



Memorandum

To: Dennis K. Burke
Patrick J. Cunningham

From: Emory Hurley

Subject: **ATF**

Date: January 28, 2011

The two AK-47 type rifles associated with the U.S. Border Patrol shooting, specifically two ROMARM WASR-10 7.62x39 mm rifles, Serial Numbers **DP** and **DP** were purchased by **ATF** on Friday, January 16, 2010, along with a third ROMARM WASR-10 7.62x39 mm rifle, Serial Number **DP**. The three rifles were purchased in a single transaction from Federal Firearms Licensee (FFL) **DP**. ATF was not notified of this purchase until Monday, January 19, 2010, when ATF received the ATF Form 4473 documenting **ATF** purchase of three AK-47 type rifles on January 16, 2010. These were forwarded to ATF by the FFL and the purchase is documented in **ATF ROI #67**.

ATF's first known firearms purchase occurred on November 24, 2009, at FFL **DP**. **DP** On that day he was in the company of another Fast and Furious suspect **ATF**. On November 24, 2009, **ATF** purchased five (5) FN Herstal Five-Seven pistols, and **ATF** purchased five (5) AK-47 type rifles. On the ATF Form 4473, **ATF** listed his address as **DP** in **DP**. At the time of the purchase, **ATF** and **ATF** were traveling in a 2000 Isuzu Rodeo registered to **DP**. **DP** This is documented in **ATF ROI # 12**. As of this date, the five (5) FN pistols purchased by **ATF** on November 24, 2009, have not been recovered.

On November 25, 2009, ATF entered **ATF** in the ATF case management system as a suspect in the investigation. This event does not result in the creation of an ROI.

On December 12, 2009, **ATF** purchased five (5) ROMARM WASR-10 AK-47 type rifles from FFL **DP**. ATF was notified of this purchase on December 12, 2009 when agents received the ATF Form 4473 recording the purchase. This is documented in **ATF ROI # 46**. As of this date, these five AK-47 type rifles have not been recovered.

On December 17, 2009, this AUSA, ATF Group Supervisor **ATF** and ATF Special Agent **ATF** met with **DP**, the owner of **DP**. **DP** had been providing information to ATF on large firearms purchases, including large purchases of (only) long guns which do not trigger any multiple purchase reporting requirements. This information was being provided voluntarily and without compensation from ATF. **DP** had expressed concerns about the cooperation he was providing and whether he was endangering himself or implicating himself in a criminal investigation.

DP was advised by the agents and this AUSA that they could not tell him who he could or

could not sell to and that they could not instruct him to make a sale in violation of the law or to refuse to make a lawful sale. He was advised by the agents that as an FFL he has to comply with all of the statutes and regulations that govern the sale and transfer of firearms and cannot sell firearms unless the required paperwork and background check were completed. As long as the required forms were properly filled out and the FFL did not know or have a reason to know that the firearms were part of a straw purchase or intended to be used in a crime, that he could complete the transfer. [DP] was also told by the agents and this AUSA that the information he provided to ATF regarding large firearms transactions, particularly sales involving only long guns, was very important and useful to ongoing ATF investigations.

During this meeting, ATF agents also described additional information that [DP] or his employees might receive from purchasers which would not necessarily be required by the provisions of Chapter 44 of Title 18 to be kept in his records, but which would prove useful to ATF. This information included phone numbers or other contact information as well as license plate numbers and vehicle descriptions. As of the date of this meeting, [DP] was already providing this type of information to ATF and continued to do so throughout the course of the investigation.

On January 9, 2010, [ATF] purchased three (3) FN Herstal Five-Seven pistols from FFL [DP] [DP]. ATF was not advised of this purchase by the FFL, however, on January 14, 2010, these firearms were entered into the suspect gun database by ATF Phoenix. These firearms were discovered by law enforcement on January 14, 2010, in Columbus, New Mexico, but were not traced and were returned to person carrying them. ATF Phoenix was not notified of this law enforcement contact until May 17, 2010. **ATF ROI #254.**

On January 14, 2010, in Columbus, New Mexico, (a border town), U.S. Border Patrol agents pulled over a vehicle driven by [DP] with passenger [DP], due to suspicious driving behavior. In the vehicle they found three AK-47 type rifles purchased by [ATF], three FN Herstal Five-Seven pistols purchased by [ATF] on January 9, 2010, from FFL [DP] and two Ruger pistols purchased by another. U.S. Border Patrol agents did not observe any other criminal conduct and so returned the firearms to the occupants of the vehicle. They did not trace any of the firearms. ATF Phoenix was notified of the observation of the firearms on May 17, 2010, after ATF Las Cruces forwarded information in connection with a firearms trafficking investigation in [DP] involving [DP] and others. **The investigation of [DP] is still on going, [DP] and must be viewed as close-hold.**

On January 16, 2010, [ATF] purchased the three ROMARM WASR-10 AK-47 type rifles, Serial Numbers [DP] and [DP] as well as [DP]. As detailed above, ATF was not notified of this purchase until January 19, 2010. This notification came only through the cooperation of the FFL as this long gun only purchase would not trigger any affirmative reporting requirements. **ATF ROI #67.**

On December 15, 2010, [ATF] was arrested for using a false address on the ATF Form 4473 on June 15, 2010. A complaint was filed on December 16, 2010, and he was indicted on January 11, 2011, for making false statements in connection with the acquisition of a firearm. On January 19, 2011, he was indicted as part of the overall Fast and Furious conspiracy.

Agents were able to determine that when [ATF] purchased firearms on June 15, 2010, that he no longer lived at the [DP] address listed on the ATF Form 4473 and his drivers license. His drivers license was changed in August of 2010, to reflect a different address. In the course of his post arrest interview in December 2010, he admitted that he had not lived at the [DP] address for two or three years. However, earlier in the investigation, agents had no reason to believe that this was not his address because his drivers license and the registration to the car that he was driving came back to the [DP] [DP] address. See ATF ROI #12.

On March 1, 2010, [ATF] purchased one FN Herstal Five-Seven pistol from [DP] [DP] in a single-firearm transaction. On or about March 3, 2010, this pistol was recovered by Phoenix Police in connection with a drug house in Phoenix. This was the first actual recovery of a firearm purchased by [ATF] ATF ROI #107 and 156.