

# United States Senate

WASHINGTON, DC 20510

March 4, 2011

## Via Electronic Transmission

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.<sup>1</sup> 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.

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<sup>1</sup> 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

# Attachment 1

UNITED STATES DISTRICT COURT  
District of Arizona

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

SEARCH WARRANT

Manuel Osorio-Arellanes (head hairs)

Case Number:

10-10251M

TO: Special Agent (SA) Scott Hunter/FBI and any Authorized Officer of the United States  
Affidavit having been made before me by affiant, Special Agent (SA) Scott Hunter, who has reason to believe that /X  
/ on the person of or /\_/ on the premises known as:

Manuel Osorio-Arellanes (head hairs)

in the District of Arizona there is now concealed a certain person or property namely (describe the person or property)

SEE AFFIDAVIT attached hereto and incorporated herein

which is (give alleged grounds for search and seizure under Rule 41(b) of the Federal Rules of Criminal Procedure)

- property that constitutes evidence of the commission of a criminal offense;
- contraband, the fruits of crime, or things otherwise criminally possessed;
- property designed or intended for use or which is probable cause, or who is unlawfully restrained
- a person for whose arrest there is probable cause, or who is unlawfully restrained.

in violation of Title 18, United States Code, Section 1114.

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before

Jan. 2, 2011  
Date

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime 6:00 a.m. to 10:00 p.m.) (~~at any time in the day or night as I find reasonable cause has been established~~) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to

D. THOMAS FERRARO

as required by law.

United States Judge or Magistrate Judge

Dec 29 2010 at 1:03 p.m.

Date and Time Issued

U.S. MAGISTRATE JUDGE  
D. THOMAS FERRARO

Name and Title of Judicial Officer

*[Signature]*

City and State

Signature of Judicial Officer

# RETURN

DATE WARRANT RECEIVED 12/29/10	DATE AND TIME WARRANT EXECUTED 1/4/11 1030am	COPY OF WARRANT AND RECEIPT FOR ITEMS LEFT WITH MANUEL OSORIO-ARELLANES
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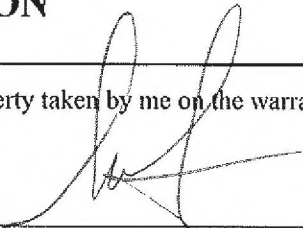
INVENTORY MADE IN THE PRESENCE OF  
SA JON EDWARDS & MANUEL OSORIO-ARELLANES

INVENTORY OF PERSON OR PROPERTY TAKEN PURSUANT TO THE WARRANT

1 - ENVELOPE CONTAINING COMBED HAIRS  
1 - ENVELOPE CONTAINING PULLED HAIRS

## CERTIFICATION

I swear that this inventory is a true and detailed account of the person or property taken by me on the warrant.

  
\_\_\_\_\_

Subscribed, sworn to, and returned before me this date.

  
\_\_\_\_\_

U.S. JUDGE OR MAGISTRATE JUDGE

DATE

1/5/11

UNITED STATES DISTRICT COURT  
District of Arizona

In the Matter of the Search of  
(Name, address or brief description of person or property to be searched)

APPLICATION AND AFFIDAVIT  
FOR SEARCH WARRANT

Manuel Osorio-Arellanes (head hairs)

Case Number: 10-10251M

I, Special Agent Scott Hunter, being duly sworn depose and say:

I am a Special Agent (SA) Scott Hunter with the Federal Bureau of Investigation and have reason to believe that /X/ on the person of or /  / on the premises known as (name, description and/or location)

Manuel Osorio-Arellanes (head hairs)

in the District of Arizona there is now concealed a certain person or property, namely, (describe the person or property)

SEE AFFIDAVIT attached hereto and incorporated herein

which is (give alleged grounds for search and seizure under Rule 41(b) of the Federal Rules of Criminal Procedure)

- XX property that constitutes evidence of the commission of a criminal offense;
- contraband, the fruits of crime, or things otherwise criminally possessed;
- property designed or intended for use or which is probable cause, or who is unlawfully restrained
- a person for whose arrest there is probable cause, or who is unlawfully restrained..

in violation of Title 18, United States Code, Section 1114. The facts to support the issuance of a Search Warrant are as follows:

See attached Affidavit incorporated by reference herein

Continued on the attached sheet and made a part hereof.  Yes  No

Reviewed by AUSA [Signature]

Signature of Affiant

Sworn to before me, and subscribed in my presence

Date Dec 29, 2010  
U.S. MAGISTRATE JUDGE  
D. THOMAS FERRARO

at

[Signature]  
City and State

Name and Title of Judicial Officer

[Signature]  
Signature of Judicial Officer

## Affidavit

I am a Special Agent (SA) of the Federal Bureau of Investigation (FBI). I have been a Special Agent since January 1999. I am currently assigned to a Violent Crime squad, with the majority of my cases being on the Indian Reservation investigations.

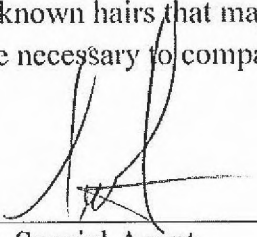
The statements contained in this affidavit are based on information provided by employees of the FBI and other law enforcement agencies, and on my experience and background as a Special Agent of the FBI. I have not included each and every fact known to me concerning this investigation.

On 12/14/2010, at approximately 11:15 pm, four United States Border Patrol Agents attempted to apprehend at least five suspected illegal aliens in Peck Canyon, which is located in Rio Rico, Arizona. One of the Border Patrol Agents, utilizing thermal binoculars, observed at least two of the suspected aliens carrying rifles. When the group of suspected aliens was near the Border Patrol Agents' location, at least one Border Patrol Agent identified himself as police and ordered the suspected aliens to drop their weapons. When the suspected aliens did not drop their weapons, two Border Patrol Agents deployed "less than lethal" bean bags at the suspected aliens. At this time, at least one of the suspected aliens fired at the Border Patrol Agents. Two Border Patrol Agents returned fire, one with his long gun, and one with his pistol.

Border Patrol Agent Brian Terry was shot with one bullet, and died shortly after. One of the suspected illegal aliens, later identified as Manuel Osorio-Arellanes, was also shot. On 12/16/2010, Osorio-Arellanes was interviewed by FBI Agents. Osorio-Arellanes was read his Miranda rights before he was interviewed, and agreed to talk to the FBI Agents without an attorney present. Osorio-Arellanes stated that he was traveling with four individuals. All of the individuals were armed, to include Osorio-Arellanes. Osorio-Arellanes stated that he had raised his weapon towards the Border Patrol Agents, but he did not fire because he had realized that they were Border Patrol Agents. At this time, he was shot.

Some of the evidence collected at the shooting crime scene included five backpacks, three gloves, two sweatshirts, a pullover, a jacket, a knit hat, a baseball cap, and a razor. The FBI Laboratory will conduct trace examinations for hairs and fibers on these items. The trace examiners need known hairs to compare to any unknown hairs that may be found on these items. Head hairs taken from Osorio-Arellanes are necessary to compare with any hairs that may be found on the clothing items.

by combing and pulling out

  
 Scott Hunter, Special Agent  
 Federal Bureau of Investigation

10-10251M

Sworn to and subscribed before me this 29<sup>th</sup> day of December, 2010, in Tucson, Arizona



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Hon. D. Thomas Ferraro  
United States Magistrate Judge