

**From:** Sherwood, Robert (USAAZ) <Contractor>  
**To:** Schmalzer, Tracy (SMO); Smith, Jessica A. (SMO)  
**Sent:** 3/3/2011 3:22:33 PM  
**Subject:** Question on Fast and Furious - FYI

Tracy and Jessica,

We got a question this am from a reporter at the Center for Public Integrity - working with the LA Times and CBS News - about the status of [ATF] one of the bad guys in the Fast Furious Case. Basically, is he in custody (why or why not), and next steps. [DP]

[DP] Below is what I sent him:

Robbie

Questions: Whether [ATF] is in custody, what's his plea, next steps?

**Answer:**

**Under 9<sup>th</sup> Circuit law offenses committed by straw purchasers are not considered crimes of violence indicating a danger to the community for which a person can be detained pending trial. As to the only other basis for pretrial detention - flight risk - [ATF] is a US citizen and the Bail Reform Act requires the court to impose the least restrictive conditions that will reasonably assure his appearance and the safety of the community. Here, [ATF] was released on conditions pending Trial by the Magistrate Court. His release conditions include reporting as directed to U.S. Pretrial Services, surrendering any passport, not traveling outside the district of Arizona, having no contact with the other defendants, and not possessing a firearm or other dangerous weapon.**

**Regarding the treatment of straw purchasers by the Criminal Justice System, the five Southwest Border United States Attorneys from Arizona, Texas, California and New Mexico recently sent the enclosed letter to the United States Sentencing Commission urging that the prison sentences for straw purchasers be strengthened because of their role in the trafficking and illegal export of weapons. The letter states in part:**

**As the chief federal law enforcement officers in the Southwest border region, we strongly believe the Commission must amend USSG 2K2.1 if it is truly to address the national security implications of arms trafficking. As the Department explained during its meeting with Commission staff, straw purchasers are the primary source of firearms trafficked to Mexico from the United States. Most of the defendants prosecuted for arms export or arms trafficking offenses involving the Southwest border would not have obtained the firearms at issue were it not for the efforts of straw purchasers. Yet because straw purchasers face such low guideline ranges under 2K2.1, and because many judges see straw purchasing as a mere paper violation, the sentences received by straw purchasers fail to reflect the seriousness of the crime or the critical role played by these defendants in the trafficking and illegal export of weapons. Simply put, straw purchasing and illegal arms exporting go hand in hand, and both must be addressed together.'**

**Regarding [ATF] plea and next steps, he has entered a plea of Not Guilty and the current schedule for the case is as follows:**

**CR-11-126-PHX-JAT [ATF] et al)-**

**Motions Deadline -4/22/11  
Jury Trial- 06/07/2011 at 09:00 AM**