

United States Senate

WASHINGTON, DC 20510

January 27, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

It is my understanding that the ATF is continually conducting operations along the southwestern United States border to thwart illegal firearm trafficking. I am specifically writing you concerning an ATF operation called "Project Gunrunner." There are serious concerns that the ATF may have become careless, if not negligent, in implementing the Gunrunner strategy.

Members of the Judiciary Committee have received numerous allegations that the ATF sanctioned the sale of hundreds of assault weapons to suspected straw purchasers, who then allegedly transported these weapons throughout the southwestern border area and into Mexico. According to the allegations, one of these individuals purchased three assault rifles with cash in Glendale, Arizona on January 16, 2010. Two of the weapons were then allegedly used in a firefight on December 14, 2010 against Customs and Border Protection (CBP) agents, killing CBP Agent Brian Terry. These extremely serious allegations were accompanied by detailed documentation which appears to lend credibility to the claims and partially corroborates them.

On Tuesday, according to press reports, the ATF arrested 17 suspects in a Project Gunrunner bust. William Newell, the Special Agent in Charge of the ATF's Phoenix Field Office was quoted as saying, "We strongly believe we took down the entire organization from top to bottom that operated out of the Phoenix area." However, if the 17 individuals were merely straw purchasers of whom the ATF had been previously aware before Agent Terry's death, then that raises a host of serious questions that the ATF needs to address immediately.

As you know, the Department of Justice Office of Inspector General (OIG) released a review of ATF's Project Gunrunner in November of 2010, in which the OIG concluded that Project Gunrunner has been unsuccessful, in large part because:

Project Gunrunner's investigative focus has largely remained on gun dealer inspections and straw purchaser investigations, rather than targeting higher-level traffickers and smugglers. As a result, ATF has not made full use of the

intelligence, technological, and prosecutorial resources that can help ATF's investigations reach into the higher levels of trafficking rings.¹

Therefore, in order to gain a more complete understanding of ATF activities in Project Gunrunner, I request that you arrange for my staff to be briefed by knowledgeable ATF supervisors no later than February 3, 2011. Please contact Jason Foster or Brian Downey at (202) 224-5225 to schedule the briefing. All formal correspondence should be sent electronically in PDF format to Brian_Downey@judiciary-rep.senate.gov or via facsimile to (202) 224-3799.

Sincerely,



Charles E. Grassley
Ranking Member

¹ *Review of ATF's Project Gunrunner, Evaluation and Inspections Report I-2011-001*, November 2010, available at <http://www.justice.gov/oig/reports/ATF/e1101.pdf>

United States Senate

WASHINGTON, DC 20510

January 31, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

As you know, I wrote to you on Thursday, January 27, regarding serious allegations associated with Project Gunrunner and the death of Customs and Border Protection Agent Brian Terry. Although the staff briefing I requested has not yet been scheduled, it appears that the ATF is reacting in less productive ways to my request. I understand that Assistant Special Agent in Charge (ASAC) George Gillette of the ATF's Phoenix office questioned one of the individual agents who answered my staff's questions about Project Gunrunner. ASAC Gillette allegedly accused the agent of misconduct related to his contacts with the Senate Judiciary Committee. This is exactly the wrong sort of reaction for the ATF. Rather than focusing on retaliating against whistleblowers, the ATF's sole focus should be on finding and disclosing the truth as soon as possible.

Whistleblowers are some of the most patriotic people I know—men and women who labor, often anonymously, to let Congress and the American people know when the Government isn't working so we can fix it. As such, it would be prudent for you to remind ATF management about the value of protected disclosures to Congress and/or Inspectors General in accordance with the whistleblower protection laws. Absent such a clear communication from you, ATF management might be able to intimidate whistleblowers to prevent them from providing information to Congress.

As you may be aware, obstructing a Congressional investigation is a crime.¹ Additionally, denying or interfering with employees' rights to furnish information to

¹ 18 U.S.C. § 1505 states, in pertinent part:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress--

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

Congress is also against the law.² Federal officials who deny or interfere with employees' rights to furnish information to Congress are not entitled to have their salaries paid by taxpayers' dollars.³ Finally, ATF personnel have Constitutional rights to express their concerns to Congress under the First Amendment.

ATF employees have the right to talk to Congress and to provide Congress with information free and clear of agency interference. Further, these employees have the right to be free from fear of retaliation or reprisal for doing so. Please ensure that ATF employees are aware of their rights and whistleblower protections and that ATF managers are accountable for respecting any protected disclosures.

If you have any questions please contact my Committee staff, Jason Foster at (202) 224-5225. Any formal correspondence should be sent electronically in PDF searchable format to Brian_Downey@judiciary-rep.senate.gov.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Eric H. Holder, Jr.
Attorney General of the United States

² 5 U.S.C. § 7211 states:

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

³ P.L. 111 -117 § 714 states:

No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who -

(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or

(2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, stats, pay, or performance of efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).

United States Senate

WASHINGTON, DC 20510

February 9, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Holder:

During our meeting on January 31, I provided you with copies of my recent letters to Acting ATF Director Kenneth E. Melson. I had received serious allegations from ATF whistleblowers. ATF agents told my staff that the agency allowed the sale of assault rifles to known and suspected straw purchasers for an illegal trafficking ring near the southwest border. Authorities allegedly recovered two of those weapons at the scene of a firefight near the southwest border on December 14, 2010. Customs and Border Protection Agent Brian Terry lost his life in that firefight and may have been killed with one of those two rifles. That is why I requested nearly two weeks ago that the ATF brief my staff as soon as possible.

Unfortunately, the reaction to my request has, so far, been little more than delay and denial. I finally received a letter at close of business on Friday, February 4, in response to my request. It came not from the ATF, but from the Justice Department. In that letter, the Department categorically denied that the ATF “knowingly allowed the sale of assault weapons to a straw purchaser...” The Department said the ATF makes “every effort to interdict weapons that have been purchased illegally and prevent their transportation into Mexico.”

However, as I explained in my initial letter to Acting Director Melson, the allegations I received are supported by documentation. It is already public record that federal agents arrested Jaime Avila on December 15, 2010—the very same day that CBP Agent Terry died. The ATF had been tracking Avila’s firearms purchases because Avila was a suspected trafficker since at least November 2009.¹ According to the whistleblowers, at least one gun dealer wanted to stop participating in sales like those to Avila sometime around October 2009. However, the ATF allegedly encouraged the dealer to continue selling to suspected traffickers and asked the dealer to forward information about the sales to the Bureau.

¹ Bureau of Alcohol, Tobacco, and Firearms, “Multiple Sale Summary,” Nov 25, 2009 (Attachment 1).

The dealer who sold the weapons allegedly recovered at the scene of Agent Terry's death met with both ATF representatives and Assistant U.S. Attorneys as early as December 17, 2009 to "discuss his role as [a Federal Firearms Licensee] FFL during this investigation."² On January 9, 2010, Jaime Avila bought three more firearms at the same Glendale, Arizona gun dealer and his purchase was entered into an ATF database two days later.³ By January 13, ATF added Avila to a suspect person database for the investigation.⁴ On January 14, ATF entered the firearms Avila purchased five days earlier into the National Tracing Center's Suspect Gun Database.⁵

On January 16, 2010, Avila bought three AK-47 variant, Romanian WASR-10 assault rifles from the same dealer with the serial numbers 1983AH3977, 1979IS1530, and 1971CZ3775.⁶ ATF entered these weapons into the National Tracing Center's Suspect Gun Database three days later.⁷ Over the next several months, ATF continued to track Avila's multiple firearms purchases in near real-time, including two purchases of .50 caliber rifles in June 2010.⁸

After the shooting of CBP Agent Terry, law enforcement officials recovered from the scene two assault rifles.⁹ On December 16, 2010, ATF's trace results confirmed that serial numbers 1983AH3977 and 1971CZ3755 match two of the three rifles purchased by Avila and tracked by the ATF nearly a year earlier.¹⁰ In addition to these specific weapons, the indictment of Avila and others references approximately 769 firearms. Of those, the indictment refers to the recovery of only about 103 weapons. So, where are the other approximately 666 weapons referenced in the indictment? Why did the ATF not seize them?

The Justice Department's reply asked that Committee staff stop speaking to law enforcement personnel about these matters. However, if not for the bravery and patriotism of law enforcement personnel who were willing to put their careers on the line, this Committee would have been forced to rely on nothing more than rumors in the blogosphere and a Justice Department denial to resolve these allegations. We need more than that. To be an effective check on Executive Branch power, we need cold, hard facts. We will seek them from whatever source is necessary.

Unfortunately, the Justice Department's letter suggested that my attempts to seek information about these matters might be politically motivated. I understand the Department needs to "protect ... law enforcement personnel ... from inappropriate

² Bureau of Alcohol, Tobacco, and Firearms, "Management Log for Case: 785115-10-[redacted]," Dec 17, 2009 (Attachment 2).

³ Bureau of Alcohol, Tobacco, and Firearms, "Multiple Sale Summary," Jan 11, 2010 (Attachment 3).

⁴ E-mail from ATF Program Analyst to ATF Agents, Jan 13, 2010 (Attachment 4).

⁵ Bureau of Alcohol, Tobacco, and Firearms, "Suspect Gun Summary," Jan 14, 2010 (Attachment 5).

⁶ Bureau of Alcohol, Tobacco, and Firearms, "Suspect Gun Summary," Jan 19, 2010 (Attachment 6).

⁷ *Id.*

⁸ Bureau of Alcohol, Tobacco, and Firearms, "Suspect Gun Summary," Jun 8 and Jun 16, 2010 (Attachment 7).

⁹ Bureau of Alcohol, Tobacco, and Firearms, "Significant Information Report," Dec 16, 2010 (Attachment 8).

¹⁰ Bureau of Alcohol, Tobacco, and Firearms, "Firearms Trace Summaries," Dec 16, 2010 (Attachment 9).

political influence.”¹¹ However, there is a difference between inappropriate political influence and appropriately holding officials accountable to the American people. I try to conduct non-partisan oversight of the Executive Branch. Regardless of which party controls the White House or the Congress, I do my best to ask tough questions. If you have any evidence that there is anything “inappropriate” about my motives in this matter, please let me know. Otherwise, I respectfully request that the Department avoid such implications in the future.

Finally, I want to share with you a portion of an e-mail from Carolyn Terry, Agent Terry’s stepmother. She wrote yesterday:

It’s hard to accept that our son was shot and murdered with a gun that was bought in the U.S. We have not had any contact from the Border Patrol or any other agents since returning home on the 22nd of [January]. Our calls are not returned. I truly feel that our son’s death is a cover-up and they hope that we will go away. That will not happen. We want to know who allowed the sale of that gun that murdered our son. Any help will [be] appreciated. We are the victims of this case and we want some answers.¹²

The Terry family deserves answers. The whistleblowers have expressed a desire to honor Agent Terry’s memory by disclosing this information. The Justice Department should work to do the same. The best way to honor his memory is to come clean.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives

The Honorable Alan D. Bersin
Commissioner
United States Customs and Border Protection

¹¹ Letter from the Justice Department to Senator Charles E. Grassley, Jan 31, 2011.

¹² E-mail from Carolyn Terry, Feb 8, 2011.

United States Senate

WASHINGTON, DC 20510

February 16, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Holder:

I appreciate the staff briefing that Department of Justice (DOJ) and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) officials provided on February 10, 2011. However, the briefers focused on general issues related to challenges in successfully prosecuting gun trafficking cases. They refused to answer specific questions about the facts and circumstances that led me to request the briefing.

Specifically, they refused to say whether the approximately 103 weapons seized according to the Jaime Avila indictment were the only seizures related to the nearly 770 weapons mentioned in the indictment. They refused to say whether the third assault rifle purchased by Avila in January 2010—the one not found at the scene of CBP Agent Brian Terry's shooting—has been recovered elsewhere. When asked whether ATF had encouraged any gun dealer to proceed with sales to known or suspected traffickers such as Avila, the briefers said only that they did not have any "personal knowledge" of that.

Therefore, please provide the following documents to the Committee:

- 1) All records relating to communications between the ATF and the Federal Firearms Licensee (FFL) who sold the weapons to Avila, including any Report of Investigation (ROI) or other records relating to the December 17, 2009 meeting "to discuss his role as an FFL during this investigation."
- 2) All records relating to communications between ATF headquarters and Phoenix Special Agent in Charge (SAC) William Newell from December 1, 2010 to the present, including a memorandum, approximately 30 pages long, from SAC Newell to ATF headquarters following the arrest of Jaime Avila and the death of CBP Agent Brian Terry.
- 3) A copy of the presentation, approximately 200 pages long, that the Group 7 Supervisor made to officials at ATF Headquarters in the Spring of 2010.

- 4) Copies of all e-mails related to Operation Fast and Furious, the Jaime Avila case, or the death of CBP Agent Brian Terry sent to or from SAC Newell, Assistant Special Agent in Charge (ASAC) George Gillette, Group 7 Supervisor, or the Case Agent between November 1, 2009 and January 31, 2011.

Please provide documents in batches on a rolling basis as they are identified and located. Also, please prioritize your search for documents and produce them in the following order: (1) documents in response to requests one through three, (2) documents in response to request four dated between December 13, 2010 and January 31, 2011, and (3) documents in response to request four dated between November 1, 2009 and December 13, 2010.

I look forward to receiving your response. Please provide the first set of requested documentation by no later than February 23, 2011. If you have any questions please contact Jason Foster or Brian Downey at (202) 224-5225. All formal correspondence should be sent electronically in PDF format to Brian_Downey@judiciary-rep.senate.gov or via facsimile to (202) 224-3799.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives

The Honorable Alan D. Bersin
Commissioner
United States Customs and Border Protection

United States Senate
WASHINGTON, DC 20510

March 3, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Attorney General Holder and Acting Director Melson:

It has been over a month since I first contacted Acting Director Melson about serious whistleblower allegations related to a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner” initiative. Several agents alleged that ATF leadership encouraged cooperating gun dealers to engage in sales of multiple assault weapons to individuals suspected of illegally purchasing for resale to Mexican cartels. These agents were motivated to come forward after federal authorities recovered two of the Operation Fast and Furious guns at the scene where a Customs and Border Patrol Agent named Brian Terry was killed.

In response to my letter, the Department of Justice (DOJ) denied that ATF would ever knowingly allow weapons to fall into the hands of criminals, or let firearms “walk” in an operation. On February 9, I wrote to DOJ and attached documents that supported the whistleblower allegations about the guns found at the scene of Agent Terry’s death.¹

My office continues to receive mounting evidence in support of the whistleblower allegations. For example, attached are detailed accounts of three specific instances where ATF allowed firearms to “walk.”² In all three instances, the suspect asks a cooperating

¹ Letter from Senator Grassley to Attorney General Holder. February 9, 2011. Accessed at <http://judiciary.senate.gov/resources/documents/upload/020911GrassleyToHolder-ATF.pdf>.

² ATF Reports of Investigation (ROIs) detailing ATF Phoenix Field Operations from May 8-June 1, 2010. (Attachment 1)

defendant to purchase firearms at a gun dealer who was also cooperating with the ATF. So, two of the three participants in the transactions were acting in concert with the ATF. Yet, the ATF allowed the suspect to take possession of the firearms in each instance. In one case the suspect said that he “assumed the only real risk in their trafficking arrangement when he [REDACTED] ‘erase(d) the (serial) numbers’ from the firearms and ‘take (transports) them...’”³

The whistleblowers did not wait until a federal agent was killed before voicing their concerns internally. Several agents in the Phoenix Gun Trafficking Group (Group VII) voiced their opposition to the ATF’s handling of the case internally first. Group Supervisor David Voth sent an email on March 12, 2010 about the “schism developing amongst our group.”⁴ His response to dissent within the group was to invite those who disagreed with the strategy to find another job:

Whether you care or not people of rank and authority at HQ are paying close attention to this case and they also believe we (Phoenix Group VII) are doing what they envisioned the Southwest Border Groups doing. It may sound cheesy, but we are “The tip of the ATF spear” [sic] when it comes to the Southwest Border Firearms Trafficking.

We need to resolve our issues at this meeting. I will be damned if this case is going to suffer due to petty arguing, rumors, or other adolescent behavior.

... If you don’t think this is fun, you’re in the wrong line of work—period! This is the pinnacle of domestic U.S. law enforcement techniques. After this the toolbox is empty. Maybe the Maricopa County Jail is hiring detention officers and you can get paid \$30,000 (instead of \$100,000) to serve lunch to inmates all day.⁵

Two weeks later, on April 2, 2010, Voth sent an email to Assistant U.S. Attorney Emory Hurley and Assistant Special Agent in Charge (ASAC) George Gillett with the subject, “No pressure but perhaps an increased sense of urgency.”⁶ In the email, he reiterated support for the strategy, but cited increasing levels of violence as a reason to move more quickly. Voth wrote:

Our subjects purchased 359 firearms during the month of March alone, to include numerous Barrett .50 caliber rifles. I believe we are righteous in our plan to dismantle this entire organization and to rush in to arrest any one person without taking in to [sic] account the entire scope of the conspiracy would be ill advised to the overall good of the mission. I

³ *Id.*

⁴ Email from Group Supervisor David Voth to Group VII. March 12, 2010. (Attachment 2)

⁵ *Id.* (Emphasis in original.)

⁶ Email from Group Supervisor David Voth to Group VII, Emory Hurley (USAAZ), and George Gillett. April 2, 2010. (Attachment 3)

acknowledge that we are all in agreement that to do so properly requires patience and planning. In the event, however, that there is anything we can do to facilitate a timely response or turnaround by others, we should communicate our sense of urgency with regard to this matter.⁷

Voth also acknowledged in a May 3, 2010 email to his group that “April was the second most violent month during the Calderon administration with 1,231 executions.”⁸ ATF personnel in Mexico reportedly noted the increased violence and contacted ATF Headquarters to express concern over the Operation Fast and Furious strategy of allowing the weapons sales to proceed.

ATF Headquarters was fully aware of the strategy. A copy the Operation Fast and Furious case summary sent to ATF Headquarters states:

This OCDETF [Organized Crime Drug Enforcement Task Force] case is a large scale firearms trafficking case with the firearms being recovered in the Republic of Mexico or on/near the US/Mexico border (El Paso, TX, Nogales, AZ, Douglas, AZ, etc.) To date over 1,500 firearms have been purchased since October 2009 for over one million (\$1,000,000.00) cash in over-the-counter transactions at various Phoenix area FFLs. [REDACTION] There are many facets to this investigation but ATF is attempting to not only secure a straw purchase/dealing in firearms without a license case against various individuals but more specifically to make the bigger connection to the Mexican Cartel/Drug Trafficking Organization (DTO) obtaining these firearms for the best possible case and the most severe charges when it is time to Indict [sic] this case.⁹

Dismantling the Mexican drug cartels is a worthy goal. However, asking cooperating gun dealers to arm cartels and bandits without control of the weapons or knowledge of their whereabouts is an extremely risky strategy. ATF leadership did not allow agents to interdict the weapons in this case. Instead, agents simply monitored the purchases of “suspect guns” and entered them into a database of firearms “suspected to eventually be used in criminal activity.”¹⁰ Over the course of this investigation, weapons allowed to walk were ending up in Mexico and along the Southwestern border. The ATF was well aware that this was happening. For example, in November 2009, four 7.62 caliber weapons were recovered in Naco, Mexico just two weeks after being purchased by one of the ATF’s suspects in Glendale, Arizona.¹¹ Also, in July 2010 a Romanian AK-47

⁷ *Id.*

⁸ Email from Group Supervisor David Voth to Group VII. May 3, 2010. (Attachment 4)

⁹ Phoenix Group VII, Operation Fast and Furious. (Attachment 5)

¹⁰ Email from Senior Firearms Program Specialist to Group VII Agent. June 17, 2010. (Attachment 6)

¹¹ Email: Suspect Person Activity Report. March 18, 2010. (Attachment 7)

variant—the same model found at the scene of Agent Terry’s death—was recovered in Navojoa, Mexico.¹²

In light of this evidence, the Justice Department’s denials simply don’t hold water. On February 4, 2011, the Department claimed that the ATF did not “knowingly” allow the sale of assault weapons to straw purchasers and that “ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation into Mexico.”¹³ Clearly those statements are not accurate. These documents establish that ATF allowed illegal firearm purchases by suspected traffickers in hopes of making a larger case against the cartels. ATF was not alone. The U.S. Attorney’s office appears to have been fully aware and engaged in endorsing the same strategy.

Congress needs to get to the bottom of this.

After close of business last night, I received a one-page response to my letters of February 9 and 16.¹⁴ The response asks that I direct to the Inspector General any individuals who believe they have knowledge of misconduct by Department employees. You should know that just after Agent Terry died in December, at least one whistleblower contacted the Office of Inspector General before contacting my office. Despite reporting the allegations multiple times by phone, Internet, and fax, no one contacted the whistleblower until after my staff contacted the Acting Inspector General directly on February 1.

I have received no documents in response to my February 16, 2011, request. Last night’s DOJ reply cites the Justice Department’s “longstanding policy regarding pending matters” as a reason for withholding documents “relating to any ongoing investigation.”¹⁵ However, as you know, that policy is merely a policy. It is not mandated by any binding legal authority.

There are many instances where the Justice Department and its components choose to provide information about pending investigations to Congress. These examples are not always officially documented, but often occur when there are particularly egregious allegations of government misconduct or there is an extremely high level of public interest in an investigation. Getting to the truth of the ATF whistleblower allegations in this case is extremely important to the family of Brian Terry and should be important to all Americans. There is no reason to wait the unknown number of years it might take for all of the trials and all of the appeals to be exhausted. The time for truth is now.

¹² Email from ATF Violent Crime Analysis Branch and Group VII Agents, detailing a weapon recovery in Mexico. August 6, 2010. (Attachment 8)

¹³ Letter from the Department of Justice to Senator Grassley. February 4, 2011. (Attachment 9)

¹⁴ Letter from the Department of Justice to Senator Grassley. March 2, 2011. (Attachment 10)

¹⁵ *Id.*

In addition to providing the documents I previously requested, please explain how the denials in the Justice Department's February 4, 2011 letter to me can be squared with the evidence.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

cc:

The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation

The Honorable Alan D. Bersin
Commissioner
United States Customs and Border Protection

United States Senate

WASHINGTON, DC 20510

March 4, 2011

Via Electronic Transmission

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Melson:

Due to my inquiry into the ATF's Operation Fast and Furious, I am concerned that the ATF may have employed the same risky strategy of encouraging weapons trafficking that was employed elsewhere by the ATF, beyond the Phoenix Field Office and its Operation "Fast and Furious."

As you know, U.S. Immigration and Customs Enforcement (ICE) Agent Jaime Zapata was murdered in Mexico on February 15. According to a press report based on an unnamed source, the weapon used to kill Zapata "was shipped through Laredo with the possible knowledge of the ATF," and "the feds were already investigating the suspects when the gun was sent to Mexico."¹ According to another report in the Dallas Morning News:

In North Texas . . . ATF agents were conducting another Project Gunrunner surveillance operation involving brothers Otilio and Ranferi Osorio. ATF and Drug Enforcement Administration officials organized the November undercover transfer of about 40 weapons believed to be destined for a Mexican drug cartel. When Immigration and Customs Enforcement Agent Jaime Zapata was gunned down Feb. 15 in Mexico, ballistics tests and a partial serial number linked one weapon used in the shooting to Otilio Osorio.²

In its March 1 press release announcing the arrest of the Osorio brothers as well as their next-door neighbor Kelvin Morrison, the Department of Justice (DOJ) confirmed that all three men were being investigated by the ATF as early as last November. Prior to the 40 weapons referenced above being confiscated in Laredo, the Osorio brothers and Morrison provided the guns to an ATF confidential informant in Dallas in a meeting set up by the ATF. After the delivery of the illegal weapons, the three men were stopped by local police. Why were these traffickers not thereafter arrested in November?

¹ Terry Wallace, "ATF: Gun in US agent's death traced to Texas man," *Associated Press*, February 28, 2011.

² "Federal gun-smuggling surveillance program backfires," *Dallas Morning News*, March 3, 2011.

Naturally, this raises questions about whether the ATF strategy of allowing straw purchasers to continue to operate in hopes of making bigger cases may have contributed to the shooting of ICE Agent Jaime Zapata. Please provide written answers to the following questions:

- (1) Although the gun used in the assault on Agent Zapata that has been traced back to the U.S. was purchased on October 10, 2010, how can we know that it did not make its way down to Mexico after the November investigation, when the arrest of these three criminals might have prevented the gun from being trafficked and later used to murder Agent Zapata?
- (2) When did law enforcement first become aware that Morrison purchased the gun?
- (3) Given that the likely recipients of any trafficked guns were so close to the border, did any ATF personnel raise concerns about the possibility of those guns being used against U.S. law enforcement? If so, how did the ATF address those concerns?
- (4) Did any ATF personnel raise concerns about the wisdom of allowing individuals like the Osorio brothers or Morrison to continue their activities after the November weapons transfer? If so, how did the ATF address those concerns?

In addition to answering those questions, please provide all records relating to:

- (5) When law enforcement officials first became aware of the trafficking activities of Otilio and Ranferi Osorio and Kelvin Morrison;
- (6) Surveillance that may have been conducted on the Osorio brothers or Morrison prior to the November transfer of weapons between the ATF's confidential informant and the Osorio brothers and Morrison;
- (7) The November transfer; and
- (8) Any surveillance that law enforcement continued to conduct on the Osorio brothers or Morrison after the November transfer.

Please contact my staff no later than March 7, 2011 to schedule a briefing on this matter. Should you have any questions regarding this letter, please contact Tristan Leavitt at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

United States Senate

WASHINGTON, DC 20510

March 4, 2011

Via Electronic Transmission

The Honorable Alan D. Bersin
Commissioner
United States Customs and Border Protection
1300 Pennsylvania Avenue, N.W.
Washington, DC 20528

Dear Commissioner Bersin:

As you know, I am investigating the connection between the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation “Fast and Furious” and the firefight on December 14, 2010 that claimed the life of Customs and Border Protection (CBP) Border Patrol Tactical Unit (BORTAC) Agent Brian Terry. Terry’s attackers were apparently armed with assault rifles originally purchased as part of ATF’s Operation Fast and Furious. The BORTAC unit used thermal binoculars to identify the rifles and demanded that the suspected aliens drop their weapons. Yet, according to an affidavit filed by the FBI, even after the aliens refused to disarm themselves, the BORTAC unit was under standing orders to first use non-lethal bean bag rounds.¹ The aliens responded with gunfire, and Agent Terry was killed in the ensuing exchange.

It’s difficult to understand why CBP would require its agents to use less-than-lethal force against people who are clearly armed and dangerous. Further, Agent Brian Terry’s brother, Kent Terry, has said that of the four individuals in the BORTAC unit, only two were armed with standard firearms at all. Two carried *only* bean bag guns. These agents did not even have the means to defend themselves.

Please provide copies of all records relating to:

- (1) CBP’s policy on the use of force in circumstances such as those Brian Terry reportedly faced, and
- (2) Any change to that policy in the last two years.

¹ Affidavit of FBI Agent Scott Hunter, December 29, 1020, Case No. 10-10251M. (Attachment 1)

In addition, please contact my staff no later than March 7, 2011 to schedule a briefing on this matter. Should you have any questions regarding this letter, please contact Tristan Leavitt at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

cc: The Honorable Janet Napolitano
Secretary
United States Department of Homeland Security
301 7th Street, N.W.
Washington, DC 20528

United States Senate

WASHINGTON, DC 20510

March 4, 2011

Via Electronic Transmission

The Honorable Hillary Rodham Clinton
Secretary
U.S. Department of State
Harry S. Truman Building
2201 C Street, NW
Washington, DC 20520

Dear Secretary Clinton:

Over the past month I have been investigating the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner initiative. According to several agents, ATF leadership encouraged gun dealers to engage in sales of multiple assault weapons to individuals suspected of illegally purchasing for resale to Mexican cartels. I am looking into the connection between Operation Fast and Furious and the firefight on December 14, 2010 that claimed the life of CBP Agent Brian Terry.

I understand that Assistant Attorney General Lanny Breuer, his deputy, and other officials met in Mexico City in the summer of 2010 to discuss “on-going investigations” related to Project Gunrunner with the U.S. Ambassador to Mexico. Accordingly, please provide all records relating to any such meeting that may have occurred from June through September 2010, to include meeting minutes, briefing notes, emails, or cables.

I would appreciate a response no later than March 11, 2011. If you have any questions about this request, please contact Jason Foster at (202) 224-5225. Thank you for your prompt attention to this important matter.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary