

# FAST AND FURIOUS, SIX YEARS LATER

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## HEARING

BEFORE THE

### COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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## FAST AND FURIOUS, SIX YEARS LATER

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Wednesday, June 7, 2017

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, D.C.*

The committee met, pursuant to call, at 9:30 a.m., in Room 2154, Rayburn House Office Building, Hon. Jason Chaffetz [chairman of the committee] presiding.

Present: Representatives Chaffetz, Issa, Jordan, Amash, Gosar, Gowdy, Massie, Meadows, DeSantis, Ross, Walker, Blum, Hice, Russell, Grothman, Hurd, Palmer, Mitchell, Maloney, Norton, Lynch, Cooper, Connolly, Kelly, Plaskett, Krishnamoorthi, Raskin, Welch, and DeSaulnier.

Chairman CHAFFETZ. The Committee on Oversight and Government Reform will come to order. And without objection, the chair is authorized to declare a recess at any time.

We thank you all for being here. It is an important hearing on a topic that has gone on for far too long. We had the death of one of our bravest, one of our best in Brian Terry, and this government, as I have said many, many times before, is different than most other governments in the world and that is we are self-critical. We do look hard at things that have happened and that have gone wrong to make sure that the truth is exposed and that we don't ever make these mistakes and errors again.

We are also, as a committee and staff, issuing a—I think it's a 259-page report. I want to thank a few people as we get into this. I want to thank John Skladany, Steve Castor. Steve has spent an exceptional amount of time on this, as well as Tristan Leavitt, who is sitting here to my left, Cordell Hull, Jack Thorlin, Natalie Turner, Mike Howell, and Rebecca Edgar, a lot of people on our staff that spend countless hours working on these topics, and we thank them for their preparation of this report that we are issuing today.

We are here to check in on one of the longest-running congressional oversight and investigative matters of our time, an operation called Operation Fast and Furious. Congress is now in its seventh year in search of a complete accounting of the facts relating to the reckless gun trafficking operation that left border patrol agent Brian Terry murdered. This happened on December 14, 2010, and we still don't have all the answers. At the scene of Agent Terry's murder in 2010, two modified AK-47-type assault rifles were recovered. The weapons were traced to Operation Fast and Furious.

The strategy of this failed operation, encouraged by the Department of Justice, was to focus the resources of the Bureau of Alcohol, Tobacco and Firearms on Mexican drug cartels rather than

low-level straw gun purchasers. As such, a program was born that allowed straw purchasers to supply Mexican drug cartels with firearms. Purchasing a firearm for someone other than yourself is illegal. The shocking end-game of this misguided plan was to identify cartel members after guns recovered at crime scenes traced back to their original place of purchase.

Absent from this strategy was any modicum of public safety. ATF failed in its mission to protect our communities from violent criminals and the illegal use and trafficking of firearms. Let's keep in mind, these were nearly 2,000 weapons that they knowingly and willingly let out onto the streets.

Agent Terry's family, who is here and will participate in the second panel, should not have to wait more than six years for answers and accountability. We are grateful they are here, and we look forward to hearing their story again in the second panel.

Our committee began its work in February of 2011 under the leadership of Chairman Darrell Issa after partnering with Senator Grassley to evaluate unfathomable whistleblower accounts and documents coming out of ATF in Phoenix, Arizona. Both Chairman Grassley and Chairman Issa helped lead the charge, and we're very grateful for their efforts and look forward to hearing more from both today.

Several Phoenix-based ATF special agents expressed skepticism and disbelief about the program as it went against everything they were trained to do and violated their law enforcement oath to protect the public. Special Agent John Dodson, who is with us today, was one of those agents. Without Agent Dodson's determination to do the right thing, surely many more thousands of firearms would have walked, leading to additional deaths. He should be thanked by the Department of Justice, the ATF, and by all of us.

But as Agent Dodson will tell us today a different story, however, happened. His employer was not treating him as a hero. As the committee with responsibility for oversight of Federal whistleblower policy, we must continue to shine the light on John Dodson's story.

The congressional investigation also led to a well-chronicled impasse between two equal branches of government. In June 2012, the House of Representatives held former Attorney General Eric Holder in contempt for failing to turn over documents relating to the investigation. The House successfully compelled the production of many of these documents in Federal court. In two separate judicial victories, the committee received approximately 80,000 pages of new documents from the Department of Justice. And again, the Department of Justice didn't want Congress to see them and certainly didn't want the public to see them.

However, it should not take years and endless, expensive litigation for the executive branch to cooperate with proper congressional oversight. We still require additional documents, and litigation is ongoing as the Department of Justice continues its unprecedented stonewalling of Congress and the Terry family. And I am sorry to report, under the Trump administration, this has not changed. This has not changed.

In previous testimony before Congress, former Attorney General Holder committed to getting the Terry Family the answers and ex-

planations they needed. But when the television lights went off, that did not happen. In fact, the opposite happened. The Obama administration Justice Department went so far as to litigate against the Terry family. The Justice Department wrote briefs and argued in Federal court against the family's efforts to intervene as a crime victim in the Fast and Furious prosecutions. It is a travesty of justice.

We look forward to hearing from Senator Grassley, Special Agent Dodson, and members of Brian Terry's family, including his mother and his cousin Robert Heyer. We look forward to hearing their accounts and perspectives from a vantage point of six years later.

Mr. CHAFFETZ. But right now, we are pleased to have serving as the ranking member today Mr. Lynch, the gentleman from Massachusetts, and will yield as much time as he needs.

Mr. Lynch, you are now recognized.

Mr. LYNCH. Thank you, Mr. Chairman.

And, Senator Grassley, you honor us by your presence here this morning. I would like to begin by acknowledging the life and courageous service of Border Patrol Agent Brian Terry, who served as a United States Marine, a police officer in his home State of Michigan, and an agent of U.S. Customs and Border Protection. His life was tragically cut short when he was murdered in a gunfight near the Mexican border in 2010. Agent Terry's family is here today. Mrs. Terry and Mr. Heyer, we are deeply sorry for your loss.

Ranking Member Cummings very much wanted to be here today, but as many of you know, he is recuperating from heart surgery. But he wanted me to extend his apologies for not being here personally today. He was able to speak with Agent Terry's family last month, and he offered to see if there was anything more we could here on this committee to obtain additional information about what happened nearly seven years ago.

As part of that effort, Ranking Member Cummings wrote a letter to Attorney General Jeff Sessions on May 30 asking whether the Department of Justice still had the same policy about producing documents to Congress that it had had under the Obama administration. Years ago, as the chairman has laid out, this committee had a high-profile disagreement with the Justice Department. Although it produced a great deal of information to the committee, it withheld certain information based on the argument that the Federal agencies have a so-called deliberative process privilege. That issue was indeed litigated, and the court found that agencies do in fact have this privilege but that there were some additional documents that were outside of the privilege that should be produced even when applying that principle.

Following the court's order, the Department provided the committee with access to thousands of pages of additional documents last summer. In his letter to Attorney General Sessions, Ranking Member Cummings again asked whether the Department policy on these documents is the same as it was under the Obama administration. He asked whether Attorney General Sessions is now asserting the same privilege that Attorney General Holder and the Obama administration did, whether Attorney General Sessions has changed these policies to provide additional documents to the committee.

Ranking Member Cummings shared his letter with Agent Terry's family members, and, Mr. Chairman, I ask unanimous consent that we place this May 30 letter from Mr. Cummings to Attorney General Sessions into the official record for today's hearing.

Chairman CHAFFETZ. Without objection, so ordered.

Mr. LYNCH. Unfortunately, the Department responded on Monday that it will not provide us with answers to the ranking member's questions, it will not explain whether the Attorney General is changing the Department's policies or legal interpretations, and it declined to send anyone here today to testify about these questions. Instead, the Department informed us that it is continuing to discuss these matters with the chairman. Because Democrats have not been invited to participate in those discussions, we have no idea whether Attorney General will let us have any of these remaining documents at this point.

This also raises a second problem. Last week, the White House directed a new policy that Federal agencies should ignore requests for information from Members of the committee other than Republican committee chairmen. This new policy relies on an opinion from the Department of Justice Office of Legal Counsel, which claims that the authority to conduct oversight, quote, "may be exercised only by each House of Congress or under existing delegations by committee and subcommittees or their chairman and that individual Members of Congress do not have the authority to conduct oversight in the absence of a special delegation by a full House committee or subcommittee."

That analysis is indeed wrong, it flies in the face of Supreme Court precedent, and it is a mistake. The great irony here is that we have the Honorable Senator Grassley testifying before us today, and he was responsible, I believe, for first bringing Operation Fast and Furious to light in 2011. And at the time, Senator Grassley was not a committee chairman. He was in the minority. But we congratulated him on his diligence and hard work.

The Trump administration should acknowledge and respect the constitutional oversight role of every Member of Congress, regardless of party, because we do our oversight in service of the American people, not on behalf of political parties like the Terry family.

As Senator Grassley wrote in a letter back in 2009 about the role of the minority, quote, "As a senior Member of the United States Senate and the ranking member of the Finance Committee, I have a duty under the Constitution to conduct oversight into the actions of executive branch agencies." Senator Grassley was right.

Finally, I want to address an issue that was raised by the Terry family when Americans are killed in the line of duty, as Agent Terry was. Their family members deserve our support. And today, I'm asking that the Department of Justice review its policies and procedures for supporting the families of those who lose their lives in service to our country. I hope the chairman and other members of the committee will join me in that request, and by working to ensure that the victims' families are supported, we can honor Agent Terry's legacy.

Thank you, Mr. Chairman, and I yield back the balance of our time.



Chairman CHAFFETZ. I thank the gentleman. I would simply note that I actually concur with your notion that the—if the Department of Justice is taking a position that they should not respond but only respond to chairmen, I think that is a dangerous and unsustainable policy. And so I just want you to know that I concur with you.

I want members to know we will hold the record open for five legislative days for any members who would like to submit a written statement.

We would now like to recognize our distinguished witness on the first panel, the chairman of the Senate Judiciary Committee. But in order to properly introduce him, I would like to recognize a colleague, the gentleman from Iowa, Mr. Blum, as well as Mr. Issa after that.

Mr. Blum, you are now recognized.

Mr. BLUM. Thank you, Mr. Chairman.

It is my pleasure today to introduce my friend and fellow Iowan, Senator Charles Grassley. The chairman of the Senate Judiciary Committee, Senator Grassley recently began serving his seventh term in the United States Senate. The former chairman of the Senate Finance Committee, Senator Grassley also served in the Iowa House and the U.S. House before coming to the Senate.

Senator Grassley has been an important partner to this committee in Fast and Furious investigation, and we are privileged to have him join us today.

As co-chairman of the Senate Whistleblower Protection Caucus, he is a tireless advocate for whistleblowers, including Special Agent John Dodson. This investigation has shown the important role whistleblowers play in enabling Congress to conduct oversight of the executive branch.

After unsuccessfully raising his concerns within the Department of Justice, Special Agent Dodson contacted Senator Grassley's office in 2011. In January of that year, Senator Grassley wrote a letter to the ATF regarding the allegations and later partnered with this committee to better understand the Fast and Furious operation and to determine if there was any wrongdoing, abuse of authority, or failed supervision.

During that investigation, the Justice Department falsely denied that law enforcement officers had allowed straw purchasers to buy firearms illegally and trafficking them without being apprehended, directly contradicting the claims of whistleblowers. The Department of Justice was later forced to withdraw their denial.

Armed with information provided by whistleblowers, Senator Grassley and this committee have continued to press Department of Justice for documents related to Fast and Furious, resorting to the court system when necessary.

Senator, I thank you for being with us today. We appreciate your hard work on this matter and are looking forward to your testimony today. Thank you for being here. And I yield back.

Chairman CHAFFETZ. Thank you. I will now recognize Mr. Issa.

Mr. ISSA. Thank you. And thank you, Mr. Chairman, for this special honor. I will be brief.

Chuck, thank you. You know, many on this dais here were not in Congress when you began your effort six-plus years ago, and ap-

parently, many don't understand that you were in the minority and they were seeking not to, in fact, cooperate. And it was through a partnership with your staff, which were excellent and added so much to this committee, with your use of—although minority—your voting capability, my ability to write subpoenas, and then the leadership's willingness to go all the way to contempt that we are here today with what we know, knowing that we don't know everything.

So I join with the chairman and today's ranking member in saying, yes, I believe the minority should be heard and should be reasonably answered. I would say, though, that our great partnership, one that I will cherish, started with their assumption that they would give you a lie as a letter and then for 10 dogged months stick by that lie. And only with your tenacity were we able to get beyond that. So I am just happy to be able to thank you today, Senator.

Chairman CHAFFETZ. I thank the gentleman.

Again, Senator Grassley, we are honored to have you here as the chairman of the Judiciary Committee. The time is now yours, sir.

#### **WITNESS STATEMENTS**

##### **STATEMENT OF HON. CHUCK GRASSLEY**

Senator GRASSLEY. Those are very kind introductions. Thank you very much. And before I read, I would like to thank Chairman Chaffetz and Ranking Member Lynch not only for the opportunity to appear here but also I listened to your remarks about two things, whistleblowing and oversight, and they are kind of connected.

And I want Mr. Lynch to know that I still stand by my 2009 letter, and I am glad that everybody else so far that has spoken on this committee realizes that sometimes you are in the majority and sometimes you are in the minority. There is a process that has to be available. So I am going to be responding in a letter to the White House in a day or two to those recommendations they put out that I disagree with them and why I disagree with them.

And I think a new phrase in this town is very appropriate for what this issue is all about because the word "drain the swamp" doesn't necessarily mean fire people or get rid of organizations. It means change the culture in this town. And one of the cultures is, whether you have Republican or Democrat Presidents, the bureaucracy is sometimes embarrassed by what they do, and we want to expose it and we want to expose it because transparency brings accountability, and accountability is very important if you work for the American taxpayers.

The second thing I would say deals with the word whistleblower. Mr. Dodson is one example of how whistleblowers are treated both in Republican and Democrat administrations. And I suggest to this President, as I suggested to other Presidents, that what we need is once a year a Rose Garden ceremony honoring some whistleblowers so that the bureaucracy, which is permanent, and Presidents and Members of Congress are not permanent, that from the top of the bureaucracy, in other words, the Chief Executive all the way down to whatever you want to consider the job in the lower end of the bureaucracy, that whistleblowing is a political, patriotic

thing and the right thing to do and that they ought to be honored. And normally, how are they treated by our bureaucracy not just in ATF, not just in the Justice Department but almost throughout the bureaucracy, they are treated like a skunk at a picnic and that is wrong. And government is less off for it when we have that attitude.

I would like to proceed, so I hope you haven't started the clock yet.

[Laughter.]

Chairman CHAFFETZ. The way of the Senate, absolutely.

Senator GRASSLEY. Okay. Thank you for inviting me to testify about an important congressional investigation that the Justice Department has stonewalled for far too long: Operation Fast and Furious. This investigation began six years ago. The fact that it is still tied up in the courts is proof positive that our system of checks and balances is broken. Congress needs to reform its process for enforcing compliance with subpoenas.

It all started when courageous agents blew the whistle on gunwalking to the Senate Judiciary Committee. We learned that the Bureau of Alcohol, Tobacco, Firearms, and Explosives sanctioned the illegal sale of hundreds of assault weapons to straw purchasers, who then trafficked the guns to Mexican cartels. These weapons have since been discovered in the hands of criminals both within the United States and Mexico. Two of these weapons were used in the firefight that led to the tragic death of Border Patrol Agent Brian Terry in December of 2010. After it became clear that the government planned to cover it up, agents, patriotic agents blew the whistle.

On January 27, 2011, I wrote to ATF for answers. But the Department of Justice and ATF had no intention of looking for honest answers and being transparent. In fact, from the very onset, bureaucrats employed shameless delay tactics to obstruct the investigation. In a letter to me February 4, 2011, Department officials denied that ATF had ever walked guns. But the evidence kept mounting that the official denial was just plain false.

Through documents obtained during this long litigation, we have learned how the bureaucrats and even political appointees reacted when they learned the truth. As the Department became aware that the information it provided to Congress was wrong, it kept the truth hidden. DOJ refused to come clean, refused to notify Congress, and refused to correct the record.

As soon as March 2011, officials at ATF and within the Department raised concerns about the inaccuracy of the information provided to me in that February 4 letter. But the Department still failed to withdraw the letter until nine months later, in December, thus admitting they lied to a U.S. Senator or to the United States Senate.

Why did it take so long then to admit the truth to Congress? Our two committees requested documents from the Department that would shed light on the delay. October 2011, this House committee issued a subpoena for documents from the Department of Justice, including documents related to the Department's response to Congress.

The Department initially refused to produce any documents responsive to the subpoena. It refused to assert any privilege at that time or provide a log of withheld documents so that this committee could consider whether there were any legitimate, legitimate reasons for not providing those documents. Instead, the Department merely made vague, feeble claims that the documents implicated words we are acquainted with “confidentiality interests” or another words that they used as an excuse, “separation of power” concerns.

Then, the ridiculous happened. In June 2012, the Justice Department had to ask President Obama to give it some cover by formally asserting executive privilege. The request came on the eve of a vote in this committee to hold the Attorney General in contempt. And the President’s assertion was communicated to this committee only minutes before the scheduled vote. The committee rejected the President’s claim on the merits, and so did the full House in a historic bipartisan vote because it = was the first time an Attorney General was held in contempt of Congress. But to add to the obstruction, the Obama administration refused to present the contempt citation to a grand jury, as required by statute.

Then, in August 2012, this committee filed a civil lawsuit to try and enforce its subpoena that way. Once in the courts, even more lengthy delays then began. Two years later, in August 2014, the court finally ordered the Department to review all the documents, provide a log explaining why it wanted to withhold specific items, and to produce everything that the Department itself admitted was not covered by any privilege.

The Department then produced more than 10,000 of the originally withheld documents. These documents totaled about 64,000 pages. To be clear—and this is very important—the Department tried to hide these documents from Congress by getting President Obama to assert executive privilege, but once the case was before a judge, the President then totally abandoned that claim. In effect, the government admitted that this privilege did not apply to those documents.

Why did it take a contempt citation from Congress to force the executive branch to finally admit that it hid documents from the people’s Representatives for completely bogus reasons? Attorney General Holder preferred to be held in contempt rather than admit the authority of this committee to compel production of the documents through a subpoena, even documents that the Justice Department and the President did not believe were privileged. If that doesn’t illustrate how broken our system of congressional subpoena enforcement is, then I don’t know what does.

The capitulation of the Department, once a judge finally forced its hand, proves that the initial claims of privilege were deceptive and unfounded. It was nothing more than an attempt to obstruct Congress’ constitutional responsibility of oversight and this investigation. The Department’s belated admission that those 64,000 pages were not privileged puts the gold seal of authenticity on the House’s bipartisan vote to hold the Attorney General in contempt. The documents exposed the Justice Department’s intent to hide information from Congress and upsets the balance of powers.

Obstructing a valid inquiry by a separate, co-equal branch of government undermines our constitutional system of checks and bal-

ances. The documents show a highly politicized climate at the Obama administration's main justice, focused more on spin and coverup than on transparency and fact-finding.

Now, despite the court's orders to the Department to produce documents that were admittedly not privileged, the Judge's opinion as a whole is problematic, and we have to take a good look at that. Although the judge also later ordered the production of more material, the judge's reasoning is fatally flawed. The judge erroneously concluded that certain of the Department's underlying privilege claims, although waived, were valid. The judge gave the House a victory in practice but gave the Department a victory on principle.

By splitting the baby in this way, the opinion seeks for the first time to push the scope of executive privilege outside the White House to cloak low-level government bureaucrats in secrecy. This is new and unprecedented territory. It is a major threat to the oversight powers of the legislative branch. The President should not be able to shield information in all the vast agencies and departments of government from congressional scrutiny. If it has nothing to do with advice to the President by his advisors, then why should it be privileged?

That is why the House must push forward with its appeal to get the District Court's opinion overturned. The so-called deliberative process privilege is no constitutional privilege at all. It is common-law doctrine and a statutory exception under the Freedom of Information Act only. It only applies to discussions about the formulation of policy and only before a final policy decision has been made.

The privilege should not extend to allow the Department to hide its internal communications about responding to Congress. These communications were not to or from the President, and now we know that they largely focused on obstructing Congress and strategizing to avoid negative press coverage. Those communications can hardly be characterized as forming Department of Justice policy, as the judge wants us to think, and should not even be protected by the deliberative process statutory exemption, let alone some new form of executive privilege.

Now, this litigation has been ongoing for a long time. The American people, including the Terry family, they are right here, they are right here to remind us of what government can do that is illegal and get away with it. They remind us of what can be done when whistleblowers that are patriotically conscious come forward.

So let me start again. The American people, including the Terry family here with us today, deserve a complete accounting for questions posed in this investigation that began with people coming to me in 2011. It has been, as we have repeated so many times, six long years. We are still waiting. But this is not just about documents in Fast and Furious. This case also must be considered from the perspective of the institutional role of Congress of oversight.

So I urge you all to take off your partisan hats for a moment. Imagine if the shoe were on the other foot. This case has broad implications for the ability of elected representatives of the American people to do our constitutional duty to act as a check on the executive branch of government.

Clearly, Congress needs to do something. It cannot take years for this body to get answers from a co-equal branch of government

about information that has no legal basis to stay hidden from the representatives of the American people and a proper check to make sure that the executive branch does its job of duly enforcing the law.

That is why I am working with my colleagues on proposals to modernize the rules of engagement in congressional oversight. We need a package of rules and legislative changes so that responders to congressional inquiries cannot rely on phony privilege claims and delay tactics. These changes will make it easier for Members of Congress to get the information they need to do their job for the American people that pay them and who they represent. So I look forward to continuing to work with my colleagues in both the Senate and the House on these proposals and hope you will all join me.

I thank you for allowing me to appear, but more importantly, we would not be where we are today because in 2011 I was not a chairman of a committee, and those excuses were used against me as this administration is using those excuses once again. So this committee was in the majority and we had a chairman and committee members that were willing to pursue this, and thank God you were in the majority at that time or we still may not have any information.

Thank you very much.

[Prepared statement of Senator Grassley follows:]

**Prepared Statement by Senator Chuck Grassley of Iowa  
Chairman, Senate Judiciary Committee  
Hearing on Operation Fast and Furious: Obstruction of  
Congress by the Department of Justice  
June 7, 2017**

Chairman Chaffetz, Ranking Member Cummings, Members of  
the House Committee on Oversight and Government Reform,  
and members of the Terry family,

Thank you for giving me the chance to testify about an  
important Congressional investigation that the Justice  
Department has stonewalled for far too long: Operation Fast and  
Furious.

This investigation began six years ago.

The fact that it is still tied up in the courts is proof positive that  
our system of checks and balances is broken.

Congress needs to reform its process for enforcing compliance with subpoenas.

It all started when courageous agents blew the whistle on gunwalking to the Senate Judiciary Committee.

We learned that the Bureau of Alcohol, Tobacco, Firearms, and Explosives sanctioned the sale of hundreds of assault weapons to straw purchasers, who then trafficked the guns to Mexican cartels.

These weapons have since been discovered in the hands of criminals both in the United States and Mexico.

Two of these weapons were used in the firefight that led to the tragic death of Border Patrol Agent Brian Terry in December of 2010.

After it became clear that the government planned to cover it up, agents blew the whistle.



On January 27, 2011, I wrote to ATF for answers.

But, the Department of Justice and ATF had no intention of looking for honest answers and being transparent.

In fact, from the onset, bureaucrats employed shameless delay tactics to obstruct the investigation.

In a letter to me on February 4, 2011, Department officials denied that ATF had ever walked guns.

But the evidence kept mounting that the official denial was just plain false.

Through documents obtained during this long litigation, we have learned how the bureaucrats and political appointees reacted when they learned the truth.

As the Department became aware that the information it provided to Congress was wrong, it kept the truth hidden.

It refused to come clean, notify Congress, and correct the record.

As soon as March 2011, officials at ATF and within the Department raised concerns about the inaccuracy of the information in the February 4 letter.

But the Department failed to withdraw the letter until nine months later, in December.

Why did it take so long to admit the truth to Congress?

Our Committees requested documents from the Department that would shed light on this delay.

In October 2011, this Committee issued a subpoena for documents from the Department of Justice, including documents related to the Department's responses to Congress.

The Department initially refused to produce *any* documents responsive to the subpoena.

It refused to assert any privilege or provide a log of withheld documents so that the Committee could consider whether there were any legitimate reasons for not providing them.

Instead, the Department merely made vague, feeble claims that the documents implicated “confidentiality interests” and “separation of powers” concerns.

In June 2012, the Justice Department had to ask President Obama to give it some cover by formally asserting executive privilege.

The request came on the eve of a vote in this Committee to hold the Attorney General in contempt.

And the President’s assertion was communicated to this Committee only minutes before the scheduled vote.

The Committee rejected the President’s claim on the merits, and so did the full House in a historic bipartisan vote.

It was the first time an Attorney General was held in contempt of Congress.

But, to add to the obstruction, the Obama Administration refused to present the contempt citation to a grand jury as required by statute.

Then, in August 2012, this Committee filed a civil lawsuit to try and enforce its subpoena that way.

Once in the courts, even more lengthy delays began.

Two years later, in August 2014, the court finally ordered the Department to review all the documents, provide a log explaining why it wanted to withhold specific items, and to produce everything that the Department itself admitted was not covered by any privilege.

The Department then produced more than 10,000 of the originally withheld documents.

These documents totaled more than 64,000 pages.

To be clear—and this is very important—the Department tried to hide these documents from Congress by getting President Obama to assert executive privilege, but once the case was before a judge, the President totally abandoned his claim.

In effect, the government admitted that the privilege did not apply to those documents.

Why did it take a contempt citation from Congress to force the Executive Branch to admit that it hid documents from the people's representatives for completely bogus reasons?

Attorney General Holder preferred to be held in contempt rather than admit the authority of this committee to compel production of the documents through a subpoena—even documents that the Justice Department itself and the President did not believe were privileged.

If that doesn't illustrate how broken our system of Congressional subpoena enforcement is, then I don't know what does.

The capitulation of the Department, once a judge finally forced its hand, proves that the initial claims of privilege were deceptive and unfounded.

It was nothing more than an attempt to obstruct Congress' investigation.

The Department's belated admission that those 64,000 pages were not privileged puts the gold seal of authenticity on the House's bipartisan vote to hold the Attorney General in contempt.

The documents exposed the Justice Department's intent to hide information from Congress and upset the balance of powers.

Obstructing a valid inquiry by a separate, co-equal branch of government undermines our Constitutional system of checks and balances.

The documents show a highly politicized climate at the Obama Administration's Main Justice, focused more on spin and cover-up than on transparency and fact-finding.

Now, despite the court's order to the Department to produce documents that were admittedly not privileged, the Judge's opinion as a whole is problematic.

Although she also later ordered the production of more material, the Judge's reasoning is fatally flawed.

The judge erroneously concluded that certain of the Department's underlying privilege claims—although waived—were valid.

The judge gave the House a victory in practice, but gave the Department a victory on the principle.

By splitting the baby in this way, the opinion seeks for the first time to push the scope of executive privilege outside the White House to cloak low-level government bureaucrats in secrecy.

This is new and unprecedented territory.

It is a major threat to the oversight powers of the legislative branch.

The President should not be able to shield information in all the vast agencies and departments of government from Congressional scrutiny.

If it has nothing to do with advice to him by his advisors, then why should it be privileged?

That is why the House must push forward with its appeal to get the District Court's opinion overturned.



The so-called deliberative process privilege is no constitutional privilege at all.

It is a common law doctrine and a statutory exemption under the Freedom of Information Act only.

It only applies to discussions about the formulation of *policy*, and *only before* a final policy decision has been made.

The privilege should not extend to allow the Department to hide its internal communications about responding to Congress.

These communications were not to or from the President, and now we know that they largely focused on obstructing Congress and strategizing to avoid negative press coverage.

Those communications can hardly be characterized as formulating Department of Justice *policy* and should not even be protected by the deliberative process statutory exemption, let alone some new form of executive privilege.

Now, this litigation has been ongoing for a long time.

The American people, including the Terry family here with us today, deserve a complete accounting for questions posed in this investigation that began in 2011.

It has been **six years**, and we are all still waiting.

But this is not just about documents in Fast and Furious.

This case also must be considered from the perspective of the institutional role of Congress.

I urge you to take off your partisan hats for a moment.

Imagine if the shoe were on the other foot.

This case has broad implications for the ability of the elected representatives of the American people to do our constitutional duty to act as a check on the executive branch.

Clearly, Congress needs to do something.

It cannot take years for this body to get answers from a co-equal branch of government about information that has no legal basis to stay hidden from Congress.

That is why I am working with my colleagues on proposals to modernize the rules of engagement in congressional oversight.

We need a package of rules and legislative changes so that responders to congressional inquiries cannot rely on phony privilege claims and delay tactics.

These changes will make it easier for Members of Congress to get the information they need to do their jobs for the people they represent.

I look forward to continuing to work with my colleagues in the Senate and the House on these proposals, and I hope you will all join me. Again, thank you for allowing me to testify today.

Chairman CHAFFETZ. Chairman Grassley, thank you. We appreciate your time. We know you have an obligation in the Senate at 10:00, and by mutual agreement and concurrence with the minority, the committee is now going to go into recess. The committee's in recess.

Senator GRASSLEY. Thank you.

[Recess.]

Chairman CHAFFETZ. The committee will come to order. We are now here to recognize the second panel of witnesses. We are very pleased to welcome Ms. Josephine Terry. She is the mother of the late Border Patrol Agent Brian Terry. And, Ms. Terry, on behalf of all of us, both sides of the aisle, we thank you for your son's service, and God bless you. Thank you for being here and talking about a very difficult subject and appreciate your bravery and you being here today. I am sure this is not something in your life that you ever thought or chose to do, but we are honored and privileged to hear from you and want to hear your full story.

We also have Mr. Robert Heyer. He is the Terry family spokesman. He is also the cousin of late Border Patrol Agent Brian Terry. And, Mr. Heyer, we again are saddened for the loss in the Terry family but appreciate your willingness and ability to come here and share a perspective from the family, which we should never, ever forget. And we thank you for being here.

We also have Mr. John Dodson, who is a special agent, Phoenix Field Division, Bureau of Alcohol, Tobacco, Firearms, and Explosives. And if you listen to this gentleman's story and what he has gone through, somebody who is serving this country as patriotically as he possibly can, it is absolutely horrific. And, sir, we thank you for your service and everything that you have gone through. We appreciate your candidness, answering questions to the committee throughout the process. But we look forward to your public testimony, and again, thank you for your commitment to the United States of America and your willingness to come here and share your story with us as well.

Pursuant to committee rules, all witnesses are to be sworn before they testify. So, if you will please, now that you have settled in, go ahead and stand back up and raise your right hand.

[Witnesses sworn.]

Chairman CHAFFETZ. Thank you. Let the record reflect that all witnesses answered in the affirmative.

In order to allow time for discussion, we would appreciate it if you would limit your verbal comments to five minutes. We will give you a little bit of leeway, but if you could limit that. Your entire written statement, as you have submitted, as the committee members already have, will be entered into the record.

You are going to need to pull those microphones nice, tight, and close to your mouth, and then you just make sure you hit that "talk" button. There are lights there that will indicate, as Mr. Gowdy likes to say, green is go, yellow means speed up, and red means, okay, you have actually got to stop. So, pay attention to that if you could.

But, Mrs. Terry, you are now recognized for five minutes. Push that talk button if you could. It should illuminate. Thank you. There you go.

### STATEMENT OF JOSEPHINE TERRY

Ms. TERRY. Mr. Chairman and members of the committee, good morning. My name is Josephine Terry, and I am the mother of Brian Terry.

My son was first a marine, a local police officer, and finally a Border Patrol agent. He loved his country and everything about it. He dedicated his entire adult life to the protection of the American people. Brian believed in truth and justice.

Just over six years ago, Brian was on patrol in the Arizona desert. In the darkness, he was shot and killed by a cartel drug trafficker.

I picked out my son's casket through weeping and tears. At his burial, Brian's coffin was covered with an American flag. My only goal was to make sure he was laid to rest with honors. That honor has been insulted by coverups and deception by the very people he served.

I refuse to also let our flag cover up the fact of how and why Brian died or allow it to hide from those who are responsible. I need you to help me. I need you to help me now.

ATF, the Department of Justice, and possibly people even higher up in the government knowingly intended to provide thousands of guns to the Mexican cartel. They gave their plan a glorious name, which was Fast and Furious. From the moment a bullet was fired from one of those Fast and Furious guns, from the moment that bullet entered Brian's body and ended his life, Brian's government, my government, your government, began to hide the truth.

One of ATF's Fast and Furious leaders dismissed Brian's death by saying, "You have to scramble a few eggs to make an omelet." That man has since been promoted by ATF and given awards by the Justice Department. Did you know that?

ATF and DOJ made sure that all those involved were given new jobs or allowed to retire with their government pensions and benefits. No one was punished or prosecuted. When I pay my taxes and when you pay yours, we are funding the comforts of those who helped murder my son.

We know that Brian encountered bad people that night he was killed. We know there was a gun battle. We know Brian was shot and killed. We know the gun used to kill him was fired by a drug trafficker. We know the gun was put in the murderer's hands by our government, and there is so much more that we don't know.

I need you to have President Obama's executive privilege order that hides many of the facts from Fast and Furious overturned. I need you to ask President Trump to keep the promise he made to my family on his campaign trail to let you see those documents.

Only one possible motivation remains for all of those involved who have covered up Fast and Furious. That is to conceal their own shame and disgrace, quite possibly their crimes.

I need you to find out why Fast and Furious was even allowed to happen. I also need you to find out why those involved were all given soft landings for their lives and their careers, and not just the lower-level people but just the—and just the scapegoats. But how high did the knowledge and approval go? Our country deserves the truth, regardless of how embarrassing it may be.

Brian believed in the truth and justice, and he died for it. What he would never would have accepted, and what I cannot accept now on his behalf, is the cover up of the truth and the avoidance of justice.

As the chairman and members of the Oversight Committee, I sit before you and plead with you to fulfill the jobs that you have been elected to. I am giving you my faith that, as a public servant, you believe in truth and justice as much as Brian did.

I have a picture of my son.

He died for us. He died for all of us. He bled to death in the darkness of the Arizona desert, mostly alone, to protect this country. Please protect Brian now. Put your party policies aside. Fulfill your obligations to the American people. Represent all the people who voted for you into office and demand answers and full accountability.

And on behalf of my family and myself and my son, I ask you to please see this through to a truthful and just conclusion. Thank you.

[Prepared statement of Ms. Terry follows:]

**Josephine Terry Statement  
June 7, 2017**

1. Mr. Chairman and members of the Committee, Good Morning.
2. My name is Josephine Terry. I am the mother of Brian Terry.
3. My son was a first a Marine, then a local police officer and finally a Border Patrol Agent
4. He loved his country and everything about it. He dedicated his entire adult life to the protection of the American people.
5. Brian believed in truth and justice.
6. Just over six years ago Brian was on patrol in the Arizona desert.
7. In the darkness, he was shot and killed by a cartel drug trafficker.
8. I picked out my son's casket through weeping and tears.
9. At his burial service, Brian's coffin was covered with an American flag.
10. My only goal was to make sure he was laid to rest with honor.
11. That honor has been insulted by cover-ups and deceptions from the very people he served.
12. I refuse to also let our flag cover up the facts of how and why Brian died or allow it to hide those responsible.

13. I need you to help me. I need your help today. I need your help right now.
14. ATF, the Department of Justice, and possibly people even higher up in the government knowingly intended to provide thousands of guns to Mexican drug cartels.
15. They gave their plan a glamorous name: Operation Fast and Furious.
16. From the moment a bullet was fired from one of those Fast and Furious guns, from the moment that bullet entered Brian's body, and ended his life - Brian's government, my government, your government - began to hide the truth.
17. One of ATF's Fast and Furious leaders dismissed Brian's death by saying, "You have to scramble a few eggs to make an omelet."
18. That man has since been promoted by ATF and given awards by the Justice Department. Did you know that?
19. ATF and DOJ made sure that all those involved were given new jobs or allowed to retire with their government pensions and benefits.
20. No one was punished or prosecuted.
21. When I pay my taxes and when you pay yours, we are funding the comfort of those who helped murder my son.
22. We know that Brian encountered bad people the night he was killed.
23. We know there was a gun battle.



24. We know Brian was shot and killed.
25. We know the gun used to kill him was fired by a drug trafficker.
26. We know the gun was put in the murderer's hands by our government.
27. But, there is so much more that we don't know.
28. I need you to have overturned President Obama's executive privilege order that hides many of the of facts from Operation Fast and Furious.
29. I need you to ask President Trump to keep the promise he made to my family on his campaign trail and let you see those documents.
30. Only one possible motivation remains for all of those involved who have covered-up Operation Fast and Furious.
31. That is to conceal their own shame and disgrace; quite possibly their crimes.
32. I need you to find out why Operation Fast and Furious was allowed to happen.
33. I need you to find out why those involved were all given soft landings for their lives and careers.
34. And, not just the lower level people. Not just the scapegoats.
35. How high did the knowledge and approval go?
36. Our country deserves the truth, regardless of how embarrassing it may be.

37. Brian believed in truth and justice. He died for it.

38. What he would never would have accepted, and what I cannot accept now on his behalf, is the cover up of the truth and the avoidance of justice.

39. As the Chairman and members of this Oversight Committee, I sit before you and plead with you to fulfill the jobs you have been elected to.

40. I am giving you my faith that as public servants, you believe in truth and justice as much as Brian did.

**[HOLD UP A PICTURE OF BRIAN FOR THE COMMITTEE TO SEE]**

41. He died for you. He died for all of us. He bled to death in the darkness of the Arizona desert, mostly alone, to protect this country.

42. Please protect Brian now.

43. Put your party's politics aside. Fulfill your obligations to the American people. Represent for all the people who voted you into office and demand full answers and full accountability.

44. On behalf of my family, myself and on behalf of my son, I ask you to please see this through to a truthful and just conclusion.

45. Thank you.

Chairman CHAFFETZ. Thank you. I appreciate that.  
Mr. Heyer, you are now recognized for five minutes.

#### **STATEMENT OF ROBERT HEYER**

Mr. HEYER. Thank you, Mr. Chairman. Before I begin my comments, I just wanted to ask your indulgence as I describe the many indignities that the Terry family suffered over the last six years. No American family deserves to be treated like they have by their government.

I see a lot of familiar faces here—well, not a lot but several familiar faces, and I want to thank those members that were here six-and-a-half years ago and six years ago almost to the day. Thank you for your leadership. Chairman Issa, Congressman Gowdy, and the other members of the Oversight Committee that originally fought for truth and the answers that the Terry family deserve.

I think it's fair to say that Americans maintain a strong disdain for dirty little secrets, especially when those secrets are being kept by government officials looking to hide poor judgment and misconduct. The death of Brian Terry in 2010 served as the catalyst that exposed a pattern of poor judgment and misconduct by several top officials in the Department of Justice, the U.S. Attorney's Office, and the Bureau of Alcohol, Tobacco, and Firearms.

Despite Brian Terry's death, the full extent of the fatally flawed gun trafficking investigation known as Operation Fast and Furious was not immediately made known to the American public because government officials were keeping a dirty little secret.

Good morning Chairman Chaffetz, Chairman Issa, Ranking Member Lynch, Senator Grassley, and other honorable members of this committee. My name is Robert Heyer. I'm the cousin of slain U.S. Border Patrol Agent Brian Terry and chairman of the Brian Terry Foundation. It's been almost six years since I first appeared before this committee. When I was here last, the impact of Brian Terry's death was still fresh and the revelation that our government had provided the very weapons to the men that killed Brian was almost too shocking to believe. Over time, I have developed a better understanding of Operation Fast and Furious and the questionable behavior of the government officials involved in that secret investigation.

My comments to this committee six years ago were tempered because of my strong belief that once the facts of this case were known, our President and our Attorney General would move quickly and decisively to fully investigate the investigation. Back then, I was confident that our leaders would ultimately find and hold those government officials responsible for the many failures of that poorly thought-out gun trafficking investigation. Even the members of this committee promised to fully investigate and seek justice in the matter.

Over time, I saw Department of Justice brimming with incompetence and arrogance. I witnessed government officials less interested in the truth and the facts behind the ill-conceived investigation and more interested in moving to contain the public relations disaster of a U.S. Border Patrol agent being murdered by drug cartel members carrying weapons supplied to them by ATF.

Agents in ATF who were privy to this information were expected to be good soldiers and keep their mouths shut. Inconceivably, no one in our government spoke openly about the connection between Operation Fast and Furious and Brian Terry's murder. Brian Terry's murder was the absolute worst-case scenario for those involved in orchestrating this gun trafficking investigation. Just as some ATF agents had warned, a U.S. law enforcement officer had been murdered with weapons allowed to "walk" during that investigation.

The immediate reaction by officials at ATF, the U.S. Attorney's office, and DOJ was to limit the release of information and to ultimately deny the fact that weapons were ever "walked" to straw buyers working for the Mexican drug cartels. The fact that two assault weapons found at the murder scene were purchased a year earlier by one of the primary suspects in the investigation was deemed extremely sensitive and only discussed among top officials in these organizations.

The Terry family and I believe that government officials responsible for Fast and Furious were not only trying to contain the political damage but were also trying to attempt to cover up the link between that information and Brian Terry's murder. There was a little dirty secret that was being kept from the American public.

Over the last six years, we've witnessed a number of examples of clear incompetence and arrogance exhibited by those in ATF, the U.S. Attorney's Office, and DOJ as they attempted to contain the public relations disaster and distance themselves from the Fast and Furious investigation. A lack of transparency was noted in my many dealings with government officials over this time, and I began to understand why these officials were keeping the facts of the case from the Terrys.

I remember at Brian Terry's funeral, then-DHS Secretary Janet Napolitano and Commissioner Alan Bersin traveled to Detroit to meet with the Terry family. Despite being the senior officials present, neither Secretary Napolitano or Commissioner Bersin chose to inform the family that the two assault weapons found at the scene were linked to the gun trafficking investigation. It should be noted that these two senior officials had just come back from Tucson, Arizona, where they had been extensively briefed on Brian Terry's murder by the head of the FBI in Tucson and the U.S. Attorney's office.

In January 2011, the Terrys attended the public memorial ceremony held in Arizona. Again, Commissioner Bersin attended, along with U.S. Attorney Dennis Burke to meet with the family. Once again, neither official chose to share the information that the men that killed Brian Terry carried weapons provided them—to them by ATF.

It wasn't until February that the family began to learn the truth. The facts were not provided by government officials but rather by a lone whistleblower who was alarmed at the lack of transparency surrounding Brian Terry's death. With the exception of this lone ATF agent, no one in government was willing to talk publicly about the dirty little secret known as Operation Fast and Furious and its connection to Brian Terry's murder.

In February of 2011, the family of Brian Terry learned for the first time through a television journalist that the weapons found at the murder scene were, in fact, connected to Fast and Furious. No one in the Federal Government had ever spoken to the Terry family about this connection. Despite the claims of ATF Special Agent John Dodson, officials in ATF and DOJ continued to deny that guns had been sold to individuals known as straw buyers and that those weapons eventually ended up in the hands of the Mexican drug cartels.

It was then, only after the news media began to publish Agent Dodson's claims that U.S. Attorney in Arizona, Dennis Burke, offered to provide information to the Terry Family. And in March of 2011, Burke traveled to the Terry home in Michigan. When asked about the origin of the weapons found at the murder scene, Mr. Burke denied that they were part of Operation Fast and Furious. Instead, he told family members the weapons were found at the murder scene originated from a gun store in Texas. We now know that this was untrue.

We know now through emails obtained by this committee that Mr. Burke without a doubt on the evening of Brian Terry's murder knew that the two AK-47-style assault weapons found at the murder scene were from Operation Fast and Furious. We know now that on the same day of Brian Terry's death, DOJ and ATF personnel were scrambling to find and arrest Jaime Avila, Jr., the well-known straw buyer of these exact weapons. Despite these facts, no one in government wanted to talk about their dirty little secret with the Terry family or the American public.

In April of 2011, I traveled to Phoenix and received a briefing from the U.S. Attorney's Office on the status of the murder investigation. I was told that the FBI had conducted ballistic tests on the two weapons found at the murder scene and the bullet recovered from Brian Terry's body. I was told that the FBI had determined without a doubt that neither weapon recovered from the murder scene had fired the fatal bullet.

I later obtained that FBI ballistics report from sources outside of the DOJ. What that report really says is that the test results were inconclusive due to deformities of the bullet recovered from Brian's body. I have always wondered why the U.S. Attorney in Arizona and his staff were not more precise in their description of that FBI ballistics report.

Senator Grassley already spoke about the letter sent by DOJ on February 4, 2011, and even today, I find it professional incomprehensible that the DOJ officials failed to simply speak with ATF Agent John Dodson and interview him about Operation Fast and Furious. Had these officials chosen to speak with Agent Dodson, they would have learned the truth about gunwalking immediately.

It was about this time that Assistant Attorney General Lanny Breuer arrogantly stated that if Brian Terry had not been killed with an Operation Fast and Furious gun, he would have been killed by some other gun. I was sickened by Mr. Breuer's comments not only because they were incredibly callous, but also because Mr. Breuer's comments reflected an unprecedented level of arrogance within the Department of Justice at the time.

We know now that Mr. Breuer himself received briefings on Operation Fast and Furious and failed to exercise the good judgment and common sense to foresee the public safety ramifications of letting 2,000 military style weapons “walk” to the Mexican drug cartels. Mr. Breuer’s callous comments also failed to take into account that Brian Terry and his BORTAC team would have used different tactics when trying to apprehend a drug cartel rip crew if they had only known that ATF and the Department of Justice had armed these individuals with state-of-the-art military weapons.

If only Mr. Breuer, the DOJ attorneys, and the ATF bosses in Phoenix Field Division had not kept this dirty little secret from the U.S. Border Patrol. I believe that if Brian Terry and his team had known this information, chances are Brian would be alive today. Unfortunately, Brian Terry and his team had no idea that the rip crew they encountered would be emboldened by the weapons that they carried and were ready to use those weapons against U.S. law enforcement.

The most disappointing and demoralizing act of all for the Terry family was in June of 2011 when President Obama asserted executive privilege over documents being sought by congressional investigators. The President’s order effectively ended the hope of the Terry family to fully understand why the Department of Justice denied gun walking in the first place. My personal disappointment in the President on this decision to invoke executive privilege in this matter continues to this day.

In September 2012, we read the long-awaited report on Operation Fast and Furious from the inspector general. The report identified several Department of Justice employees who bore particular responsibility for the many mistakes made in Operation Fast and Furious. It should be noted that these individuals have continued in their employment with the government despite the findings of the IG’s report and the death of Brian Terry.

Additionally, ATF’s own Professional Review Board had recommended termination for at least one of these individuals; yet, ATF leadership failed to act on this recommendation. Instead, these employees were instructed to keep their mouths shut, and in return, they would be provided with private defense attorneys whose exorbitant fees would be paid by the American taxpayers.

In 2014, I spoke with the lead special agent investigating the murder of Brian Terry. The agent told me that she had not been initially informed by ATF agents or the U.S. Attorney’s Office personnel that the weapons recovered from the scene of the murder had been traced to Operation Fast and Furious. Imagine my shock in learning that members of ATF’s Phoenix Field Division and the U.S. Attorney’s Office in Arizona kept this important piece of information from the lead investigator in a Federal agent’s murder. That FBI agent went on to say that she learned of this connection only when the news media began to report the link almost two months after Brian Terry’s murder. Incredibly, not even this lead FBI agent was allowed to know the dirty little secret.

Did members of ATF’s Phoenix Field Division and the U.S. Attorney’s Office in Arizona attempt to keep the details of Fast and Furious and its connection to Brian Terry’s murder from becoming public knowledge? We now know through review of official emails

that ATF officials in Phoenix associated with the investigation and members of the U.S. Attorney's Office there knew on the evening of Brian's murder that the two weapons found at the murder scene were directly linked to the investigation by means of weapons trace data. However, this critical information was not passed to the lead FBI case agent investigating Brian Terry's murder.

I've also witnessed a continued pattern of abuse and retaliation directed against ATF Special Agent John Dodson by members of ATF. Incredulously, senior members of that agency continue to blame Agent Dodson for going public with the information connecting Brian Terry's murder with Operation Fast and Furious. I have watched other agents who were regarded as "good soldiers" be promoted while Agent Dodson remains in the same pay grade, shunned by most of the agency.

Ladies and gentlemen, it's time for the dirty little secrets of Operation Fast and Furious to be fully exposed. A number of lingering questions should be asked: Why was Operation Fast and Furious initiated and then suddenly concealed by senior members of ATF and the Department of Justice? Why did the Department of Justice deny the tactic of gunwalking only to retract that denial weeks later? How many Fast and Furious weapons have been recovered over the last 10 years? How many people besides Brian Terry have been killed or wounded by individuals carrying Operation Fast and Furious weapons? Was there an attempt to keep the link between Operation Fast and Furious and Brian Terry's murder from becoming public knowledge? And finally, did senior government officials engage in behavior considered as obstructing Congress?

We urge the Trump administration and the Department of Justice to revisit the claim of executive privilege as it relates to Operation Fast and Furious. The American public deserves to see the documents previously sealed by executive order and for those documents to be turned over to congressional investigators. We need all of you, both Republicans and Democrats, to exercise your responsibility of oversight in this matter.

Brian Terry gave his life protecting the United States, and he deserves at the very minimum that we honor his sacrifice by demanding answers to the many questions left unanswered surrounding Operation Fast and Furious and once and for all putting an end to this dirty little secret.

[Prepared statement of Mr. Heyer follows:]

**Robert Heyer****Comments to the House Committee on Oversight and Government Reform:**

I think it's fair to say that Americans maintain a strong disdain for dirty little secrets, especially when those secrets are being kept by government officials looking to hide poor judgment and questionable actions. The death of Brian Terry in 2010 served as the catalyst that exposed a pattern of poor judgment and questionable actions of several top officials in the Department of Justice, the U.S. Attorney's Office in Arizona and the Bureau of Alcohol, Tobacco and Firearms. Despite Brian Terry's death, the repercussions of the failed gun trafficking investigation known as Operation Fast and Furious were not immediately made known to the American public because government officials were actively trying to keep a dirty little secret.

Good morning Chairman Chaffetz, Ranking Member Cummings and other honorable members of the committee. My name is Robert Heyer. I am the cousin of slain U.S. Border Patrol Agent Brian Terry and Chairman of the Brian Terry Foundation. It has been almost six years since I first appeared before this Committee. When I was here last, the impact of Brian Terry's death was still fresh and the revelation that our government had provided the very weapons to the men that killed Brian was almost too shocking to believe. Over time, I have developed a better understanding of Operation Fast and Furious and the questionable actions of government officials involved in the secret investigation.

My comments to this committee six years ago were tempered because of my strong belief that once the facts of the case were known, our President and Attorney General would move quickly and decisively to fully investigate Operation Fast and



Furious. Back then, I was confident that our leaders would ultimately find and hold those government officials responsible for the many failures of that poorly thought out gun trafficking investigation. Even the members of this committee promised to fully investigate and seek justice in the matter.

Instead, I witnessed a Department of Justice brimming with incompetence and arrogance. I witnessed government officials not interested in the truth or the facts behind an ill-conceived gun trafficking investigation but rather assertively moving to contain the public relations disaster of a U.S. Border Patrol Agent being murdered by drug cartel members carrying weapons provided to them by ATF. Agents in ATF who were privy to this information were expected to be good soldiers and keep their mouths shut. Inconceivably, no one in our government spoke openly about the connection between Operation Fast and Furious and Brian Terry's murder.

Brian Terry's murder was the absolute worst case scenario for those involved in orchestrating this flawed gun trafficking investigation. Just as some ATF agents had warned, a U.S. law enforcement officer had been murdered with weapons allowed to "walk" during that investigation. The immediate reaction by officials in the ATF, the U.S. Attorney's Office and the Department of Justice was to limit the release of information and to ultimately deny the fact that weapons were ever "walked" to straw-buyers working for the Mexican drug cartels. The fact that two assault weapons found at the murder scene were purchased a year earlier by one of the primary suspects in the investigation was deemed extremely sensitive and only discussed among top officials in these three organizations. The Terry Family and I believe that government officials responsible for Operation Fast and Furious were not only trying to contain the political

damage but also were attempting to cover-up the link between the gun running investigation and Brian Terry's murder. This was the dirty little secret that was being kept from the American public.

Over the last six years, we have witnessed a number of examples of clear incompetence and arrogance exhibited by those in ATF, the U.S. Attorney's Office and Department of Justice as they attempted to contain the public relations disaster and distance themselves from the secret gun trafficking investigation that armed Mexican drug cartels with American weapons and ammunition.

At Brian Terry's funeral, then DHS Secretary Janet Napolitano and Commissioner Alan Bersin traveled to Detroit to meet with the Terry family. Despite being the senior government officials present, neither Secretary Napolitano nor Commissioner Bersin chose to display the moral courage needed to inform the family that the two assault weapons found at the scene of Brian's murder had been linked to an active federal gun trafficking investigation being conducted jointly by agents from ATF and the Homeland Security Investigations. It should be noted that these two senior officials had just come back from Tucson, Arizona where they had been extensively briefed on Brian Terry's murder by the head of the FBI in Tucson and the U.S. Attorney's Office in Arizona.

In January of 2011, Brian's public memorial ceremony was held in Arizona. This time, Commissioner Bersin and Arizona U.S. Attorney Dennis Burke traveled to Tucson to meet with the Terry family. Once again, neither official chose to share the horrible information that the men that killed Brian Terry carried weapons provided to them by

ATF. It wasn't until February that the family began to learn the truth. The facts were not provided by government officials, but rather by a lone whistle blower who was alarmed at the lack of transparency surrounding Brian Terry's death. With the exception of this brave ATF agent, no one in government was willing to talk publicly about the dirty little secret known as Operation Fast and Furious and its connection to Brian Terry's murder.

In February of 2011, the family of Brian Terry learned for the first time through a television journalist that the weapons found at the murder scene were connected to a secret gun trafficking investigation. No one in the federal government had ever spoken to the Terry family about this connection. Despite the shocking claims of ATF Special Agent John Dodson, officials in ATF and the Department of Justice continued to deny that guns had been sold to individuals known as straw buyers and that those weapons eventually ended up in the hands of the Mexican drug cartels.

It was then, only after the news media began to publish Agent Dodson's claims that U.S. Attorney Dennis Burke offered to provide information to the Terry Family. In March of 2011, Mr. Burke, traveled to the Terry home in Michigan. When asked about the origin of the weapons found at the murder scene, Burke denied that they were part of Operation Fast and Furious. Instead, he told family members that the weapons found at the murder scene originated from a gun store in Texas.

We now know that this was untrue. We know through emails obtained by this committee that Mr. Burke knew without a doubt on the evening of Brian Terry's death that the two AK-47 style assault weapons found at the murder scene were from Operation Fast and Furious. We know now that on the same day of Brian Terry's death,

DOJ and ATF personnel were scrambling to find and arrest Jaime Avila Jr., the well-known straw buyer of these exact weapons. Despite these facts, no one in government wanted to talk about their dirty little secret with the Terry family or the American public.

In April of 2011, I traveled to Phoenix and received a briefing from the U.S. Attorney's Office on the status of the murder investigation. I was told that the FBI had conducted ballistic tests on the weapons found at the murder scene the bullet recovered from Brian Terry's body. I was told that the FBI had determined without a doubt that neither weapon recovered from the murder scene had fired the fatal bullet. I later obtained the FBI ballistics report from sources outside of Department of Justice, and what the report really says is that the test results were inconclusive due to deformities of the bullet recovered from Brian Terry's body. I have always wondered why the U.S. Attorney in Arizona and his staff were not more precise in their description of that FBI ballistics report.

On February 4, 2011, Assistant Attorney General Ronald Weich presented the now infamous denial letter to Congress, asserting that any claim "that ATF sanctioned or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them to Mexico is false." Weich also said, "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." Even today, I find it professionally incomprehensible that Mr. Weich and other Department of Justice officials failed to simply speak with ATF Agent John Dodson and interview him about Operation Fast and Furious. Had these officials chosen to speak with Agent Dodson, they would have learned the truth about gun-walking immediately.

The Department of Justice was forced to send a retraction of its February 4<sup>th</sup> letter. Then, almost eleven months after Brian Terry's murder, Attorney General Eric Holder finally admitted during Congressional testimony that the flawed tactic of gun-walking was in fact used in Operation Fast and Furious. The Terry's have always wondered why the facts of this investigation had not come to light sooner, especially since U.S. Attorney Dennis Burke knew on the same day that Brian Terry was killed that the weapons found at the murder scene were part of the gun running operation.

It was during this time that Assistant Attorney General Lanny Breuer arrogantly stated that if Brian Terry had not been killed with an Operation Fast and Furious gun he would have been killed by some other gun. I was sickened by Mr. Breuer's comments not only because they were incredibly callous, but also because Mr. Breuer's comments reflected an unprecedented level of arrogance within the Department of Justice at the time. We know now that Mr. Breuer himself received briefings on Operation Fast and Furious and failed to exercise the good judgment and common sense to foresee the public safety ramifications of letting 2,000 military style weapons "walk" to the Mexican drug cartels.

Mr. Breuer's callous comments also failed to take into account that Brian Terry and his team would have used different tactics when trying to apprehend a drug cartel rip crew if they had only known that ATF and the Department of Justice had armed these individuals with state of the art military style assault weapons. If only Mr. Breuer, the DOJ attorneys, and ATF agents had not kept this dirty little secret from the U.S. Border Patrol. I believe that if Brian Terry and his team had known this information, chances are Brian would be alive today. Unfortunately, Brian Terry and his team had no

idea that the rip crew they encountered would be embolden by the weapons that they carried and that the rip crew was ready to use these weapons against U.S. law enforcement.

The most disappointing and demoralizing act of all was in June of 2012 when President Obama asserted executive privilege over the documents being sought by Congressional investigators. The President's order effectively ended the hope of the Terry family to fully understand why the Department of Justice denied gun walking in the first place. My personal disappointment in the President on his decision to invoke executive privilege in this matter continues to this day.

In September of 2012, we read the long-awaited report on Operation Fast and Furious from Inspector General Michael Horowitz. Mr. Horowitz's investigative report identified several Department of Justice employees who bore particular responsibility for the many mistakes made in Operation Fast and Furious. It should be noted that these individuals have continued in their employment with the Department of Justice despite the findings of the Inspector General's report and the death of Brian Terry. Additionally, ATF's own Professional Review Board had recommended termination for at least one of these individuals; yet, ATF leadership failed to act on this recommendation. Instead, these employees were instructed to keep their mouths shut and in return they were provided with private defense attorneys whose fees were paid by American taxpayers.

In 2014, I spoke with the lead FBI Special Agent investigating the murder of Brian Terry. The agent told me that she had not been informed by ATF agents or U.S. Attorney personnel that the weapons recovered from the scene of the murder had been

traced to Operation Fast and Furious. Imagine my shock in learning that members of ATF's Phoenix Field Division and the U.S. Attorney's Office in Arizona kept this important piece of information from the lead investigator in a federal agent's murder. The FBI agent went on to say that she learned of this connection only when the news media began to report the link almost two months after Brian Terry's murder. Incredibly, not even this senior FBI agent was allowed to know this dirty little secret.

Had members of ATF's Phoenix Field Division and the U.S. Attorney's Office in Arizona attempted to keep the details of Operation Fast and Furious and its connection to the murder of Brian Terry from becoming public knowledge? We now know through review of official emails that ATF officials in Phoenix associated with Operation Fast and Furious and members of the U.S. Attorney's Office in Arizona knew on the evening of December 15, 2010 that the two weapons found at the murder scene were directly linked to the gun trafficking investigation by means of weapon trace data. However, this critical information was not passed to the lead FBI case agent investigating Brian Terry's murder.

I also have been witness to a continued pattern of abuse and retaliation directed towards ATF Special Agent John Dodson by members of ATF. Incredulously, senior members of that agency continue to blame Agent Dodson for going public with the information connecting Brian Terry's murder with Operation Fast and Furious. I have watched as other ATF agents who were regarded as "good soldiers" have been promoted while Agent Dodson remains in the same pay grade and shunned by most of the agency.

Ladies and gentlemen, it's time for the dirty little secrets of Operation Fast and Furious to be fully exposed. A number of lingering questions should be asked: why was Operation Fast and Furious initiated and then suddenly concealed by senior members of ATF, the U.S. Attorney's Office and the Department of Justice? Why did the Department of Justice deny that the tactic of gun-walking only to retract that denial weeks later? How many Fast and Furious weapons have been recovered over the last 10 years? How many people besides Brian Terry have been killed or wounded by individuals carrying Operation Fast and Furious weapons? Was there an attempt to keep the link between Operation Fast and Furious and Brian Terry's murder from becoming public knowledge?

We urge the Trump Administration and the Department of Justice to revisit the claim of Executive Privilege as it relates to Operation Fast and Furious. The American public deserves to see the documents previously sealed by executive order and for those documents to be turned over to Congressional investigators. We need all of you, both Republicans and Democrats to exercise your responsibility of oversight in this matter. Brian Terry gave his life protecting the United States and he deserves at the very minimum that we honor his sacrifice by demanding answers to the many questions left unanswered surrounding Operation Fast and Furious... and once and for all putting an end to this dirty little secret.



Chairman CHAFFETZ. Mr. Heyer, thank you. We appreciate your testimony.

Special Agent Dodson, you are now recognized.

#### STATEMENT OF JOHN DODSON

Mr. DODSON. Thank you. Good morning, Chairman Chaffetz, Ranking Member Lynch, honorable members of this committee, thank you for your continuing efforts and investigation into this and the many other matters that come before you. Your duty is an important one.

I am honored and humbled to have received an invitation to again address this body and to take part, however small, in such a fundamental and important proceeding in the governing of our nation. It is a privilege that I do not take lightly.

Nearly six years ago to the day, I sat at this table with my fellow whistleblowers as we described for you the ATF's—excuse me—ill-conceived and deadly gunwalking operation known as Fast and Furious. Today, I have been asked to return and tell you what has transpired since, the aftermath if you will.

First, allow me to say that it is not my desire nor my intent to sit here and cry foul, purport myself as a victim, or to seek sympathy. Nothing I say here today can compare to the ultimate sacrifice of Brian Terry or to the immeasurable loss and injustice suffered by the Terry Family. I am here simply to tell you my story, and you will conclude from it what you will. But it is just that, mine alone, just one of many from an untold number of whistleblowers, each of whom have a story all their own, some having fared far better, some worse, but each important, each personal to them, and all worthy of being heard.

It is my hope that my story will not give cause to dwell on those things that have already occurred, but rather utilized to help us pursue a common goal, that of learning from the past to better ourselves as individuals, as a government, and as a nation.

Since the moment I first voiced objection to the strategy of gunwalking and pointed out the all-too-foreseeable and tragic consequences of it, I began being subjected to reprisals, initially from my immediate supervisor, then my chain of command, and soon thereafter, from the uppermost echelons of my agency, the ATF.

Later, after being compelled to blow the whistle and bring the deadly ramifications of it to the light of others, to you, and to the public, I found myself squarely in the crosshairs of the Department of Justice itself. That decision, the single act of standing up and saying what we are doing is wrong, instantly took my standing from being that of an agent of the government to an enemy of the state.

United in their hubris and without ever once talking to me, asking me a single question, or properly investigating what it was that I was actually reporting, ATF and DOJ officials implemented an all-out campaign to silence and discredit me.

When I began preparations for this hearing, I started to list the many acts of retaliation and retributions that had befallen me as a result of blowing the whistle. And truthfully, that list soon grew much too long and much too cumbersome to be recited here today before you: no less than three plots to have me arrested and crimi-

nally charged; subjected to multiple Internal Affairs investigations; my communications monitored and my activities surveilled; I was lied about, disparaged, publicly attacked, ridiculed, libeled; I've been transferred 11 times, denied promotion, ostracized, barred from government workplaces, and banned from public buildings, including those open to the public, and the list goes on and on. Suffice to say, the last six to seven years at ATF have not been the best for me or my career.

Of all the things that I have encountered and experienced over the past few years, the single most challenging aspect for me has been the ostracism. When I had a valid viewpoint to share that was viewed as unfavorable to the agency, I immediately became the outcast, dubbed the one who can't get along, accused of being unethical, and became the one whose opinions and views were not even valued enough to simply be heard. Open discussion was off the table and the order was handed down "Contact with Dodson is detrimental to any ATF career."

The ignorant assumptions about my motives and the absurd judgements of my character being used as the reasons to cast me out simply are not true. Yet they have been and continue to be the single most difficult reprisal strategy for me to personally overcome. You see, the fact is, before *Fast and Furious* I was a good agent, experienced and dedicated, hardworking, and respected. ATF had always been good to me. I believed that I worked for a good agency, full of good people. I felt that I was part of something bigger, and I was proud to carry the badge.

Never could I have foreseen the many twists and turns of how this would eventually end up affecting every aspect of my life, personally and professionally. These days, I remain in a state of purgatory, an agent with no agency. All that has happened and all that has transpired was not because I had done something wrong but because I did what I thought was right, what I thought I was supposed to do, and merely what I thought was expected of me.

As an ordinary GS-13 field agent, I found myself in the extraordinary situation, adrift in some deep and unfamiliar waters and having to navigate the many storms and the perilous hazards. But this journey, despite hardship, mistake, failure, and loss, has taught me much more than I ever knew I needed to learn. Woven in the battered sail of life's biggest trials is where we can find the threads of life's greatest lessons if only we are willing to learn them.

My desire here today is to offer insight for calming the seas for future whistleblowers, as well as helping Brian Terry's family in getting their deserved answers to the so many lingering questions. In doing so, I hope to assist this committee in its prescribed duty of oversight and reform, which is essential to our government's original purpose, serving the people of this nation. I welcome and encourage all questions that will assist this committee in achieving these outcomes.

Thank you, and my wishes for a speedy recovery to Ranking Member Cummings.

[Prepared statement of Mr. Dodson follows:]

Good Morning

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Never could I have foreseen the many twists and turns of how this would eventually end-up effecting every aspect of my life - personally and professionally. These days, I remain in a state of purgatory...an agent with no Agency. All that has happened and all that has transpired was not because I had done something wrong - but because I did what I thought was right...what I thought I was supposed to do...merely what I thought was expected of me.

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Thank you.

John Dodson  
Special Agent - ATF

Chairman CHAFFETZ. Special Agent Dodson, thank you. Thank you for your service and thank you for your testimony.

We will now recognize the gentleman from California, Mr. Issa, for five minutes.

Mr. ISSA. Thank you, Mr. Chairman. That is very kind. Maybe I will start off by saying, Special Agent Dodson, you look older. It has been a tough six years. Special Agent Heyer, Bob, you, too, look older. And when we started this, you were protecting the President. You were a Secret Service agent heading up San Diego. Now, you are retired. A lot has happened.

Josie, you look a lot older. This has been unforgiveable and unreasonable to do to any mother, and you have my apology and an apology I think of everyone on the dais for taking so long.

But today, I am hoping to maybe give you a little different view than you would have heard from others. You heard a little of it from Senator Grassley. What you are going through, what you have suffered through for six years, at its best you will suffer through for another two. And the reason is we are in a struggle for whether this happens to another family. If the Trump administration were to simply hand over the documents in a negotiated agreement and the case were closed, a bad ruling by a judge who was appointed by President Obama would stand not as a precedent but certainly as something to be looked at the next time a case came from this or any committee of the Congress.

Only by having her bad ruling reversed by an appellate court will there be a clear understanding that the President's disingenuous, obstructive, false assertion of executive privilege was wrong. And the remaining documents not handed over voluntarily or a portion of them but rather for all time, not understanding that what you have gone through should be quickly dealt with in a matter of weeks or months because a court would understand that there is a precedent that says very clearly the coverup of a crime cannot be held.

Now, to be honest, there is a good precedent. It was Richard Nixon's case, and it went all the way to the Supreme Court. In a matter of months, in a fraction of what you have gone through, the court decided those tapes were to be turned over. But for some inexplicable reason, the courts have slowed to a crawl the consideration of these cases.

So I wish I could ask you a lot of questions. I think your testimony makes clear what you have gone through and what you continue going through. But if we are going to protect people like Special Agent Dodson, we are going to need a quick resolution of what they have given us and not a decade of waiting.

And, Ms. Terry, Josie, if we are not going to have this happen again, we are going to need a strong reversal of a decision that, if you will, codified the wrongdoing of the Attorney General.

Now, I presented a t-shirt to Senator Grassley, and it is a little bit lighthearted, but it really isn't. One of the documents that was covered up was his disdain for this committee and the work we were doing. Issa and his idiot cronies was a verbatim of what he was saying, but it was much more than that.

As you will see in the report that is being published—and thank you, Chairman, for bringing it to light—some of those documents

that came after my chairmanship was over made it clear that they had deliberately not searched on the terms necessary to give the documents that would have given us a more full picture another form of obstruction of justice. Clearly, the Attorney General lied to Congress when he made it seem like he wasn't deeply involved in this when in fact he was having a daily briefing and update on it.

So one of the things I am going to say today is that I am calling on the Speaker of the House to stop negotiations with the Trump administration because nothing the Trump administration can give would guarantee that another family wouldn't go through exactly what you have gone through in the years to come. A quick consideration by a court of appeals, a reversal and a remand would get you your documents, but it also would guarantee some other mother, some other cousin, some other agent wouldn't go through what you have gone through for six years. Now, that is not an easy request, but I hope, as we all seek those documents, we also seek a codified solution to this.

And by the way, when those documents are completely uncovered, I would hope that this committee would refer for criminal prosecution the former Attorney General Dennis Burke and others for crimes I believe they committed. In fact, I would like to know and probably never will, did the President of the United States, when he issued a broad executive privilege, know that it was false and clearly false, as we have discovered, that these documents were never anywhere close to what an attorney and a constitutional scholar as he would like to be known had asserted? Maybe it was just carelessness. Maybe he did not look and he took the word of the Attorney General. That is a further indictment of the Attorney General if it happened.

So I plan on continuing to push this with your help, with the chairman's help and others, but I would ask you to be patient because to get to the truth and to a solution will take time.

Thank you, and thank you, Mr. Chairman, for your indulgence. I yield back.

Chairman CHAFFETZ. I thank the gentleman.

I will now recognize the gentleman from Massachusetts, Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

And I first want to thank Mrs. Terry, Mr. Heyer, and Special Agent Dodson for your courage in coming forth today and testifying in Brian's memory. Your experience, I think, is a painful reminder that we have law enforcement officers throughout our government that put their lives on the line each and every day on our behalf. Brian Terry's life, I think, exemplified this dedication and not only as a Border Patrol agent but also as a United States Marine and as a police officer back in Michigan.

I do understand that a foundation has been created in honor and memory of Brian Terry, and I want to just take a few minutes today before this committee considering his legacy and his life and his courageous service.

Mr. Heyer, I understand that you are the—chairman is it? Chairman of the Brian Terry Foundation and one of its missions is to provide assistance to family members of Border Patrol agents who

are injured or killed in the line of duty. Can you tell the committee a little bit about this?

Mr. HEYER. Well, thank you, Mr. Lynch. Absolutely. The Brian Terry Foundation continues to support the family that is the U.S. Border Patrol. And, unfortunately, we know deaths are going to occur in the line of duty, and that's when one of our missions is to come to the financial and emotional aid of family members.

And the second big piece would be our scholarship program specifically designed for men and women looking to go to college and earn a degree in criminal justice that are going to allow them to pursue careers in law enforcement.

Mr. LYNCH. That is a great way to, I think, carry on Brian's legacy.

We did have one other issue up here before this committee that has some parallels. As many people remember, a young man from Massachusetts, my home State, Glen Doherty, was actually killed on the roof of the Benghazi compound. He was a CIA contractor, and so under the regulations, under the base act of, you know, 1945 I believe, he was ineligible for a death benefit because of his status. And it was really the work of this committee and Democrat and Republican working together. We got the Department to change their policy so that his family was able to receive the death benefit, as they so deserved. He was a former Navy SEAL, had done multiple tours in Iraq and Afghanistan, but, you know, because of the bureaucracy and the regulations, they were denied justice.

And I just want to say that I would ask the Department of Justice to review its policies and procedures as well for responding to families such as the Terry family when Federal agents lose their lives in the line of duty in defending this country. I would just say, Mrs. Terry, do you have anything that you would like to add with respect to how Brian's legacy might be more appropriately remembered and supported, as well as his colleagues?

Ms. TERRY. Mostly, Brian's legacy is remembered by his foundation like last year we only got 15 scholarships; this year, we got 40 so —

Mr. LYNCH. Wow.

Ms. TERRY. So the word is getting out. And he was all about learning, so I think that—I think he would like that.

Mr. LYNCH. Is the Justice Department a participant or a sponsor or a supporter of the scholarship effort?

Mr. HEYER. Not that I'm aware of, no.

Mr. LYNCH. Okay. And you are the chairman so you would know. All right.

Again, I want to thank you for your willingness to come here.

Special Agent Dodson, how can we help? How can we help you? You have shown a tremendous amount of courage in calling out the government when they were engaging in unlawful activity that endangered the citizens of the United States in complete dereliction of their duty. Are there things that this committee can continue to do to help you and make sure that you are treated fairly?

Mr. DODSON. Well, first of all, thank you, sir. I appreciate it.

To be honest with you and in short, I don't know. The problem as I see it or from where I sit is not so much with the current lead-

ership that we have at ATF. I don't believe they are directly responsible for any of the acts that have taken place since they took over the reins. But this culture that Senator Grassley talked about in his remarks to you is the problem. And I don't want to be that kind of person that comes here and tells you about the problems and doesn't offer you a solution, but quite honestly, I don't know how you fix it.

Mr. LYNCH. Yes.

Mr. DODSON. It's this middle management, this core, this bureaucracy that picks a side. And once sides are chosen, decisions are made, opinions are rendered, and it's done. And so—and I don't know how you overcome that. I've been trying for almost seven years now and have had absolutely no luck in doing so.

But I appreciate it. I appreciate you having me here, and I appreciate everything that you guys are doing for the Terry family and for Brian's legacy. And as much as I appreciate the offer, again, I don't know. I don't —

Mr. LYNCH. All right. We will keep working on it.

Mr. DODSON.—have any requests of you.

Mr. LYNCH. All right. Thank you. And I—thank you for your service, and I yield back the balance of my time.

Chairman CHAFFETZ. I thank the gentleman.

I will recognize the gentleman from South Carolina, Mr. Gowdy, for five minutes.

Mr. GOWDY. Thank you, Mr. Chairman.

Ms. Terry, Mr. Heyer, I want to begin by expressing our condolences and sympathy ongoing for the loss of your son, Special Agent Terry. And I want to ask you a question in just a moment, but Special Agent Dodson, there was a franticness, an obsessiveness exhibited by Federal law enforcement officers with respect to narcotics, controlled delivery of pornography, even money, which is not inherently dangerous as firearms and narcotics and pornography would be, this obsessiveness, this franticness of never letting that walk. So that would be only intensified if you were working with firearms.

From the very first moment I heard about Fast and Furious, it has vexed me how anyone could have ever thought this investigative scheme was going to work. I don't know how a line agent would think it was going to work, and that is why line agents have supervisors and assistant U.S. attorneys and U.S. attorneys that say, wait, your heart might be in the right place, but this may be the dumbest idea I have ever heard. How did this investigative scheme get started? Who thought it was ever going to work?

Mr. DODSON. Well, sir, I can tell you I can't tell you where the idea originated from or who was ultimately responsible for beginning it, but apparently—or what I can tell you directly is everyone in my chain of command, up to and including the former Director, was well-briefed on the case, well-versed on it, and knew the strategy coming and going and they all thought it was a great idea.

The U.S. Attorney's Office in Arizona, as well as up to Main Justice were—you yourself know the requirements of big cases or big problems and the briefings you have to go all the way to OEO, the Office of Enforcement Operations, to do some of the techniques involved in the investigation that we were doing, the OCDETF fund-



ing that we had, the proposals that were written for that, it was all spelled out, sir.

Everyone knew it. It was there in black and white. And I always thought as soon as we got to the next level, somebody's going to shut it down. As soon as they hear about it, it's going to get shut down. But that never happened. It kept getting more funding, more approval, more attaboys. The people that were running it were called to D.C. several times to brief it at headquarters, at Special Operations Divisions, and over at Main Justice, and it just seemed—it was the new strategy. All the rule books that you and I are aware of were thrown out.

I worked with DEA for a number of years. We were never allowed to walk dope, not a gram of it. And walking money was—we would have to go and work a case through a county to get approval to that. DEA would not authorize it. So, when I heard that we were walking guns, it was completely alien to me.

Mr. GOWDY. Well, I am glad to hear that because it is alien to me, too. I cannot imagine letting someone that you even suspect to be a straw purchaser purchase a firearm and then let that firearm navigate its way through the criminal element only to be recovered at a crime scene. I just—I find it unfathomable that anyone could ever have thought this would turn out any differently than with the mother of a slain Federal law enforcement agent and/or ordinary citizen sitting at a table. I have tried to give—I actually like Federal law enforcement officers. I am probably biased towards them.

I am just struggling to understand how this ever could have turned out any other way. As soon as the gun leaves the parking lot, unless you are maintaining constant surveillance, then you have lost the gun. And then if it crosses the border, God knows what you are going to do with it. And then when you learn they didn't even let our Mexican counterparts in law enforcement know what was going on, this is most imminently predictable tragedy that I have been connected with since I have been in Congress. It could not have turned out any other way.

Ms. Terry, I want to ask you one question, and then I want to have a very brief conversation with the chairman. For lots of America, they view your son as a hero, but all they have seen is the still photograph of a young man in uniform. What would you like our fellow citizens to know about your son that they may not know?

Ms. TERRY. Brian was—he was like a special, special person. He was dedicated—he was a true American. He was just dedicated to his country. He loved to be in the limelight. He lived helping people, protecting people, and that's what he always wanted to do.

Mr. GOWDY. Well, thank you. He was wired differently, the different uniforms that he wore. Most of us are not wired to want to run towards danger. Most of us are wired to protect ourselves first and foremost and not others, so you raised an outstanding human being, and I hope that that provides some level of comfort to you, even in the throes of your grief.

In conclusion, Mr. Chairman, I would just say this. Perhaps I have missed something. I thought the administration said that they were not part of the approval and were not part of the process and had nothing to do with this investigative scheme. So, I guess

I am vexed in how you can use a defense of deliberative process if you were not part of the process. And I would encourage you to share this report with the chairman of the subcommittee that provides appropriations for the Department of Justice. His name is John Culberson from Texas.

And I would encourage you to share this report for this reason: We all have privileges and rights, and all across America, every day people waive those privileges and rights because there is an incentive to waive them. I would give DOJ an incentive to waive their privilege, and I might do it through the subcommittee chair of appropriations.

Chairman CHAFFETZ. I thank the gentleman.

I will now recognize the gentleman from Maryland, Mr. Raskin, for five minutes.

Mr. RASKIN. Mr. Chairman, thank you very much.

And I would like to start by offering my appreciation and my continuing condolences to the Terry family. Mrs. Terry, Mr. Heyer, thank you for coming here today to share your story with us. Brian Terry was an extraordinary young man with an extraordinary legacy now, and thank you for putting it to use for whole new generations of idealistic young people going into law enforcement, as Brian was.

I also want to associate myself very strongly with the remarks of Mr. Gowdy. I am dumbfounded and baffled by this law enforcement technique, which just seems patently ridiculous to me, but again, I am not steeped in the field but it just doesn't seem to make any sense, this idea that was deployed in the Fast and Furious investigation.

We were hoping to hear from Attorney General Sessions today, but I take it he declined to come or to send someone in his place. But, Agent Dodson, I had a question for you. On January 27th of 2011, Senator Grassley, then the ranking member of the Judiciary Committee, sent a letter to ATF's Acting Director Melson requesting information about gunrunning operations on the southwest border. And his letter marked the beginning, as I understand it, of the years-long investigation by Congress into Operations Wide Receiver and Fast and Furious.

Can you briefly explain the role of Senator Grassley in launching the gunwalking investigations and bringing all of this to light?

Mr. DODSON. Yes, sir. The role of Senator Grassley and his staff was instrumental, dare I even say lifesaving for me at some point. They were the only ones at this level—once DOJ had been informed—you have to understand I was—I didn't understand the concept either or how this was ever approved. So, when DOJ—or—and ATF headquarters originally denied that they were ever doing this, I kept thinking, okay, well, as soon as it gets to the next level, the next level, then somebody's going to shut it down and will realize. Well, that never happened. It was only Senator Grassley's office and his staff that listened to me and considered and looked at the evidence and the information that I had and started asking the questions about it. They were great. And Senator Grassley did it to me, I believe, for no other reason than it was the right thing to do. He was in the minority at the time in the Senate, and as such, he was the minority leader and didn't have a subpoena power.

Mr. RASKIN. Let me pause right there because it goes to my point. He indeed is a great champion of transparency in government and public integrity, and we owe him a great deal of credit for his diligent oversight, which ended up exposing this terribly flawed logic behind the gunwalking operations in Arizona and led to the reforms at ATF.

Unfortunately, we just learned of a serious barrier to Congress' ability to conduct exactly this kind of oversight that Senator Grassley was engaged in. Last week, it was reported that the White House had directed government agencies not to cooperate or respond at all to oversight requests from Members of Congress who are not committee chairmen, in other words, from the minority side, as Senator Grassley was.

And it appears to stem from a flawed new opinion from the Office of Legal Counsel saying that individual Members, quote, "do not have the authority to conduct oversight in the absence of a specific delegation by a full House committee or subcommittee." I believe this analysis is completely incorrect, constitutionally unfounded, and will be of great detriment to the public interest.

Agent Dodson, when Senator Grassley wrote the Obama administration seeking information about Fast and Furious in the minority, he was a ranking member, not a committee chairman as you point out. Do you agree that he still deserved a response? Do you think it is important for all Members of Congress to be able to exercise the constitutional oversight power?

Mr. DODSON. First of all, I also want to say after dealing with Senator Grassley's office and then Chairman Issa at the time, he and his staff, this committee staff, took up the gauntlet and helped us all immensely, and I just want to make sure that he's thanked as well and your staff and Steve and just everyone.

But to your question, sir, I am not an attorney. I don't necessarily know what those decisions —

Mr. RASKIN. So as a matter of public interest, leaving aside the

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Mr. DODSON. As a matter of public interest —

Mr. RASKIN. Yes.

Mr. DODSON.—I can tell you what—I found it completely reprehensible or completely unacceptable to me that the administration would tell Senator Grassley, the ranking member of that committee, that he had no business to do oversight and that they weren't going to provide him any information or any documents.

Mr. RASKIN. Yes. Well, good. I appreciate that. And I will, Mr. Chairman, ask colleagues on both sides of the aisle to join me in urging the administration to respect all Members of Congress and all of our oversight responsibilities, regardless of the political party we belong to, regardless of whether we happen to be wearing a hat of the majority or a hat of the minority. We are all equally Members of Congress. Again, I want to thank you for your service and the Terry family again for its public service and devotion to keeping the legacy of Brian Terry alive.

Mr. ISSA. Would the gentleman yield?

Mr. RASKIN. Yes, by all means.

Mr. ISSA. Maybe a clarification. The odd thing was the Senator did get an answer as a member of the minority. It just happened to be a lie.

Mr. RASKIN. Well, and that goes to another question, which I do think that —

Mr. ISSA. So maybe it is about getting the truth in addition to —

Mr. RASKIN. Well —

Mr. ISSA.—who gets it.

Mr. RASKIN.—number one, an answer; and number two, a truthful answer. With that, I concur. I think that is implied in the Constitution. The whole Constitution is based on the truth. It is based on the idea that—that is why we have an oversight responsibility because in a democracy, the people have the right to truth.

I yield back, Mr. Chairman.

Chairman CHAFFETZ. The gentleman yields back.

And I just want to note, as I noted earlier, I agree with you. I think it is a dangerous precedent and unwarranted and unfounded to suggest that just committee chairmen can initiate something that the administration would actually respond to. I think every Member of this body, no matter which party you belong to and no matter who is in power, has a duty, a responsibility, it is one of the core things we do is provide oversight over the executive branch. It is not just delegated to 18 chairmen.

With that —

Mr. RASKIN. And thank you for your leadership on that, Mr. Chairman.

Chairman CHAFFETZ. I thank you.

I will now recognize myself for five minutes.

Mr. HEYER, I want to talk about your—the family tried to do a motion to intervene—during this prosecution—let me back up. The Terry family tried to get some rights from the Department of Justice. Tell us about that experience.

Mr. HEYER. Chairman, it seems like every interaction with the Department of Justice became a battle. They fought and continue to fight every request, every attempt that we've made to gather information, to understand the aspects of the—why DOJ did what they did. It's been a contentious relationship, and that's why I said early on, no American family deserves to be treated like the Terrys were treated by their government, by their Attorney General.

Chairman CHAFFETZ. Now, you tried to receive some victim's rights, claiming that the Terry family, Mrs. Terry, was a victim in this case. What did the Department of Justice do?

Mr. HEYER. Well, after much discussion and threats of litigation, we finally reached a compromise, which it seemed at a minimum the Department could extend victim rights to the Terry family. But again, everything was a battle and remains contentious to this day.

Chairman CHAFFETZ. The Department of Justice in this case argued that the family, quote, "was not directly or proximately harmed by the illegal purchase of the murder weapon. The family does not meet the definition of a crime victim," end quote, was the position of the Department of Justice. I hope that the Department is learning this lesson and I can't imagine all the horror and things

that you have gone through, then to be denied status as a crime victim in this case is just—I just really—it is just so abhorrent.

Mr. Dodson, tell us about your personal situation. You have had a list of so many—at one point I think you said something like the list of retaliation is so long you stopped counting; it is almost too many pages to write, being banned from public buildings, things like that. You are still apparently a special agent with the ATF, correct?

Mr. DODSON. Yes, sir, that's correct, although I don't report to the ATF. I currently report to the FBI office in Tucson.

Chairman CHAFFETZ. Tell us about some of the retaliation that you and your wife and your family experience?

Mr. DODSON. Well, again, I don't mean to dredge everything back up, but there were several attempts or threats to prosecute me criminally. There have been at least three Internal Affairs investigations that I was the subject of that I know about, and I didn't find out about those until after the fact. I've either been transferred or had to be transferred 11 times, transferred or reassigned. I have been routinely locked out of ATF computer systems, barred from ATF workspaces. I was libeled by the Department of Justice. A hit piece in a major publication was sanctioned on me. I—it's just—it just goes on and on, sir. If you could —

Chairman CHAFFETZ. What did the inspector general, when they dove into it, what did they find?

Mr. DODSON. I like to call the inspector general's report issued on Fast and Furious 512 pages of "You should have listened to John Dodson" because it pretty much substantiates every allegation, everything that I said was occurring.

Chairman CHAFFETZ. Do you know how long they conducted this investigation? How many times did they interview you, that sort of thing?

Mr. DODSON. I interviewed initially once in Arizona and then they interviewed me again here in D.C. on the actual Fast and Furious investigation. I want to say that it began in maybe January of 2011, and I think the report was issued September of 2012 if that sounds right.

At one point I was involved in including Fast and Furious six OIG investigations, five of which I was the victim of some form of retaliation or another on. And if I'm correct, two of those have yet to be completed or resolved by the OIG.

Chairman CHAFFETZ. And how many times have you been given a raise over the last seven years?

Mr. DODSON. I only get the annual COLA adjustment that all Federal employees get, sir, the cost of living.

Chairman CHAFFETZ. So you have had no other promotion?

Mr. DODSON. Maybe a mandatory step, you know, I'm a 13 —

Chairman CHAFFETZ. But mandatory, no —

Mr. DODSON. Correct.

Chairman CHAFFETZ. Yes. Again, something that we as a committee, both sides of the aisle, we have got to look out for the people that are whistleblowers here.

And lastly, I just want to say to Mrs. Terry, God bless you and your family. As Mr. Gowdy was pointing out, you know, there are some people that run to the call, they answer the call. I have been

in those hills and not the exact spot where your son was but that is tough duty, whether in the light of day or the blackness, the darkness, knowing that people are flowing north with nefarious intent to go out—oftentimes, it is amazing. You go out, as I have, with the Border Patrol, most of the time these people are going out by themselves and maybe going with two or three other people, maybe they are within radio shot, maybe not. But doing a service for this country that they are not, in my opinion, adequately compensated for or thanked or understood.

But I can't thank you and your family and loved ones, and we feel for your loss. And we will continue to pursue this till we get to the bottom of it, and I hope that we can fully provide you all the answers that you deserve, as we should.

And with that I yield back, and now will yield to Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

I know that the majority has prepared a report that has been referred to several times today, and I just want to say a few things about it. When you came into this position, Mr. Chairman, you said that you would do things differently than in the past, that you would try to work on a more bipartisan basis when you could, and for the most part I have to say, as a longtime member of the committee, you have done just that and you should be commended for that. It is not an easy task, as the rest of Congress can testify to.

For example, this committee conducted a very good bipartisan investigation of the Secret Service, and we issued a wonderful report that was adopted by every single member of the committee. It was unanimous. It took time to get there, but we got a lot of investigation, a lot of hearings, but the final report had so much more authority to the Secret Service and to the White House because it had credibility that came from Democrats and Republicans, and we all agreed on that.

So, when we saw this report last night very late, it is more than 250 pages, of course we were disappointed because we never got a chance—it is really an issue that you can tell from the questioning today we all support the Terry family. And so I know this investigation began with the previous chairman, so maybe the committee was just deferring to him on how to handle this process, but it is a shame because I think the end report, if we had any input at all—which we have not; this is solely the majority's report—Democratic members who agreed with you were denied an opportunity to participate in this report, I think it would have had more force—I think on behalf of the Terry family I think it would have had more force if we had been allowed to be part of that. So that is all I have to say on that. And that is just for future reference.

Chairman CHAFFETZ. Okay.

Mr. LYNCH. And it is not to your criticism at all. You have been wonderful on this, but this is a little gap that occurred. The other thing is we heard from Senator Grassley earlier today that he intended to do a letter regarding the obstruction of oversight, and I would just ask you, on behalf of Ranking Member Cummings, if you would join us to, you know, pull this House committee together and perhaps we could do a similar letter in support of the oversight. I think it would be helpful to ATF Agent Dodson and any others who might benefit from government oversight.

Chairman CHAFFETZ. And I think that is the spirit in which we are approaching this. I just heard about this letter that Senator Grassley is putting together. Whether we in a bipartisan way join on that letter or we do our own separate letter, let's sort that out with staff and members here in the next day or two —

Mr. LYNCH. Okay.

Chairman CHAFFETZ.—because it should not go unanswered.

Mr. LYNCH. I agree.

Chairman CHAFFETZ. I agree with you there.

Mr. LYNCH. Thank you.

Chairman CHAFFETZ. Thank you.

I will now recognize the gentleman from Georgia, Mr. Hice, for five minutes.

Mr. HICE. Thank you, Mr. Chairman.

And with all my colleagues here, thank each of you for being here and our hearts do go out—there are so many question marks in this whole thing, and we thank you for coming.

Special Agent Dodson, let me go back to you. And as the chairman was just saying, your testimony with how you have been ostracized and outcast and all this kind of stuff is just inexcusable. You have explained even—in fact, what you just explained, even criminal charges, attempts for criminal charges, were those charges related to the whistleblowing?

Mr. DODSON. They were partially, yes, sir, and in retaliation for it. They openly threatened to prosecute me with a violation of the grand jury 6(e) secrecy rule. They actually brought in an FFL in the Phoenix area and attempted to suborn perjury from him to indict me for witness tampering. They illegally transmitted classified material to me in an FBI skiff in Phoenix, which had neither—or I had clearance for but I had no need to know in the hopes of prosecuting me for either its mishandling or its release, and they openly and very publicly tried to or announced my—announced the desire to have me prosecuted for perjury for my original testimony here six years ago.

Mr. HICE. And who is “they”?

Mr. DODSON. Well, sir, that's a good question. It's one of the ones that we could hope that this committee could ultimately answer one day. Some of them were members of my former chain of command. Others were Department of Justice officials.

Mr. HICE. Okay. I want to come back to that here in just a few moments.

Are you aware of others besides yourself who have suffered for coming forward to blow the whistle?

Mr. DODSON. Yes, sir, many. And there are many that still suffer. Like I say, my story is just that; it's from me, but there are other agents that have attempted to blow the whistle or bring forth, you know, misconduct and mishandling by the agency, both my agency and other agencies, but they are still, you know, in turmoil. They're still just getting chewed up in the gears of government. And it's this cultural aspect of it, this bureaucracy and the size of the entities that they are that keeps a lot of them from ever being heard, that prevents them from getting the, you know, opportunities like I have here.

And this is one of the reasons that I don't take this lightly at all. I can't tell you—we could fill this room and several more just like it with other people that have been through situations similar that I have that have a story to tell, and it's just as important. And it's happening to them every day.

Mr. HICE. And we don't take it lightly either. So you would say that there are obviously many people who, for fear of the retaliation, are not going to blow the whistle because they have seen what has happened to you and others. Would you agree with that?

Mr. DODSON. Yes, sir. And I can say I don't feel that anything in any way how ATF or the Department of Justice handled me or my situation would give anyone the idea that whistleblowing is a favorable activity.

Mr. HICE. Okay. So those who have been involved in whistleblower retaliation, are they still at the ATF?

Mr. DODSON. Yes, sir. There are a number of them.

Mr. HICE. Okay. Can you give us some names?

Mr. DODSON. I—could I provide that in another format, sir?

Mr. HICE. Yes.

Mr. DODSON. Okay.

Mr. HICE. Do you know Bill Newell?

Mr. DODSON. Yes, sir. He was my former special agent in charge.

Mr. HICE. Do you know where he is today?

Mr. DODSON. My understanding, he is assigned to the Salt Lake City office.

Mr. HICE. All right. So still with ATF? Has he received promotions?

Mr. DODSON. I cannot say, sir.

Mr. HICE. Do you know Dave Voth?

Mr. DODSON. He was my former supervisor on the Strike Force in Phoenix, yes, sir.

Mr. HICE. And where is he today?

Mr. DODSON. I believe he is in Minnesota.

Mr. HICE. Hope MacAllister?

Mr. DODSON. Yes, sir. She was the case agent involved in Fast and Furious.

Mr. HICE. And where is she?

Mr. DODSON. She's still in Phoenix.

Mr. HICE. Do you know that the ATF's Professional Review Board recommended that Newell be fired and that both Voth and MacAllister be disciplined?

Mr. DODSON. I had heard that, yes, sir. I don't know it firsthand but I'm aware of that.

Mr. HICE. Are you aware of any discipline that—obviously Newell was not fired. He is still working.

Mr. DODSON. That's to my understanding, yes, sir.

Mr. HICE. Would you provide a list of others who are involved in this?

Mr. DODSON. I can, yes, sir.

Mr. HICE. Mr. Chairman, I think it is part of our responsibility to find out why Mr. Newell was not fired and whether or not there was any discipline directed towards Voth or MacAllister and if not, why not. I think these people and others that Special Agent Dodson will provide for us need to be held accountable to the full extent.



And I would just ask, Mr. Chairman, that we follow this as closely as we can and we see to it that justice is done and that those who are responsible for this are held accountable.

And I yield back.

Mr. PALMER. [Presiding] I thank the gentleman.

I will now recognize myself for five minutes for some questions.

And I am going to cover a little different territory, Agent Dodson. Obviously, the goal was to trace these firearms once they entered into Mexico, and a number of them were recovered at crime scenes. Were any of the firearms actually traced to a crime scene?

Mr. DODSON. Yes, sir, several of the firearms, a number of which were recovered at crime scenes in Mexico and some on this side of the border. And you have to understand the tracing aspect that you're referring to to trace these firearms, that—the definition of that is letting them be purchased or actually facilitating it, allowing it to happen, and going home and waiting for the crime to occur where they're recovered and ultimately submitted back to the tracing system.

What happened in the interim we had no idea about. There was no full-time surveillance. There was nothing that rendered those weapons, you know, untraceable or nonoperable. And I've pointed this out before, that one of the most striking things in all of this is we're only going to recover that weapon in the last crime that it's used in, right? How many violent incidences occurred with, you know, utilizing that firearm between the time it was purchased and the time it was ultimately recovered and traced we have no measure of at all.

Mr. PALMER. I ask that question because there were two particularly egregious incidences where weapons traced back to Fast and Furious were used in crimes. One was September 2, 2009, in which 18 people were killed in Juarez, Mexico, and another one was January 30, 2010, at a birthday party, about 60 teenagers. They killed 14, wounded I don't know how many, shot a lady down, a neighbor, and a couple other young people. And the weapons used there included weapons from Fast and Furious. Are you aware of that?

Mr. DODSON. Yes, sir, I am. And also, I'm aware of several other incidents where they were recovered. But what I think is important to point out is that DOJ and ATF have refused to provide the entirety of that information. These are the crimes, the atrocities that we know of. How many are there that we don't of that were recovered and a firearm was traced back to this program? That information has never been fully provided to this committee.

Mr. PALMER. That is murder, mayhem on a massive scale —

Mr. DODSON. It's on a very large scale.

Mr. PALMER.—Agent Dodson.

Mr. DODSON. Yes, sir.

Mr. PALMER. And obviously, Ms. Terry, we are here about Brian. Both of these crimes, these murders of these 32 people occurred before your son was murdered. And as far as I know—I wasn't in Congress at the time. I came in 2015; I was elected in 2014. As far as I know, the committee—unless somebody else has information about this, I don't think this committee knew about it. And I am going to take this a little bit farther. It just seems the height of hypocrisy, first of all, for the previous administration to interfere

with the investigation and the truth regarding Border Patrol Agent Brian Terry and his family, and we owe that to you, but also to have been signatories to a United Nations treaty banning the proliferation of small arms. And at the very time they were trying to push this through Congress, they were trafficking arms into Mexico.

Agent Dodson, are you aware of any weapons from Fast and Furious or other ATF operations that entered other countries besides Mexico?

Mr. DODSON. No, sir, I'm not for sure if other countries were involved, but I know that this strategy, as it was run out of the Phoenix office, was referred to as the Phoenix strategy. And it was being exported to all the field divisions along the southwest border. This was the golden plan for how—and this is what it boils down to—to combat illegal firearms trafficking by illegally trafficking firearms was the model that was going to be in place. So, Fast and Furious was one case from one office in one field division. What

Mr. PALMER. But there were other operations being run out of other offices, though, weren't there —

Mr. DODSON. Yes, sir.

Mr. PALMER.—that involved Colombia and Honduras and Venezuela.

Mr. DODSON. I cannot say for sure, but I've heard things to that effect, yes, sir.

Mr. PALMER. Do we know if the weapon that was used to murder ATF agent Jaime Zapata was a weapon that came through Fast and Furious?

Mr. DODSON. Yes, sir. That's been concluded that the firearm used in the murder of Agent Zapata was traced back to the Fast and Furious program. It's my understanding.

Mr. PALMER. As tragic as the death of Border Patrol Agent Brian Terry is, the deaths of so many other people, not citizens of the United States, as a result of having access to firearms provided by an agency of the United States, the fact that that is not bigger news, that that is not a scandal is stunning. I think we owe it to the Terry family, but we also owe it to the American people to get to the bottom of this.

With that, now, I will recognize the gentleman from Oklahoma, Mr. Russell, for five minutes.

Mr. RUSSELL. Thank you, Mr. Chairman.

And, Mrs. Terry, thank you for being here today. It is important that we always put a human face back on these issues, and you not only help remind us of the honor of Special Agent Terry and his sacrifices but also our responsibility to make sure that the honor of everyone else remains intact in this process. And keep up the fight. There are a great many of us here that intend to keep it up with you, and so I thank you for your presence here today.

Agent Dodson, you had mentioned in the comments and questions from Representative Gowdy that the strategy made no sense, and I would certainly agree with that, that as a former drug enforcement officer, you would never walk drugs. We would never see a situation where firearms would walk. And as the chairman has

alluded to and even stated, what would be behind this and what were the causes of it?

My instincts tell me that, much like planting a gun at a crime scene to try to affect an outcome that really isn't the real story, the administration at the time seems set on planting an idea that firearms from the United States and their seemingly unregulated flow and ease of purchase were posing a danger to the drug war and border security as a whole. This in turn would set conditions to manipulate public opinion to restrict firearms ownership and their purchase by American citizens.

I think that is the real story that unfortunately so many have been caught up in to include you, your service, Agent Terry, Agent Zapata, others that were caught up in this, not to mention Mexican citizens and children that were gunned down. That is the egregious thing. That is why there is so much protection of this even to this day, that the United States of America would try to manipulate through walking of guns and planting in essence a gun at a crime scene to go after something else.

And I understand your difficulty, and in fact you strike me as not only a very dutiful man but a humble man, and you are not here to finger-point, and I appreciate that. Having served over two decades in uniform myself, I understand that. But you have an opportunity also to help us get at who should be held accountable. The honor of Agent Terry is intact. Nothing will ever change that. But the honor of the family and by extension of the ATF and its reputation as a whole is not intact because the family is not being treated as the victims that you clearly are, and at the same time, the ATF comes under continued suspicion. With good accounting, then, you know, all the way back to the first decade in the 1800s when we decided to do oversight, this is exactly the type of thing that American citizens expect that we do.

And so, in your view are there people clearly accountable for these actions? You don't have to name them here, but are there people clearly accountable that you could name that would help us restore that honor not only to the agency but to American citizens and their government?

Mr. DODSON. To answer your question, sir, yes, there are some individuals that I feel are clearly accountable for both the flawed and dangerous strategy known as Fast and Furious, as well as the attempts by the United States Government to cover it up, as well as for direct acts of reprisal and retaliation against me.

However, given my position on this totem pole of leadership being, you know, at the subterranean level, that knowledge of mine only goes so far. It is incumbent upon this committee and its members to be able to ferret out that information from those echelons above John Dodson who, at those levels, are responsible and needs to bear that burden and those responsibilities. Again, my spectrum of knowledge in this is only to a certain level.

Mr. RUSSELL. And I get that, I do. But I also know, having been, you know, a former commander in a different life, that sometimes a soldier going to an IG can open up a whole basket of things. And we have seen an opportunity for that here where we have seen a Justice Department that clearly lied, put out a letter that they knew to be false for reasons that are still as yet to be determined.

But again, I stated what my own instincts are on it and why those decisions were made seemingly very coincidentally timely with the expiration of the 10-year ban on so-called assault firearms, lots of coincidences there.

But if you would work with us to help us, as Representative Hice had also asked, we need that help. We have to be able to continue to dig. And maybe it is that the people that we are able to query and we are able to ask, it turns out that they are able to help us even further. It may not be them at all, but it could lead to other things. We have to get to the bottom of this.

And, Agent Heyer, would you care to speak along this line also?

Mr. HEYER. Congressman, your intuition is right on. You know, this entire operation, as it was conceived, was counterintuitive to what we—my 26 years in law enforcement and what agents like John have dedicated their lives to. It was a total disregard for public safety. It continues. The weapons of this operation continue to present a clear and present danger to law enforcement on both sides of the border. You know, we even saw through emails obtained by this committee, ATF agents, supervisors in the Phoenix Field Division celebrating when weapons from the operation were found at crime scenes in Mexico, insane.

Mr. RUSSELL. Absolutely insane.

Mr. HEYER. You know, the—you asked earlier about those truly responsible who they—these individuals are. I think that the OIG's investigation into Operation Fast and Furious, along with the previous two reports written by this committee, indicate exactly who those individuals are. The fact of the matter was—is no one was held accountable. And that's the true pain and the truly egregious part of all this. Those DOJ officials in the prior administration have moved on. They are now in high-paying jobs in the private sector. The U.S. attorney in Arizona has moved on without ever being held accountable. Those senior ATF officials in headquarters were allowed to retire and move on without being held accountable.

And just as you learned, the agents on the ground level responsible for Operation Fast and Furious were allowed to take downgrades and move to their hometowns and move to other parts of the country, and the case agent was allowed to remain right in Tucson and continue in her job while the whistleblowers continue not to look at being considered for promotion and get on with their lives. So that continues to be a truly egregious behavior, a part of ATF and upon DOJ as a whole in the aftermath of Brian Terry's death.

Mr. RUSSELL. Well, and I thank you for that.

And thank you, Mr. Chairman.

And while Agent Terry and Agent Zapata and others, their honor is certainly intact, one thing we can do is to make sure that those that were not held accountable, that their honor will go down in history tainted because it deserves to be so because of the sacrifices made by honorable agents such as Agent Dodson, yourself, Agent Zapata, and Agent Terry.

And thank you, Mr. Chairman. I yield back.

Mr. PALMER. Just to clarify and, Agent Dodson, I really appreciate your testimony, but I want to clarify that we are grateful for the recent Department of Justice and OIG report, which in Feb-

ruary released its conclusions that the firearms recovered at the scene of Jaime Zapata's murder—and by the way, he was an Immigration and Customs Enforcement Agent—were purchased by individuals at ATF and the DEA should have been investigating and confronting. And it had similarities to Fast and Furious, but they were not ultimately connected to Fast and Furious. But with that, again, I want to thank you for your testimony and work that you have done. And you have served with honor and what you are doing right now, again, indicates that.

With that, I will recognize the gentleman from California, Mr. DeSaulnier.

Mr. DESAULNIER. Thank you, Mr. Chairman. And, first, obviously, Mrs. Terry and Agent Heyer, there is nothing any of us can say really but to offer our continued respect and condolences for your loss and your efforts to make sure that that loss leads to something better and make sure that another family will ever have to go through that.

After a yearlong investigation by Ranking Member Cummings, we issued a staff report in 2012 that found that ATF's misguided gunwalking operations originated in 2006 as a strategy at ATF's Phoenix Field Division. The report stated, and I quote, "Although these officials claim that 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 and created an obvious and inexcusable threat to public safety on both sides of the border, we now know that the IG has said we have fulfilled or the Department has fulfilled its recommendations.

But following on the questions from my friend from Oklahoma and your comments, Agent Heyer, and starting with your, Mr. Dodson, we get to a larger I think endemic problem maybe culturally and within these institutions where even Congress having these multiple hearings, there seems to be—and Agent Heyer, you sort of hit at this—is that there—part of the culture is that we will just endure this and there won't be repercussions. So, the real question is do you think we have done enough to change the culture so this won't happen again?

Mr. HEYER. Congressman, I'd say this goes beyond culture. It's doing what's right. It's being honest. We're sworn as Federal agents. I took the oath. You as a Congressman have taken the oath. Part of the oath is to do the right thing. And there are so many examples of officials in ATF, the Department of Justice, and U.S. Attorney's Office that were involved in Operation Fast and Furious that did not do the right thing, especially after Brian Terry's murder. That's the egregious part. And it goes beyond culture. It's basic integrity, and that's what was lacking by so many.

Mr. DESAULNIER. So, that brings up the obvious concern is even if we continue to have these hearings and future Congresses have these hearings, the problem may go away for a while, but if we haven't got at the culture of honesty for lack of a better expression—and this is not just for ATF. We certainly have it in our political culture. I always think of President Lincoln saying that he had to do what he did because that oath he took was registered in Heaven, and in those days there seemed to be, even with all their

problems and civil war, there seemed to be some connection by a principal group of people within this institution and others that we would adhere to that honesty level.

So, the question really is have we gotten to that where there are enough people who believe in the honesty within ATF that this will not happen again?

Mr. DODSON. Sir, I wish that I could tell you that it will never happen again or I even think that it's at a point where it won't happen again. Nobody would have liked to come here today and tell you more than I that in the past six years since the last time I was here things have been great, I've seen a huge change and they're really, you know, working hard to fix the problem. I unfortunately can't tell you that. And I think that even though this body, all that it had done up until this point, that the culture that is still there still remains.

And there's two prongs to this problem. One of those are those people who actually took overt acts to try and cover stuff up to try and retaliate or to try and spearhead this kind of operation. There are those people with those malice of intent. Then behind them and where they're able to operate and get things done is within the culture and the bureaucracy.

Now, those people that did those overt acts that actively, you know, perpetrated those things may be gone. Some of them I know are. Others I'm not so confident of. But the culture is still there, and it's still ripe to do it again. I believe—and until there is genuine change in that, in how we function as a government and hold each other accountable and we are held accountable to the people of this country, that there will be another Fast and Furious. It will only be under another name. It will happen with another agency, and it may involve another commodity. But as long as this bureaucracy, those wheels are allowed to turn and grind through everyone the way that they do, even with all that you've done and all your efforts, I don't think you've put a dent in it.

Mr. DESAULNIER. And I think therein lies the problem. Unless there are consequences in any field, the generations that come behind them, even though the rules have changed, don't see that there are consequences for bad behavior, and that is just human nature.

Thank you, Mr. Chairman. I'll yield back.

Mr. PALMER. I thank the gentleman.

The chair recognizes the gentleman from North Carolina, Mr. Walker, for five minutes.

Mr. WALKER. Thank you, Mr. Chairman.

Ms. Terry, it is a privilege to get a chance to meet you in person today. You know, it is not just Brian, as much as a hero that he was and is, you—and that goes for Kelly your daughter as well—even living miles apart I can only imagine the expense, the toil that has been on your family, but you have kept his flame burning bright. It has flickered a few times, but I think it is glowing as bright as it has ever been. Thank you and Mr. Heyer and all those who have just bulldogged this thing where you refuse—Special Agent Dodson as well—that you refuse to allow injustice to continue to permeate, even in the halls of this government. And so I am grateful for that. I appreciate that.

I am saddened that the former administration, President Obama included, would work so hard with executive privilege to keep many of these documents sealed, whether it was either for the incompetence of the Department of Justice, who did not even think about or refuse to allow our Mexican counterparts in law enforcement know that we are providing automatic weapons and such to drug cartels would be something that most of us would look at, as far as a commonsense standpoint, I just feel like the previous Department of Justice owes more to the American people but specifically to the Terry family and these many other families who have gone through such tragic loss. But it goes without saying that what you are doing continues to celebrate the life of your son, and I think that you are willing, you and your family, to carry what it sometimes I can only imagine is quite a heavy load.

I have got a couple questions, just real short. I probably won't even use the full component of my time. But Special Agent Dodson, is there anything Congress can do to help whistleblowers come forward to expose failings like Fast and Furious, if you could say here is one or two things that I would recommend, having gone through this journey, here is what Congress could do to help?

Mr. DODSON. Sir, I think there's a lot that could be done, but it's going to be like a pretty long and hard road. It's—but you guys are already doing a lot. I want you to understand that. Please don't take anything I say away from that. The fact that people know that there are bodies, there are committees like this with staffers like you guys have here that, you know, Tristan and Castor that I know personally and I'm sure there are others, but as long as they know that there is a place where they can come where people do care, where they have a voice, you know, in this government and they can—there are avenues in place and things, certain protections that can be afforded to them, that's already huge.

Now, what you can do to make it better and make it more expanded and to get more people to come in, I don't know. I mean, it's all part of the mission I guess is how do you get the word to these people.

Mr. WALKER. Right.

Mr. DODSON. And I help you do that. I tell people that I talk to are those—people have contacted me both officially and unofficially and asked for my experience and what I've gone through, there's two things that I want through what I went through, to help the Terrys get the answers that they deserve and to help other whistleblowers that find themselves in a situation —

Mr. WALKER. Sure.

Mr. DODSON.—like I did in the future.

Mr. WALKER. Can I ask you a personal question?

Mr. DODSON. Yes, sir.

Mr. WALKER. Do you regret coming forward?

Mr. DODSON. Do I regret—no, sir. It's—I don't regret coming forward at all. I just did my job. I did what I thought I was supposed to, what was expected of me. How do you have regret for that?

Mr. WALKER. Sure. Well, then let me follow up with this question. If there is anything that you could do differently, looking back, if you started this process from the beginning, what would you do differently?

Mr. DODSON. Well, sir, given the—given what I know now and the current political climate, I would maybe look for a way to blame it on the Russians because that would guarantee bipartisan and it would get the major news media looking into it asking the hard questions.

But absent of that, I would say, look, I didn't do everything right. I made some mistakes. I made some decisions out of fear and anger because there were times that I was very scared and times that I was very upset. Some of those things I would do differently. But because I was fortunate enough to land somehow with Senator Grassley's staffers at that time and ultimately over here on the committee, they guided me and helped me and it was—I mean, it was immeasurable. I can never thank them enough —

Mr. WALKER. Sure.

Mr. DODSON.—for everything.

Mr. WALKER. Not to any scale which you have done, but there was a time in my life where I told the truth and it cost me something, not to what it has cost you, but I just want to encourage you today that when you do the right thing, it may take a while, may even take a few years, but when you do the right thing, eventually, it is honored. So, thank you again for your willingness to be able to carry this load. Again to Mr. Heyer, Ms. Terry, Kelly, thank you all for being here. It's a privilege to get a chance to be in a hearing with you folks.

With that, I yield back.

Mr. PALMER. I thank the gentleman.

The chair now recognizes the gentleman from Virginia, Mr. Connolly, for five minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman. And let me extend my welcome and ongoing condolences to the Terry family and Mrs. Terry in particular and Mr. Heyer representing the family. It is a terrible thing when we lose somebody in the service of their country, and on a bipartisan basis, we very much understand I think and appreciate your loss as best we can.

I do want to say, Mr. Chairman, that if there is one thing in terms of process that ought to unite us, it is in opposition to this avowed policy coming out of the Trump White House that they will respond to oversight requests only if they are signed by a Republican Member and in some cases chairman of the subcommittee or the full committee. Had President Obama had that policy, we would still be hearing about it.

And I will say this. If that policy is allowed to stand, it invites a similar policy when tables are turned. And that is not good for the —

Mr. PALMER. If the gentleman will yield?

Mr. CONNOLLY. Of course.

Mr. PALMER. There was a colloquy between Chairman Chaffetz and Ranking Member Lynch in which we are in agreement, sir.

Mr. CONNOLLY. Yes. I —

Mr. PALMER. I yield back.

Mr. CONNOLLY. Thank you, Mr. Chairman. I did hear that colloquy, and I also heard Senator Grassley express his disapproval as well, and I commend that. I just want to get on the record,



though, what I think are the profound consequences if that policy is not quickly overturned.

Mr. PALMER. I thank the gentleman. I think there is a discussion about a letter from the committee as well.

Mr. CONNOLLY. Great.

Mr. PALMER. I yield back.

Mr. CONNOLLY. And I pray it will be bipartisan because however conservative, however liberal, however middle of the road any of us may be, all of us institutionally have a stake in that. And that is just a mistake. I hope, I want to believe it is by a rookie White House that doesn't fully understand how the legislative branch functions and constitutionally has a function.

Mr. PALMER. I thank the gentleman. Points are valid and very important and I appreciate him making that for the record.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. DODSON, do you consider yourself a whistleblower?

Mr. DODSON. I use that term to describe myself sometimes in what I did only because I lack another term to describe it. I—like I say, I consider what I did just my job, sir. I did what I thought was expected of me, what I thought my oath, you know, entitled—or made me do and what my duty was.

Mr. CONNOLLY. Did you feel any pattern of retaliation based on what you did?

Mr. DODSON. Yes, sir.

Mr. CONNOLLY. And was that retaliation limited to the office in Phoenix or elsewhere?

Mr. DODSON. No, sir. It was not limited to the office of Phoenix, and at times it felt—and I believe it came from the highest levels of the Department of Justice.

Mr. CONNOLLY. And unfortunately, we don't have anyone from the Department of Justice here today. It would be interesting to hear from them.

Mr. DODSON. There are several of them that I would like to talk to —

Mr. CONNOLLY. Yes.

Mr. DODSON.—myself, sir, yes.

Mr. CONNOLLY. Yes, I can only imagine. So, how did you find yourself protected? If you don't mind, let's call you for a minute a whistleblower —

Mr. DODSON. Yes, sir.

Mr. CONNOLLY.—for the purposes—because our committee cares a lot about whistleblowers, again, on a bipartisan basis. We care a lot about whistleblower protection legislation, and so we want to learn from your experience, which I think is terribly instructive here. How did you manage to withstand that retaliation and remain a special agent with ATF?

Mr. DODSON. Well, sir, it was partially because of the air cover that I got from Senator Grassley and his staff, as well as from the committee staff and the committee itself. But you learn pretty quickly that that can only go so far. Those letters that can be fired off to DOJ or to your agency, although they can bring attention to it and put things on notice, when the—you know, in the works of it, it's—there's not a lot of teeth there.

And you think—I always thought before this—you hear talk of people who have blown the whistle and they have a whistleblower card. And you're taught that those people are untouchable, you know, that their agency can't do anything to them; they can essentially do whatever they want and they can't be fired. It's not until you find yourself in that situation and you realize that that card doesn't make you untouchable; it makes you unapproachable. And it's those things that the agency and the Department have done—like I say, all the overt things, the ways that they tried to come after me, trying to prosecute me, trying to smear me, to, you know, everything that they have said, the lies they've told about me, the Internal Affairs investigations, those things are tangible. Those are things that you can combat, you can overcome. It's that alienation, that ostracization that you can't. When people simply won't talk to you, won't work with you, won't deal with you, you cannot make them. You can't force that issue, and you're on your own.

Mr. CONNOLLY. Yes. And I think one of the things implied in what you just said, too, is you have the intestinal fortitude to stand up to that and fight back. Not everybody has that kind of stamina or constitutional makeup and so they can become victims of that kind of retaliation even though they were trying to do the right thing. And I think we would welcome your reflections on—you had the protection of a Member of Congress, and that is good, but that is not going to be available to everybody in various and sundry circumstances. So, the question is how can we create a legislative framework that protects people who want to do the right thing even if it is unpopular within their agency and division?

My time is up, and I thank you very much for your testimony.

Thank you, Mr. Chairman.

Mr. PALMER. I thank the gentleman.

The chair now recognizes the gentleman from Wisconsin, Mr. Grothman, for five minutes.

Mr. GROTHMAN. Yes, we really haven't gotten into a lot how this happened in the first place or what the motive would be for the U.S. Government to try to get United States automatic weapons in the hands of Mexican drug cartels. And it is very horrible what happened to Brian Terry. I would suppose, given the zeal with which they were pursuing this, I suppose there are a variety of Mexican individuals who wound up—unknown Mexican individuals who wound up being killed today as a result of the actions of the United States Government. Do you think that is accurate, say, Mr. Heyer?

Mr. HEYER. I think that's a fair assumption.

Mr. GROTHMAN. Has the Obama administration or anybody connected with that administration apologized to the Mexican Government for trying to get automatic weapons down to the Mexican drug cartels as far as you are aware?

Mr. HEYER. Not that I'm aware of.

Mr. GROTHMAN. Oh, my goodness. Well, somebody ought to apologize to them. Do you know, because you have followed this as much as anybody, Mr. Heyer, what would be the motivation try to get American automatic weapons in the hands of drug cartels? Why was it in—why did some people in the American Government think

it was in our interest to make sure the Mexican drug cartels were armed to the teeth?

Mr. HEYER. Well, as I understand it, there were different ideas. From the Phoenix Field Division, their goal as I understand it were to ultimately be able to take down a Mexican drug cartel, the leadership of the cartel. How that was supposed to happen I really don't know. All we knew was the first part, they were going to let weapons walk to straw buyers working for the cartel.

In the bigger picture, with respect to the previous administration, I don't know. Was it to build some sort of apprehension to automatic weapons, to strengthen gun laws? I don't know.

Mr. GROTHMAN. Yes, I mean, people out there throw around the idea that the hatred of the Second Amendment was so great in the prior administration that they wanted, you know, people killed with—or people—they wanted to look like we had a crisis of automatic weapons here in the United States.

Now, Eric Holder certainly was not very helpful to this group. We held him in contempt in Congress. Could you just in general give us your opinion of the degree to which Eric Holder tried to help this investigation and the degree to which he tried to stand in the way of finding out what was really going on here?

Mr. HEYER. Well, I spoke earlier about frustration in every aspect in dealing with the Department of Justice, and that continued not only with Eric Holder but his predecessor. Letters went unanswered, requests for information went unanswered, and, again —

Mr. GROTHMAN. So, it appears that he really didn't want to get to the bottom? He was willing to cover up?

Mr. HEYER. Well, when it came to the Terry family, I believe they saw us as a nuisance.

Mr. GROTHMAN. Okay. Okay. I mean, you know, I would think most people if they were President, you know, then they would get involved and say, hey, I got, you know, a real problem here. Did you see the Obama administration step up and do anything about this?

Mr. HEYER. Again —

Mr. GROTHMAN. Nothing?

Mr. HEYER.—you know, we really felt like we were on our own, and with the exception of this committee and the—really, really providing the only information beyond what journalists were providing —

Mr. GROTHMAN. Okay.

Mr. HEYER.—that was our sole source of accurate information with regard to Brian's death and the circumstances around his death.

Mr. GROTHMAN. Okay. Now, we should see what happened to Eric Holder here. I was just kind of Googling him, and maybe you know what is going on. It looks like after he left public service, he was rewarded by working at Covington and Burling, a very, you know, top-of-the-line—I don't know what his compensation is there—but top-of-the-line kind of liberal-leaning law firm here in Washington. Does that bother you when you see people like Special Agent Dodson, his career kind of stalls because he cares about the people and cares about the future of this country, but somebody who, you know, gets in the way of this investigation, such a big

problem is rewarded by the left-leaning establishment here in town by getting a job with a big law firm?

Mr. HEYER. Well, it's not only just the rewards; it was the lack of accountability. And I spoke earlier today about the numerous officials that were allowed to leave their positions within top DOJ positions that were able to leave and move into the private sector, just like Lanny Breuer, just like Eric Holder. It was the lack of holding individuals accountable like those senior ATF headquarter individuals that were allowed to retire with full pensions.

Mr. GROTHMAN. Okay. Just one other thing. I know I'm a little bit over. I just hope this committee and whoever the new committee chairman is does what they can to make sure this is written in the history books. You know, sometimes, you know, they say the winners write the history books, and sometimes horrific things happen and they just disappear into the ether and future generations will never know about it. I mean, to me, the Fast and Furious scandal, this should be something, you know, actually worse than Teapot Dome. I mean, you know, this should be one of the greatest scandals in American history, and I hope this committee does all they can so that people in the future always know the name of Eric Holder and know how little was done by this administration after they participated, for whatever motivation, in trying to get automatic weapons in the hands of the drug cartels.

I would like to thank you, Mrs. Terry, for showing up.

I would like to thank you, Special Agent Dodson. I mean, you know, I know you are, I am sure, financially not as well off as you would be if you had just, you know, kept your head down and shut up and da, da, da, da, da, but of course I am sure your reward is greater because you know you are on the side of the angels as opposed to a lot of those other people who are just grabbing the cash. Thanks much.

Mr. PALMER. I thank the gentleman.

I would like to thank our witnesses for taking time to appear before us today, and particularly you, all three of you. You were here six years ago.

Ms. Terry, your strength and stamina and your commitment to your son's memory and seeking justice for him is inspiring. We continue to grieve with you, but at the same time, I want you to know that we deeply appreciate the service of Brian Terry and how you have honored that service. And in holding this hearing, I hope at some point that you will feel like he has been honored by the United States Government.

Mr. Heyer, I appreciate your coming again and Mr. Dodson, Agent Dodson, for your testimony and your diligence in trying to shed light on some problems that should have been resolved, frankly, years ago.

If there is no further business, without objection, the committee stands adjourned.

[Whereupon, at 12:01 p.m., the committee was adjourned.]

## **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD

JASON CHAFFETZ, UTAH  
CHAIRMAN

ONE HUNDRED FIFTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND  
RANKING MINORITY MEMBER

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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WASHINGTON, DC 20515-6143

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MINORITY (202) 225-5051  
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May 30, 2017

The Honorable Jeff Sessions  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530

Dear Mr. Attorney General:

On December 14, 2010, Customs and Border Protection Agent Brian Terry was murdered in a gunfight in Arizona near the Mexican border. Two assault rifles found at the crime scene were traced to purchases by one of the targets of a criminal investigation being conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

At the time the target purchased the weapons, the criminal investigation—known as Operation Fast and Furious—had already identified the target as a suspected straw purchaser who was providing weapons to firearms traffickers. ATF knew about hundreds of similar purchases over a year-long period, but interdicted only a small number of those firearms and delayed making arrests.

After more than a year of investigating this matter, my staff compiled a report describing the evidence the Committee obtained. The report explained that ATF's gunwalking operations allowed thousands of firearms to be released into communities and created an "obvious and inexcusable threat to public safety on both sides of the border."<sup>1</sup>

The report explained how the "misguided gunwalking operations originated in 2006 as ATF's Phoenix Field Division devised a strategy to forego prosecutions against low-level straw purchasers while they attempted to build bigger charges against higher-level cartel members." Due to insufficient operational controls, ATF failed to stop those dangerous weapons before they made it into the hands of violent criminals, including Mexican drug cartels.

The Committee issued subpoenas to the Department of Justice for documents in March and October 2011. By June 2012, the Department had produced more than 7,600 pages of documents to the Committee relating to Fast and Furious. However, the Department declined to produce certain documents, including those relating to open criminal investigations and

<sup>1</sup> *Fatally Flawed: Five Years of Gunwalking in Arizona*, Report of the Democratic Staff, House Committee on Oversight and Government Reform (Jan. 30, 2012).

The Honorable Jeff Sessions

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involving internal deliberations about the Department's response to the congressional investigation and press regarding Operation Fast and Furious. Ultimately, the President asserted Executive Privilege over some of these documents, Congress held the Attorney General in contempt for declining to produce the documents, and the documents became the subject of litigation between Congress and the Department.

On January 19, 2016, U.S. District Judge Amy Berman Jackson ordered that the Department produce to the Committee certain documents that "concern the Department of Justice's response to congressional and media inquiries into Operation Fast and Furious which were withheld on deliberative process privilege grounds" and "documents for which no justification for the invocation of privilege has been provided."<sup>2</sup> However, the court did not compel the production of other documents subject to the subpoena, leaving it to the parties to resolve their dispute over those documents through negotiation and accommodations.<sup>3</sup> The Committee has appealed that decision.

On April 8, 2016, the Department produced 20,500 pages of documents to the Committee as ordered by the district court.<sup>4</sup> On June 17, 2016, the Department produced an additional 6,333 pages of documents that it determined no longer required withholding as law-enforcement sensitive. The Department also made available to Committee staff previously withheld or redacted documents totaling approximately 33,000 pages for *in camera* review.

The Committee issued identical subpoenas to the Department of Justice renewing its demand for the same documents on January 5, 2015, and January 3, 2017.

You have been serving as Attorney General and the head of the Department of Justice since February 9, 2017. Because the Committee may hold a hearing on these issues on June 7, 2017, I am seeking your assistance in obtaining answers to the following questions with respect to the position of the Trump Administration regarding the documents previously sought by this Committee:

1. Are there any documents responsive to the Committee's January 3, 2017, subpoena that the Department of Justice is currently withholding? If so, please explain on what grounds.
2. Under your leadership, has the Department of Justice changed its position with respect to withholding documents responsive to the Committee's January 3, 2017, subpoena? If so, please provide an explanation of the change, when it was made, and which previous assertions are now being reversed. Please also provide any

<sup>2</sup> *Committee on Oversight and Government Reform v. Lynch*, 156 F.Supp.3d 101 (D.D.C. Jan. 19, 2016).

<sup>3</sup> *Id.*

<sup>4</sup> Letter from Peter J. Kadzik, Assistant Attorney General, Department of Justice, to Chairman Jason Chaffetz, House Committee on Oversight and Government Reform (Apr. 8, 2016).

The Honorable Jeff Sessions

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responsive documents that you are no longer withholding, if any.

3. Does the Department of Justice intend to provide any additional documents responsive to the Committee's January 3, 2017, subpoena? If not, please explain the basis for withholding those documents.

In order to be most helpful for our hearing, I would appreciate if you would provide responses to these questions by June 5, 2017. I would also like to know by that date whether a Department official would be available to testify at the June 7 hearing regarding your responses. Thank you for your assistance with this request.

Sincerely,



Elijah E. Cummings  
Ranking Member

cc. The Honorable Jason Chaffetz, Chairman  
Committee on Oversight and Government Reform