was not a DEA operation. I can't respond much more than that. But DEA can provide your staff a briefing with regard to that outside of this setting.

Mr. FARENTHOLD. That's fine. I'm just worried about the pilots.

Attorney General HOLDER. That's fine. Sure.

Chairman ISSA. I thank the Attorney General. On December 5th, we actually asked for a briefing on that. We appreciate your commitment to that briefing in an appropriate setting.

Now we go to the very patient gentleman from Missouri, Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman, and thank you, Attorney General Holder, for, once again, coming before the committee.

Our job on this committee is oversight. It is to examine the facts and come to conclusions. People of good faith may disagree. Reasonable people can look at the same evidence and come to differing conclusions.

In this case, we're not looking at evidence and then coming to conclusions. Rather, the majority is not looking at evidence and coming to conclusions. The majority came to a conclusion before any facts were examined, before any evidence was produced, before any witnesses were given the opportunity to testify. And that conclusion was that there was a scandal, a scandal that the majority could exploit for political gain, an Obama administration scandal that could garner the majority the splashy headlines they promised when they took control of this committee.

Remember now, this is when the chairman of this committee promised the American people that he would hold seven hearings a week times 40 weeks. These plans weren't reflective of actual evidence, of actual facts already gathered that would determine the number and pace of hearings. This was at a time when, flush with victory, the majority began to display the hubris that would be their hallmark for the last 13 months.

Chairman ISSA. Would the gentleman yield?

Mr. CLAY. Not yet. This was at a time when the incoming chairman on the committee said that President Obama has been one of the most corrupt Presidents in modern time. Since then, we have sat through politicized hearing after politicized hearing and we have seen the majority level wild accusations against the administration with absolutely no basis in fact. We have watched the majority berate witnesses. We have heard the majority accuse witnesses of lying. We have seen the majority attempt to deny us the right to call our own witnesses, and we have seen what we see here once again today.

The majority has been and is accusing the administration, the Justice Department, the Attorney General of participating in a vast conspiracy. The chairman has compared the Fast and Furious operation with Iran-Contra. This was a completely irresponsible com-

parison. Iran-Contra was, indeed, a vast conspiracy, one that reached directly to the Oval Office, and evidence proved that.

It is irresponsible to take that gavel to assume the grave responsibility of leading this committee and to wield the power to subpoena, the power to call and examine witnesses, the power to investigate like a political instrument, solely like a political instrument, to accuse the AG of—no, I won't repeat the irresponsible wholly manufactured accusation, but to do so without evidence is irresponsible.

Now there is evidence Fast and Furious was a fatally flawed operation. We know that from the evidence. We also know from the evidence that an Attorney General knew about flawed failed gunwalking operations. We know this from the documents produced by the Justice Department. However, that was Attorney General Mukasey in President Bush's administration.

So we have evidence of knowledge at the highest level of the Justice Department about a bad, flawed policy. Does the majority call former Attorney General Mukasey to testify? Does the majority examine the full history of these operations in a fair and responsible manner? Does the majority even attempt to avoid the appearance that this is a politically motivated attack?

I think from the evidence we know the answer to those questions; and, Mr. Chairman, I will now yield the balance of my time to the ranking member.

Chairman ISSA. The ranking member has 5 seconds.

Mr. CUMMINGS. Mr. Chairman in light of the latitude that you've given on your side, I would ask for 2 minutes. Unanimous consent.

Chairman ISSA. Any objections?

Without objection, the gentleman from Missouri has an additional 2 minutes.

Mr. CUMMINGS. Thank you very much.

I'm going to look at this organizational chart, Attorney General, and I see every single person with immediate supervisory responsibility of Operation Fast and Furious has been removed or reassigned.

Let's look at ATF. Here are the people that have been removed from their management positions and from any operational roles: the director, the deputy director, the assistant director, the deputy assistant director, the special agent in charge, the assistant special agent in charge, and the group's supervisor. Is that right?

Attorney General HOLDER. I can't see the bottom of the chart, but I think that's all accurate.

Mr. CUMMINGS. Similarly, at the U.S. Attorney's Office in Arizona, all of the key personnel involved in Fast and Furious have resigned, been removed, or been reassigned: the U.S. attorney, the criminal chief, the section head, and line prosecutor. Is that right?

Attorney General HOLDER. I believe that's all correct as well.

Mr. CUMMINGS. One of the criticisms is that no one has been actually fired. Can you explain why you are waiting to take final personnel actions against some of these employees?

Attorney General HOLDER. Well, I don't want to single those people out, because the universe is actually larger than that. But certainly one of the things that I'm going to take into consideration is what we find from the Inspector General report and what factual

findings that she makes in addition to the material that I have just gotten I guess over the past couple of days, the minority report.

I think the chairman's right. There are a couple of majority reports I should look at as well before I make final determinations.

Mr. CUMMINGS. Would a confirmed director of ATF be able to improve management supervision?

Attorney General HOLDER. Oh, I don't think there's any question about that.

Again, Todd Jones has done a great job, and he has put in place great number of reforms and has done a lot of the things that you are pointing up to there on the ATF side. But I think you need to have a person with the prestige of a Senate confirmation to really run an agency in the way that we would like it to be run.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman ISSA. I thank the gentleman, and I thank you for making my point that no one in Washington has been held accountable.

And, with that, we go to the gentleman from Pennsylvania, Mr. Kelly.

Mr. KELLY. Thank you, Mr. Chairman.

Chairman ISSA. Another cheap seat, I'm afraid. You will move up, though.

Mr. KELLY. I hope so.

The real reason we're here today—and I appreciate your being here. I know you've gone through a lot of questioning. And the fact that it's not a political hearing, I understand that. But I'm getting a little bit confused, because we keep going back to the political side of it.

To me, this is about trust. And you're the highest-ranking law enforcement official in the country. And when the people lose trust in an agency, that's a very difficult thing to recover, if you can recover it at all.

And I go back to a couple of quotes, and these are ones that you will recognize.

One is: "Transparency is the best thing." That's from you, by the way, in January 2009. "For a long time now, there's been too much secrecy in this city. Let me say it as simply as I can, transparency and the rule of law will be the touchstones of this presidency."

So we always hear this talk about we're going to be transparent, we're going to be clear. And then the only thing that I hear that I'm clear on is that you were never onboard with any of these things. No matter what it was, you know what, I never was informed.

And I'm not questioning your management style. I come from an industry that if you lose somebody's confidence, it's very hard to get it back.

Now we can keep talking about this for a long time. But what I'm amazed about is that since 2009, 2010, 2011, there is very little information about what happened. When we go back to 2006 in a previous administration, we can very clearly demonstrate what they did and what they did not do.

And what I'm really bothered by is a letter from the Department of Justice—and we've already made reference to it. And this is to Senator Grassley. This responds to your letters dated January 27, 2011, and January 31, 2011, to Acting Director Kenneth Melson of

the Bureau of Alcohol, Tobacco, Firearms and Explosives, ATF, regarding Project Gunrunner: We appreciate your strong support for the Department's law enforcement. At the outset, the allegation described in your January 27th letter that ATF sanctioned or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico is false. ATF makes every effort to interdict weapons that have been purchased illegally.

And then on that very same day: Below is a synopsis of Assistant Attorney General Lanny Breuer's meetings with the Mexican Attorney General's Office, Mexican Federal Police, and the Secretary of Foreign Relations.

Now who else was there? AAG Breuer, Deputy Chief of Mission John Feeley from the State Department, DAAG Blanco, Kevin Sundwall. All these folks are here, and at the end of it here's what they come up with:

AAG Breuer told Ventura that there had been a proposed increase in U.S. sentencings or guidelines for straw purchasers. AAG Breuer suggests that a letter from the SRE or PGR in support of increased sentencing guidelines for straw purchasers may be useful. The proposed cross-border operation AAG Breuer suggested allowing straw purchasers cross into Mexico so SSB can arrest and PGR can convict and prosecute these folks. Such coordinated operations between the United States and Mexico may send a strong message to arms traffickers.

And now it is preposterous for me to sit here and listen thatyou, as the highest law enforcement officer in the country, say, but I didn't know. I didn't know. See, that's the problem. I just didn't know. Had I known, I would have changed it. And had I known earlier, I wouldn't have waited until December 2nd of this year to pull the message that Breuer had sent. I wouldn't have allowed the February 4, 2011, letter to be entered into it.

Don't you see where the problem is, Mr. Attorney General? It isn't that you say I didn't know or I wasn't quite aware of it. The problem is the American public relies on you, sir, to follow all those guidelines. You are the chief officer.

And then to come before this body and for us then to be accused of some type of a political agenda, this isn't a Republican issue or a Democrat issue. This is a United States of America issue.

So you have your AAG down in Mexico saying, yeah, it's a good idea. We're going to keep doing it. And then you have people back home saying, you know what, we never did that, and we don't want it to go on.

Is there any wonder then the American people have lost trust and lost faith in this system? Absolutely not. The fact that they still hang on to a thread of it goes back to what they know the country was to be in the beginning and what it still can be.

But when you continue to find out that those who are responsible don't do their work and at the end of the day they don't say, you know, it happened on my watch; it's my fault. What they say is, it happened in the previous administration and, doggone it, the people who were supposed to brief me never briefed me.

I can't believe that the transition from the last administration to this administration, there was no briefing? I mean, there may have

been—the AGs may have turned, but I betcha the same people were still on. So to say that we really didn't know about it to me is absolutely preposterous, and that's something that I can't accept.

If you go back to northwest Pennsylvania, you know what integrity is? It's saying what you mean and meaning what you say. And don't run around the outsides of it. Go right to the middle and tell people what happened.

You know what I would appreciate you saying? You know what? I didn't have the foggiest idea what was going on. I went after the people that handled it and handled it poorly, and they are no longer involved.

Chairman ISSA. The gentleman's time has expired.

We go to the gentleman from Ohio, Mr. Kucinich, for 5 minutes.

Mr. Attorney General, we're going to get you close to 1. We're down to about six people left.

Go ahead, Mr. Kucinich.

Mr. KUCINICH. Thank you very much, Mr. Chairman, members of the committee.

I want you to know, Attorney General—I'm sorry I'm late to this hearing, but my wife and I were at the prayer breakfast this morning. And I knew this meeting started at 9, and we were still at the prayer breakfast, and we were praying for you.

Attorney General HOLDER. I can't complain about that.

Mr. KUCINICH. Well, let me tell you, based on what I've seen, I think my prayers have been answered. Because, frankly, I haven't seen anyone make a case about you not performing your duties in the way that you should, and I want to go over that right now.

You and senior Justice Department officials have repeatedly been accused of authorizing the gun-walking tactics used in Fast and Furious. We already have the record about what my chairman has said. He said, "there's no question that high-ranking officials at Justice were briefed and rebriefed, and many of them had direct contacts in authorizing the program. They now call it a failed program when in fact the very concept, the very way they wanted it to be executed was deadly and dangerous."

Now none of the 22 witnesses that this committee has interviewed supported that claim. And I want to look at, for the moment, the Department of Justice organizational chart, which is relevant here.

Of course, you know, the DOJ, you are at the top. ATF reports to you through the Deputy Attorney General.

The former head of the ATF—and I emphasize the word "former"—Kenneth Melson told us that the controversial tactics were never raised to my level. He said he was not aware of gun-walking and never brought it to the attention of senior DOJ officials.

Now Mr. Melson's second in command, William Hoover, also told the committee staff he did not know of the gun-walking tactics in Fast and Furious. He said it was his "firm belief that the strategic and tactical decisions made in this decision were born and raised in Phoenix."

Now, Mr. Attorney General, can you corroborate their statements to the committee? And did the head of ATF or his deputy ever warn you that gun-walking was occurring?

Attorney General HOLDER. No, I never got that from either Mr. Melson or from Mr. Hoover.

Mr. KUCINICH. Well, I want to go back over this chart again, because it's really important for Members to have an understanding here.

You've got the U.S. attorney in Arizona, the ATF—the ATF, Mr. Hoover, Mr. Melson. ATF didn't report anything to the Deputy Attorney General. The U.S. attorney for the district of Arizona didn't put any information through to the Deputy Attorney General. So what I want to know is, all of this talk about resignation, we're really devaluing the whole concept of asking a top-level official to resign when you haven't reached the level of proof that something was right on his desk. No one's proved that at all. But we keep talking about resignation.

If we cheapen this whole idea of just—you don't like someone, you ask them to resign. You don't like an administration, you ask people to quit. You cheapen that idea. It makes this whole committee process less significant.

And I want this committee to be important. I chose to be on this committee when I first came to Congress because government oversight is a very important function. I want to support my chair's call for this hearing, even though it's the sixth hearing. You must feel like Tom Hanks in the movie Groundhog Day because we keep coming to the same point. But you know what? You have an obligation to come to us, nevertheless.

So look at that chart. Hold that up again, please. All this information, all these assertions, they never got to the Attorney General. Now why? Whether you like him or not, you've got to be able to make the case, and the case has not been made here that the Attorney General, Eric Holder, was in any way derelict in his duties. And those on the other side of the aisle know me well enough that if I thought that he was I wouldn't hesitate to say it.

So I think that we've got to be very careful here with people's reputations, because reputations take a lifetime to build. They can't just be trashed in a minute without facts. After a while, this is starting to sound like Alice in Wonderland or Through the Looking Glass, where you've got the queen saying, sentence first, verdict afterwards.

The sentence is resignation, resign. But we haven't made a fact pattern that would suggest that we should have that conclusion raised to the level of the President having to take the action because you serve at the pleasure of the President.

So I just want to say, whatever disagreements that we may have on certain policies, I don't see anything that's been produced here today that should cause you to have to stop serving the people of the United States of America. And I just want that on the record, haven't seen the facts that would show otherwise.

Thank you.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Idaho, Mr. Labrador, for 5 minutes.

Mr. LABRADOR. Mr. Chairman, thank you.

I'm glad that the minority has made a point that I've been trying to make for a long time: Government is too big and has too many layers of bureaucracy.

But I'm one of the first people who asked for your resignation, and I did it after thinking about it for a long time. And in my statement when I asked for your resignation I said that, in your testimony before Congress, you either lied or you were grossly incompetent in your actions when it came to finding out about Fast and Furious and your handling of this matter.

The reason we keep bringing you back to Congress is because we want to know what you knew and when you knew it. It's a simple question. But the problem is that, even though you have testified six times up here on this matter on differing occasions, your story continues to evolve and continues to change. In fact, today your story changed a little bit.

So let's talk about the facts. Everybody wants the facts. So let's talk about the facts here.

On May 2011, you said in the Senate Judiciary that you first heard about Fast and Furious a few weeks ago. In November 2011, you said that a few weeks was inaccurate and that you should have said a couple of months. Emails released on January 28th show that you were informed by your deputy chief of staff of Agent Terry's death; and you just testified today that, yes, that is correct, on December 15, 2011.

And this is what I am trying to get to right here. On that same day—and it's already been shown—your deputy chief of staff learned that the guns used to kill Agent Terry were from Fast and Furious. So what you want us to believe is that you were told about the death of Agent Terry but you chose not to ask any followup questions on that same day about what caused the death of Agent Terry and that, in fact, you didn't learn about the connection between the death of Agent Terry and Fast and Furious until a couple of months later.

That's what you want us to believe. And that's fine. That may be the truth. But you can continue to come to Congress—that may be the truth. That's fine. I don't have a problem with it. You continue to come to Congress unprepared. Don't you agree that this is a pattern that you have of dealing with difficult questions and embarrassing issues in your office, continuing to come to Congress unprepared?

Attorney General HOLDER. I think it's very interesting what you just said: That may be the truth. What I said may be the truth.

Mr. LABRADOR. Yeah, it may be the truth. I'm not disputing it. I'm saying, but you continue to come to Congress unprepared. Wouldn't you admit that you continue to come to Congress unprepared when you have to testify? Where you have to change your statements, you have to withdraw memos from your office, isn't that a fact?

Attorney General HOLDER. No.

Mr. LABRADOR. Okay. Let's look at that. Let's look at the facts. If we could go to the slides, please.

When you came to Congress on February 14, 2001, you were being asked about Mr. Mark Rich's pardon. It says, "Mr. Rich's

name was unfamiliar to me. I had gained only a passing familiarity with the underlying facts of the Rich case."

Go to the next slide. "I did not acquaint myself with his record."

Let's go to the next slide. "I never actually saw that letter."

There's a pattern here that we continue to hear in your testimony.

Let's go to the next slide. "You're right."

Mr. CUMMINGS. Mr. Chairman, you said at the beginning that this would be limited to Fast and Furious; and here we are—I'm seeing something up there from 2001.

Mr. LABRADOR. I'm just showing a pattern of behavior.

Mr. CUMMINGS. We've honored that. And I have been very strict with my people on this side to stay within the parameters that the chairman set. And, as a matter of fact, I thought we've done a pretty good job so far.

Chairman ISSA. The gentleman will suspend.

I'm going to limit what he can do to anything that he wants to say related to management style. And the Attorney General does not have to answer any questions. I don't actually see a question here.

I have heard time and time again people talking about gun control and the need for it and a number of other items. Expressing an opinion within the 5 minutes by a Member of Congress is something I have limited authority. The gentleman has only 5 minutes. I do not expect the Attorney General to answer, although in defending himself in this case he may choose to. And I would caution the gentleman from Idaho to get to the management question quickly because this is about Fast and Furious.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Mr. LABRADOR. Okay.

Next slide. "You're right. I didn't have the ability to look at all the materials."

Next slide, please. "I have not had a chance—" on May 13, 2010, when you were testifying about Fast and Furious, "I've not had a chance to. I have glanced at it. I have not read it."

Next slide, please. "I have no recollection of knowing about Fast and Furious"—on October 7, 2011.

Next slide, please. On October 7, 2011: "On a weekly basis, my office typically receives over 100 pages and weekly reports that are provided."

Next slide, please. "I certainly never knew about the tactics employed in the operation."

Next slide, please—and this is on February 14, 2001: "And I think the one thing that would have changed this whole thing is if I had said to the person on my staff, what's the status of the Rich matter?"

I believe that's what would have changed, and we would have avoided the six hearings that we have had about this matter, is if you would have just asked a simple question of your staff before you came to testify in Congress: What did we know about Fast and Furious, and when did we know it?

You failed to do that. You failed to do that under the Mark Rich investigation, and you failed to do it on this case, and this is why we continue to have these hearings.

Mr. Attorney General, I believe the American people deserve better. I believe that the American people deserve to have an Attorney General that they can trust. And for that reason, I have asked for your resignation. And I believe that, because you have been grossly incompetent in the way that you have prepared before coming to Congress, I think you should resign.

Thank you very much.

Ms. NORTON. Mr. Chairman, I just want to note for the record, this gentleman could have had a whole pattern that begins with Fast and Furious, but he insisted——

Chairman ISSA. Does the gentlelady state a point of order?

Ms. NORTON. It was a violation of the rules you yourself, Mr. Chairman, set——

Chairman ISSA. Madam Norton, the rules of the House severely limit my ability to impede your 5 minutes of opinion or his 5 minutes of opinion. I have cautioned Members. I have made it very clear the witness will not be expected to answer any questions that are not on the narrow subject of Fast and Furious.

Staff will show you the rules that limit how much I can stop——

Ms. NORTON. Mr. Chairman, if I may say, it seems to me that that interpretation of the rule was clearly not before us before. And I am going to have to ask, sure, if it's the right—it has been my view all along that a Member may ask about what time it is on the Moon in her 5 minutes. I never had a chairman before try to keep me from using my First Amendment rights. But since that had been your rule and this isn't the first time you have invoked it, I tried to honor it.

Chairman ISSA. I thank the gentlelady for her comment.

I have the ability to limit the scope of a hearing. I've tried to protect the Attorney General from answering questions which were not within the scope of his preparation. I respect the gentlelady's right to use her 5 minutes to state opinions, and I have never stopped somebody from it, although I have cautioned.

It is the intent of this committee to keep this from being anything other than a legitimate investigation as to Fast and Furious and conditions that occurred around the investigation of a number of committees. So I appreciate the gentlelady's comment and would recognize for 10 seconds the gentleman from Ohio.

Mr. KUCINICH. I just want to correct the record. It was suggesting that it was Bill Murray, not Tom Hanks, in Groundhog Day. So I just want to make sure that, you know, I thought that you may have felt like Bill Murray in Groundhog Day, not Tom Hanks.

Chairman ISSA. I thank the gentleman. And, for the record, it was 38 days in a row in which that repeated itself for Groundhog Day.

Attorney General HOLDER. Mr. Chairman, if I could just say one thing in response to Mr. Labrador.

Chairman ISSA. Of course.

Attorney General HOLDER. That was among the worst things I think I've ever seen in Congress. You took a whole series of statements out of context, with no context——

Mr. LABRADOR. With all due respect, the worst thing I've ever seen——

Chairman ISSA. The gentleman's time has expired.

Attorney General HOLDER. And, you know, the Mark Rich thing was considered in my confirmation. We talked about it then. There are a whole bunch of things that I could say about what you just did. And maybe this is the way you do things in Idaho—or wherever you are from.

But understand something. I'm proud of the work I've done as Attorney General of the United States. And looked at fairly I think that I've done a pretty good job. Have I been perfect? No. Have I made mistakes? Yes. Do I treat the members of this committee with respect? I always hope that I do.

And what you have just done is, if nothing else, disrespectful. And if you don't like me, that's one thing. But you should respect the fact that I hold an office that is deserving of respect.

And, you know, maybe you are new to this committee. I don't know. I don't know how long you have been here. But my hope would be that, you know, we can get beyond that kind of interaction, that kind of treatment of a witness, whether it's me or somebody else. Because I think in some ways what you did was fundamentally unfair, just not right.

Chairman ISSA. I thank the gentleman.

We now go to the senior member of the committee from Pennsylvania, Mr. Platts.

Mr. PLATTS. Thank you, Mr. Chairman. I certainly appreciate your efforts on this important issue.

Mr. Attorney General, I guess first I'd just comment, most of my line of questions or questions have been addressed, asked, and answered, and I am not going to repeat what others have already addressed.

To the last exchanges, I guess I have two comments:

For the most part, I agree with what you just said and consider the gentleman from Idaho a friend and don't share the approach in this instance that he took. And I think your points of a reminder of civility are important.

Along with that, I also share the frustration I think that's coming through in his presentation or others on both sides of the aisle that what this is all about is a courageous American who died in the line of service to this country and that the actions of others in service to this country may have played a role because of mismanagement of a program or outrageous conduct relating to gun trafficking and that we stay focused on that.

The frustration is that, apparently, the Inspector General has thousands of pages of documents that this committee, in trying to do legitimate oversight, has not been privy to; and the sooner this committee on both sides of the aisle have access to the same information, the sooner the efforts of this committee can be achieved in a nonpartisan, just good government fashion.

So I think we all need to keep the focus. This is about how do we make sure that the death of a servant of this Nation never is repeated in the circumstances that we see in here.

So with my questions being asked and answered, I'm going to yield. I know the gentleman from South Carolina has something he didn't get to finish up. So I am going to yield him the balance of my time.

Mr. GOWDY. I thank the gentleman from Pennsylvania.

I just want to circle back, Mr. Attorney General, with respect to the October 12, 2010, email, Mr. Weinstein and Mr. Trusty. And I am happy to provide you a copy if you do not have one.

You would agree with me that Fast and Furious is mentioned specifically in that email exchange?

Could I ask that the clock be tolled, Mr. Chairman, while——

Chairman ISSA. We will suspend, and we'll give him back the document again.

Attorney General HOLDER. I have it in front of me. This is October 14th, October 17th, and October 18th.

Mr. GOWDY. That's correct. If you need time to familiarize yourself with it, take all the time you want.

Attorney General HOLDER. That's fine. No, I'm okay.

Mr. GOWDY. Would you agree with me that Fast and Furious is mentioned specifically in that email exchange?

Attorney General HOLDER. Yeah. I guess this is the October 17th from Jason Weinstein to James Trusty.

Mr. GOWDY. And both of those gentlemen are Main Justice employees, correct?

Attorney General HOLDER. That's right.

Mr. GOWDY. And you would agree with me that gun-walking is mentioned specifically, correct?

Attorney General HOLDER. Yes. In the second line. Number of guns that have walked.

Mr. GOWDY. Yes, sir. And it is actually mentioned in both the exchanges, guns that have walked and then somebody says gun-walking. So that's two references to it.

Now can you find the phrase "Wide Receiver" anywhere in that email?

Attorney General HOLDER. I can't see this very well, but I'm just going to assume that, given the tenor of your question, that the term Wide Receiver does not appear in here. But Mr. Weinstein testified that when he was talking about a tricky case he was referring to Wide Receiver in the Sunday, October 17th, email.

Mr. GOWDY. And I can't speak to that, Mr. Attorney General. My point is this: Leading up to February 4th, a letter was being drafted—and I'm much more concerned with the name at the top of that letter than I am the name at the bottom. The name Department of Justice means something to me. The name at the bottom of it, not so much.

While that letter was being drafted, there are people in Main Justice who knew the body of that letter was incorrect, factually incorrect. And while that letter was being drafted, the criminal chief Lanny Breuer was in Mexico talking about gun-walking.

Do you know whether or not he alerted our Mexican counterparts that Fast and Furious was something that they needed to be prepared to deal with because of the number of weapons? Did he at least mention to them, be alerted; a lot of weapons went down there; a lot of your civilians are going to be killed?

Attorney General HOLDER. Well, first I would say yes, there were people at main Justice who did have that knowledge of Wide Receiver and who admitted they did not make the connection between Wide Receiver and Fast and Furious, and that should have hap-

pened, and that could changed the February 4th letter. Lanny Breuer was not down there talking about gun walking as we have used that term during the course of these last 4 hours or so when he was dealing with the people in Mexico.

And I don't remember the third question——

Mr. GOWDY. Well, I actually don't like interrupting witnesses, but I am almost out of time. I am going to read a summary. And this isn't my summary. This is from a DOJ attache named Tony Garcia. The summary reads, "Mr. Breuer suggested allowing straw purchasers crossing into Mexico so Mexican police can arrest and Mexican prosecutors can prosecute and convict." Mr. Garcia then wrote a summary saying what a horrible idea that was for the very reasons we have been talking about for the last hours, that people were going to die and weapons were going to get away from us.

So my time is out. I just want to ask one more question.

Chairman ISSA. Very, very briefly.

Mr. GOWDY. Very briefly. Has there been discussion at main Justice of either a grant of immunity to Mr. Cunningham so we can know what it is that he feels the need to invoke his Fifth Amendment right to not say? Have you discussed granting him immunity, and has there been a conversation by calling for a special prosecutor who may want to issue that grant of immunity?

Attorney General HOLDER. We have not discussed immunity or a special prosecutor. I think that would be for you-all to ask us, if that is something you want to have considered. I will say I don't know exactly why he invoked his Fifth Amendment privilege, but I can say that in the preparation of that February 4th letter that he was involved in, I don't have any basis to believe that he knowingly provided with us any false information. But, again, I don't know why he invoked his privilege. He has a lawyer from a very good law firm here in D.C., and I am not sure why he did that.

Chairman ISSA. The gentleman's time has expired.

Mr. CUMMINGS. Mr. Chairman, just 5 seconds. I just want to say to Mr. Gowdy, we have answered all your questions that you asked about Weinstein in our report, and it comes from documents that were during the testimony and before our staffs.

Chairman ISSA. I thank the gentleman. We now go to the gentleman from Oklahoma, Mr. Lankford.

Mr. LANKFORD. Mr. Attorney General, thank you for being here, your testimony. It is a long day and you dealt with this topic a lot. I know you also did not want to see the death of Brian Terry. None of us did. This was a horrible incident that we are dealing with a lot of consequences of over time because we want to make sure it never happens again. We have heard loud and clear from you, you want to make sure this never happens again, and I appreciate that.

What I want to do is talk briefly about ATF and the structure there. Obviously this was an acting director. You have to have concerns, have extra there, you have extra attention to it in the management based on an acting director and the transitions and all that has happened with ATF on it.

The structure with the FBI, and if they are going to go for an undercover operation, they have a field office proposal that goes through the supervisor in charge, it goes through headquarters, it goes through legal. Then legal has to determine is this entrapment,

is this fully within the bounds of that. A U.S. attorney may get involved in it at some point, and then it goes up to headquarters if it involves a certain amount of money and a length of time and such. So it has a very lengthy process getting all the way up to the Department of Justice on that.

Is that a similar process to what ATF also does to be able to approve an operation like this undercover?

Attorney General HOLDER. I am not sure that it is as robust as what you have just described with regard to the FBI, but it is certainly——

Mr. LANKFORD. But that is consistent with the FBI process, is that correct?

Attorney General HOLDER. I am sorry?

Mr. LANKFORD. Is that the right process for FBI that they go through?

Attorney General HOLDER. I think the FBI process is a good one, and I think that what we need to do is have, not only with regard to ATF but all the other investigative agencies within the Justice Department, make sure that we have similar procedures in place. That is one of the things that I have talked about with Todd Jones, the Acting Director who is in the process of making changes at ATF.

Mr. LANKFORD. Because that is the concern obviously, to put in a system and structure to make sure this never, ever happens again. It is one thing to talk about it after the fact. It is another thing to try to fix it so it doesn't become such a bureaucratic maze that nothing happens, but it also makes sure there are some checks and balances, that we are not doing entrapment, that someone else is checking it, that it is getting up to your office. If it wasn't getting to your office or something like this before, let's try to make sure it does in the future day get up to DOJ. So that is something in process.

What is the timeframe on that for a decision and a shift on that that is occurring?

Attorney General HOLDER. You know, I mean, I would hope this is something we can do over a matter of a relatively short number of months. I think to do this right, we need to have buy-in from people who are at ATF headquarters, people who are in the field, so they have an ability to express their views and so that they will accept—these are things that are probably going to be changes in the way in which they have operated. So I think we are talking about a matter of months before we have those kinds of things in place.

Again, Todd has really made significant changes. He is working real hard at this. But I think the concern that you have expressed is one that I agree with. We should make sure that we have processes in place to minimize the possibility that what we are talking about today, and legitimately talking about today, never happens again.

Mr. LANKFORD. Right. The last thing I want to say to the Terry family at some point is this occurred and nothing has happened to make sure it never occurs again, that there is some way to be able to say this is never going to occur again as long as it is on any of our watch on it.

Let me make a quick side statement and then I am going to yield back to the chairman as well. This is not something that I expect you to answer on it. It is a comment that I want to be able to make. It is off topic on it, so I am going to tell you that.

Yesterday this committee had a hearing dealing with the constitutional issues and the repercussions of the President's appointments to the NLRB and CFPB in January. Obviously your Department is very involved in that in the constitutional statement.

In 2010, Deputy Solicitor General Neal Katyal was before the Supreme Court and Chief Justice Roberts asked him specifically, can the NLRB, a question, be resolved with a recess appointment? Neal Katyal at that time——

Ms. NORTON. Mr. Chairman, it looks like there is another violation of your rule coming up.

Chairman ISSA. The gentlelady is out of order.

Mr. LANKFORD. I already prefaced this by saying I do not anticipate this—I am making a statement. I do not expect the Attorney General to respond to this.

So Neal Katyal made this statement to the Supreme Court saying that a recess appointment could not be done if it is less than 3 days. So there was an opinion by him on that before the Supreme Court dealing specifically with the NLRB. Two years later, Justice came back out and came out with a statement saying no, that is legal, so there was a transition.

Mr. Chairman, what I would hope for at some point is to be able to have some conversation to say what changed between 2010 and 2012 in Justice, that at one point they considered it not legal and 2 years later considered it legal and appropriate at that point. So obviously I am not expecting—that is not in your preparation on that, but that is something we just dealt with as a committee yesterday, and I would hope at some future day we would deal with.

Chairman ISSA. I thank the gentleman. There is no question there.

Attorney General HOLDER. If I could just——

Chairman ISSA. Are you yielding to me?

Mr. LANKFORD. I do yield back.

Chairman ISSA. I will give you time for a quick close.

The evidence that you have given us through discovery that on February 4th, Lanny Breuer was, in fact, talking about a program that included guns passing over the border in the hopes that they would be intercepted, well, in fact, on March 10th in the Cole email there is a statement I will read verbatim here. "As I said on the call, to avoid any potential confusions I want to reiterate the Department's policy as though existing. We should not design or conduct undercover operations which include guns crossing the border. If we have knowledge that guns are about to cross the border, we must take immediate action to stop firearms from crossing the border, even if that permanently terminates or otherwise jeopardizes an investigation." That is a complete paragraph.

Can you, in fact, answer for this committee how you have counseled or changed Lanny Breuer from a man who flew to Mexico and said I want to have guns crossing the border to this, which says there is a policy and it is wrong, and we have only got a month in between them?

Attorney General HOLDER. Well, clearly what was proposed in, I guess, February by Lanny Brewer was in contravention of the policy that I had the Deputy Attorney General make clear to everybody at main Justice and to the field. And to the extent that there is a tension, the policy that Mr. Cole has laid out is the policy of the Justice Department and is the thing that I support.

Chairman ISSA. I want to thank you. I am not going to ask any more questions. You have been very generous with your time.

I want to reiterate just one thing. We can't undo everything that was said here. The effort was made for this to be narrowly about Fast and Furious. I believe that two other committees, Senate Judiciary, House Judiciary, had each one time in which the primary reason for you being called was not normal oversight, but in fact, related to Fast and Furious and the letter that followed. We believe we have had one crack at it also, and we appreciate your coming three times to three separate committees. And that we appreciate.

In closing, I do believe there are people at Main Justice who ultimately do need to go. If you are a political appointee, you should not be reassigned if you are in some way culpable in something like Fast and Furious. I have never accused you of having personal knowledge. This committee has never accused you of having personal knowledge. One of our Members went on quite a bit about the alternative of either you knew or should have known. I share that, that, in fact, Justice has to have a bubble-up system that holds specific people accountable for specific levels of action.

This committee would hope, under our reorganization and organizational side, not our investigation side, that we can continue working with Justice so that we can have a comfort level, along with the Judiciary Committees, that those systems are put into place so that in the future, if something like this happens, we know that, for example, a person signing a wiretap would also be a person who would understand the level of the operation being described in great detail, and you described it as this thick a document, and it often is.

So I appreciate what you came here to do. This committee is obviously widely divided on details of Fast and Furious and the letter that followed.

I said I would let you have the last word. So, Mr. Attorney General, you have the last word.

Attorney General HOLDER. Well, Mr. Chairman, I would just say——

Chairman ISSA. Would the gentleman suspend.

Mr. CUMMINGS. Just 30 seconds.

Chairman ISSA. Thirty seconds of, course.

Mr. CUMMINGS. I just wanted to go back very quickly, Mr. Chairman, to something that Mr. Gowdy was asking about with regard to Mr. Weinstein, and just wanted to make it part of the record, this transcript page 121, where he says, "Okay, first of all, let me clear up the confusion that you noted about the pronouns. When I say it is a tricky case given the number of guns that have walked, I am talking exclusively about Wide Receiver." I just wanted to say that.

Thank you, Mr. Attorney General.

Chairman ISSA. Thank you. As we said, you have the last word, Mr. Attorney General.

Attorney General HOLDER. Well——

Chairman ISSA. Briefly.

Attorney General HOLDER. As I said, you and I talked before the hearing began, and I just want to say that you, the ranking member, the members of this committee have treated me fairly, with one exception, one glaring exception, and I have talked about that. The questions you have asked have been tough, they have been fair, and I share what was indicated, a desire to make sure that we have in place mechanisms so that the thing that brings us here today is something we will never have to discuss again.

I think there are a variety of things that we can work on as people who are dedicated to the safety of the American people, and I look forward to working with the members of this committee across party lines to try to reach those kinds of—successfully reach those kinds of solutions.

Chairman ISSA. I thank you, General Holder. We stand adjourned.

[Whereupon, at 1:20 p.m., the committee was adjourned.]

[The prepared statements of Hon. Dan Burton and Hon. Paul A. Gosar follow:]

Opening Statement for Rep. Dan Burton
"Fast and Furious: Management Failures at the Department of Justice"
Thursday, February 2, 2012

Thank you, Mr. Chairman for this opportunity to talk about the significant management failures in the Justice Department surrounding Operation Fast and Furious. As you may recall, I chaired this Committee during the investigation of the pardon Marc Rich. The common thread between the actions of Attorney General Holder at that time and now is his forgetfulness and lack a dearth of managerial controls.

The office of Attorney General is one of the most important positions in our government. The actions of Mr. Holder then and now reveal a pattern of confusion, mismanagement, and a total disrespect of Congress' oversight authorities. Lives were lost and no one is being held accountable at the highest levels nearly two years later. As Harry Truman once said, the buck stops here. Mr. Holder seems to think the buck stops anywhere but with him.

In addition to betraying the trust of the American people - especially those engulfed by the violence along our southwestern border - Operation Fast and Furious has also damaged US-Mexican relations. It is unthinkable that the United States sponsored a project that knowingly allowed thousands of weapons to enter Mexico without its government's knowledge or consent; especially as we need Mexico's cooperation to defeat the cartels terrorizing Mexico and our southwestern communities. Operation Fast and Furious has proved to be one of the most serious errors in judgment carried out in recent history by a Federal agency, and to date no one at the highest levels has been held responsible.

Mr. Chairman, I applaud your determination to uncover the whole truth behind Operation Fast and Furious. Based upon the DOJ's cooperation on this matter to date, and my own experience investigating FBI corruption in Boston back in 2003, Attorney General Holder has an established pattern of putting up every obstacle, no matter how flimsy, to thwart ongoing Congressional investigations. Unfortunately, it has come as no surprise to me that the Department of Justice has delayed Committee document requests by refusing to cooperate with Committee subpoenas; and has produced scores of blacked-out pages. According to the Department's own Inspector General, that office has reviewed 80,000 pages of documents and more than 100,000 emails relating to its own Fast and Furious investigation. In comparison, Congress has been given only between 5,000 - 6,400 pages. The Committee must be vigilant and Mr. Chairman, you have been. I commend you and your staff for taking seriously this Committee's oversight responsibilities.

No matter what the case is, Attorney General Holder should be held responsible for overseeing a Department that executed Fast and Furious. The American people and the innocent Mexican citizens whose lives have been forever damaged by Operation Fast and Furious deserve answers and they deserve accountability from our Federal officials.

I look forward to Mr. Holder's testimony and his responses to the questions raised here today. Again, thank you Mr. Chairman.

Congressman Paul Gosar
Opening Statement
"Fast and Furious: Management Failures at the Department of Justice"
February 2nd, 2012

As the only member of the Oversight Committee from Arizona, I cannot state enough how crucial today's hearing is to give Arizonans the answers they truly deserve about Operation Fast and Furious. My constituents brought this scandal to my attention very early on in my first term – and our committee, under the leadership of Chairman Darrell Issa, as well as Senator Chuck Grassley in the Senate, has been working tirelessly to interview witnesses and investigate who authorized and supervised Operation Fast and Furious. It is infuriating that a year later, we still cannot answer that simple question.

We can start with what we do know. Our federal government, under the auspices of the Department of Justice, enacted a program to walk guns into Mexico but failed to use any standard tracking methods. The result was thousands of guns ending up in the hands of hardened Mexican criminals and drug cartels, hundreds of deaths in Mexico, and several deaths here in the United States. We have seen statements from inside the DOJ, and its fellow travelers in Congress, almost hoping for a tragedy in order to use such a tragedy as a pretext for even more gun control laws. When the Second Amendment is under attack by the very Agency sworn to uphold it, we must all remain vigilant against the onslaught upon our freedoms and constitutional rights.'

I have said many times that the Constitution is not a menu from which the President, the Attorney General, or even a member of Congress, can pick and choose what rights they like and will enforce, and what rights they want to violate. The Second Amendment right to own and keep firearms is as important to the freedom of this country as the First Amendment right to free speech or free worship. It is as important as the right against unlawful search and seizure, or the right to an attorney before facing imprisonment. We all took oaths to uphold and defend the Constitution. We did not swear to uphold only those parts we really like.

It is a profound shame that this committee is today holding its third hearing with respect to Fast and Furious and has yet to discover who authorized this program and who must be held accountable for it. Frankly, this sad state of affairs is a deadly reflection of the bigger picture, of an Administration gone wild – an Administration with no regard for the Constitution. Everywhere we look, from individual insurance mandates, engaging in war without Congressional approval, to illegal recess appointments, to Cabinet members who flout Congressional subpoenas – this President and his appointees believe that the Constitution simply doesn't apply to them. Let me be clear. They are wrong. They do not deserve to hold high office with this clear contempt for our Rule of Law. It is our duty as Congressional oversight watchdogs to root out these egregious instances of executive abuse and hold the offenders accountable. And I intend to do everything in my power to make that happen today.

I also want to address the report that the minority released in the days preceding this hearing. I find the report laughable. The report is notable as a poor whitewash and transparent partisan cover-up. The "nothin' to see here folks, move along now" attitude displayed in the Minority Report is a public disservice. The Minority's suggestion that the idea that rogue ATF agents were wholly responsible for Operation Fast and Furious and that the Department of Justice has its hands one hundred percent clean in the matter is simply frivolous. The facts belie that assertion. Actions speak louder than words, and this committee has had ATF agents willingly come forward and share their story, and also be open to questions and answer them honestly. This Department of Justice has stonewalled our investigation, hiding behind an Inspector General's report. We can all respect the work of Inspectors General but let's not mince words here: the Department of Justice is choosing not to cooperate with Congress. I fully support my Chairman in the actions he chooses to take to address this non cooperation, on behalf of our Committee and our Congress, which is a fully co equal branch of government.

Mr. Holder cannot continue to hide from the public and avoid addressing this matter. The people of Arizona cannot hide from the consequences of Fast and Furious. Over a thousand guns, placed into the hands of narco-terrorists and criminals, still remain at large. The guns we have found are usually accompanied by dead bodies of innocent victims or industrial size loads of illicit drugs. It is sickening that our government shares any portion of the blame for aiding these international criminals – and just as sickening that those appointed to positions of power see themselves as above the law and not accountable for their part in it. Americans have record low confidence in their government and in their public servants. With politically motivated stonewalling and covering up for political appointees, as the Department of Justice has done, it's not hard to see why. We have a mission here to restore that trust and it requires not letting up until we have all the facts.

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