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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
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April 13, 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:

At approximately 1:30 p.m. yesterday, my staff learned that the Justice Department was making four documents available at 2:00 pm for Chairman Darrell Issa's staff to review regarding the controversy over ATF's Project Gunrunner, Operation Fast and Furious, and the death of Border Patrol Agent Brian Terry. These documents are among those I requested in February of this year. Yet, the Justice Department refused to make them available for my staff to review. In fact, the Justice Department has produced not one single page of documents in response to my inquiries.

Thus far, I have not requested that Chairman Leahy join in any document requests, consider any subpoenas, or schedule any hearings into this matter in the Senate Judiciary Committee. Any such request would be unnecessary and duplicative of the process on the House side, so long as any documents provided there are also provided to the Senate Judiciary Committee at the same time.

The Department's failure to cooperate with my requests is especially troubling in light of the February 4, 2011, reply to my initial letter. In that reply, the Justice Department took the position that those allegations were "false" and specifically denied "that ATF 'sanctioned' or otherwise knowingly allowed the sale of assault weapons" to straw purchasers. The letter further claimed that "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."

I already provided evidence contradicting that denial in my February 9 and March 3 letters. In addition, attached you will find further documentation undermining the Department's assertion. Specifically, the documents are emails between ATF officials and a Federal Firearms Licensee (FFL) in Arizona. These emails demonstrate that ATF instructed gun dealers to engage in suspicious sales despite the dealers'

concerns. The emails refer to meetings between the FFL and the U.S. Attorney's office to address the concerns being raised by the FFL. ATF supervisor David Voth wrote on April 13, 2010:

I understand that the frequency with which some individuals under investigation by our office have been purchasing firearms from your business has caused concerns for you. ... However, if it helps put you at ease we (ATF) are continually monitoring these suspects using a variety of investigative techniques which I cannot go into [in] detail.¹

In response, the gun dealer expresses concern about potential future liability and sought something in writing to address the issue explicitly:

For us, we were hoping to put together something like a letter of understanding to alleviate concerns of some type of recourse against us down the road for selling these items. We just want to make sure we are cooperating with ATF and that we are not viewed as selling to bad guys.²

Following this email, the ATF arranged a meeting between the FFL and the U.S. Attorney's office. According to the FFL, the U.S. Attorney's office scheduled a follow-up meeting with the FFL, but asked that the FFL's attorney not be present.³

At the meeting on May 13, 2010, the U.S. Attorney's office declined to provide anything in writing but assured the gun dealer in even stronger terms that there were safeguards in place to prevent further distribution of the weapons after being purchased from his business.⁴ As we now know, those assurances proved to be untrue. On June 17, 2010, the gun dealer wrote to the ATF to again express concerns after seeing a report on Fox News about firearms and the border:

The segment, if the information was correct, is disturbing to me. When you, [the Assistant U.S. Attorney], and I met on May 13th, I shared my concerns with you guys that I wanted to make sure that none of the firearms that were sold per our conversation with you and various ATF agents could or would ever end up south of the border or in the hands of the bad guys. ... I want to help ATF with its investigation but not at the risk of agents' safety because I have some very close friends that are U.S. Border Patrol agents in southern AZ[.]⁵

¹ Email from ATF Group VII Supervisor David Voth to Cooperating FFL, Apr. 13, 2010 (Attached).

² Email from Cooperating FFL to ATF Group VII Supervisor David Voth, Apr. 13, 2010 (Attached).

³ Telephone interview with Cooperating FFL, Apr. 5, 2011.

⁴ *Id.*

⁵ Email from Cooperating FFL to ATF Group VII Supervisor David Voth, Jun. 17, 2010 (Attached).

Incredibly, the FFL sent this email six months before guns from the same ATF operation were found at the scene of Border Patrol Agent Brian Terry's murder. So, not only were the ATF agents who later blew the whistle predicting that this operation would end in tragedy, so were the gun dealers—even as ATF urged them to make the sales.

Furthermore, according to the FFL, there were “one or two” occasions on which his employees actually witnessed and recorded with surveillance cameras an exchange of money between the straw purchaser and another individual on the premises.⁶ Despite this actual knowledge of a straw purchase, the dealer said ATF officials wanted him to proceed with the transaction.⁷ However, his employees refused to process the sale.⁸

In light of this new evidence, the Justice Department's claim that the ATF never knowingly sanctioned or allowed the sale of assault weapons to straw purchasers is simply not credible. As you know, I have multiple document and information requests pending with various components of the Justice Department. Unfortunately, however, it appears that senior Department officials are not allowing the components to respond fully and directly.

Please provide written answers to the following questions by no later than April 20, 2011:

1. Do you stand by the assertion in the Department's reply that the ATF whistleblower allegations are “false” and specifically that ATF did not sanction or otherwise knowingly allow the sale of assault weapons to straw purchasers? If so, please explain why in light of the mounting evidence to the contrary.
2. Will you commit to providing the Senate Judiciary Committee with documents, or access to documents, simultaneously with the House Committee on Oversight and Government Reform? If not, please explain why not.

⁶ Telephone interview with Cooperating FFL, Apr. 5, 2011.

⁷ *Id.*

⁸ *Id.*

If you have any questions regarding this request, please have your staff contact Jason Foster at (202) 224-5225. Thank you for your prompt attention these important issues.

Sincerely,



Charles E. Grassley
Ranking Member

Attachment

cc: Chairman Patrick Leahy
U.S. Senate Committee on the Judiciary

Chairman Darrell Issa
U.S. House Committee on Oversight and Government Reform

Ongoing ATF investigation

6 messages

ATF [redacted] @usdoj.gov> Tue, Apr 13, 2010 at 9:24 AM

To: Cooperating FFL [redacted]

Cc: ATF Agent [redacted] @usdoj.gov>, ATF Agent [redacted] @usdoj.gov>, Cooperating FFL [redacted]

I understand that the frequency with which some individuals under investigation by our office have been purchasing firearms from your business has caused concerns for you. I totally understand and am not in a position to tell you how to run your business. However, if it helps put you at ease we (ATF) are continually monitoring these suspects using a variety of investigative techniques which I cannot go into detail. We are working in conjunction with the United States Attorney's Office (Federal Prosecutors) to secure the most comprehensive case involving the different facets of this organization. If it puts you at ease I can schedule a meeting with the Attorney handling the case and myself to further discuss this issue. Just know that we cannot instruct you on how to run your business but your continued cooperation with our office has greatly aided the investigation thus far.

Thanks again and please let me know how I can be of service to you.

Respectfully,

ATF

Group Supervisor

Phoenix Group VII

602-[redacted]

Cooperating FFL [redacted] Tue, Apr 13, 2010 at 1:29 PM

To: ATF [redacted] @usdoj.gov>

Cc: Cooperating FFL [redacted] ATF Agent [redacted] @usdoj.gov>, ATF Agent [redacted] @usdoj.gov>, Cooperating FFL [redacted]

ATF

Let me start by saying thank you for the email and as always we will do what we can to continue to work with you and the ATF on Project Gun Runner. Our goal is to develop a system to get you (ATF) what you need in the most efficient manner possible. For us, we were hoping to put together something like a letter of understanding to alleviate concerns of some type of recourse against us down the road for selling these items.

We just want to make sure we are cooperating with ATF and that we are not viewed as selling to bad guys. If you and the case Attorney are free to meet some time this week or next, that would be great. I am out of town Friday of this week and have meetings Thursday afternoon but am open other than that and I am open next week. Please let me know what would work best for you.

Thank you again and I look forward to meeting.

Respectfully,

Cooperating FFL

[Redacted signature block]

[Redacted block]

[Redacted block]

Mail Delivery Subsystem <mailer-daemon@googlemail.com>

Tue, Apr 13, 2010 at 1:29 PM

To: [Redacted]

Delivery to the following recipient failed permanently:

[Redacted recipient address]

Technical details of permanent failure:

Message rejected. Please visit http://www.google.com/mail/help/bulk_mail.html to review our Bulk Email Senders Guidelines.

[Redacted block]

[Redacted block]

From: Cooperating FFL
 To: ATF [REDACTED]
 Cc: Cooperating FFL [REDACTED] ATF Agent [REDACTED]@usdoj.gov>, ATF Agent [REDACTED]@usdoj.gov>, ATF Agent [REDACTED]@usdoj.gov>, Cooperating FFL [REDACTED]

ATF

Let me start by saying thank you for the email and as always we will do what we can to continue to work with you and the ATF on Project Gun Runner. Our goal is to develop a system to get you (ATF) what you need in the most efficient manner possible. For us, we were hoping to put together something like a letter of understanding to alleviate concerns of some type of recourse against us down the road for selling these items. We just want to make sure we are cooperating with ATF and that we are not viewed as selling to bad guys. If you and the case Attorney are free to meet some time this week or next, that would be great. I am out of town Friday of this week and have meetings Thursday afternoon but am open other than that and I am open next week. Please let me know what would work best for you.

Thank you again and I look forward to meeting.

Respectfully,

Cooperating FFL

[REDACTED]

Tue, Apr 13, 2010 at 1:31 PM

----- Forwarded message -----

From: Cooperating FFL
Date: Tue, Apr 13, 2010 at 1:29 PM
Subject: Re: Ongoing ATF investigation
To: ATF @usdoj.gov
Cc: Cooperating FFL, ATF Agent @usdoj.gov, ATF Agent @usdoj.gov, ATF Agent @usdoj.gov, ATF Agent @usdoj.gov, Cooperating FFL

[REDACTED]

ATF @usdoj.gov Thu, Apr 15, 2010 at 9:23 AM
To: Cooperating FFL
Cc: Cooperating FFL, ATF Agent @usdoj.gov, ATF Agent @usdoj.gov, ATF Agent @usdoj.gov

Cooperating FFL

We at ATF consider Cooperating FFL to be our ally in Project Gunrunner SWB Initiative and appreciate your cooperation with us in regards to this (and all) law enforcement matters. I have inquired from the Assistant United States Attorney (AUSA) handling this case as to his availability to meet with you next week. He is checking his schedule and I expect to hear from him soon.

Thanks again and please contact me any time with questions or concerns,

ATF

Group Supervisor

Phoenix Group VII

602- [REDACTED]

From: Cooperating FFL [REDACTED]
Sent: Tuesday, April 13, 2010 1:30 PM
To: ATF [REDACTED]
Cc: Cooperating FFL [REDACTED]; ATF Agent [REDACTED]; ATF Agent [REDACTED]; ATF Agent [REDACTED]; Cooperating FFL [REDACTED]
Subject: Re: Ongoing ATF investigation

ATF

[REDACTED]

Cooperating FFL [REDACTED] Thu, Apr 15, 2010 at 10:39 AM
To: ATF [REDACTED] <[REDACTED]@usdoj.gov>
Cc: Cooperating FFL [REDACTED]; ATF Agent [REDACTED] <[REDACTED]@usdoj.gov>; ATF Agent [REDACTED] <[REDACTED]@usdoj.gov>; ATF Agent [REDACTED] <[REDACTED]@usdoj.gov>

ATF

Thank you for the kind words and the continued support. We will continue handling the transactions as we have in the past until we meet. If there is anything you need in the interim please don't hesitate to ask.

See you soon.

Respectfully,

Cooperating FFL [REDACTED]

[REDACTED]

[REDACTED]

2/14/2011

Fox News report

3 messages

Cooperating FFL

To: ATF <[redacted]@usdoj.gov>

Thu, Jun 17, 2010 at 11:56 AM

ATF

I hope this email finds you well.

As per our discussion about over communicating I wanted to share some concerns that came up. Tuesday night I watched a segment of a Fox News report about firearms and the border. The segment, if the information was correct, is disturbing to me. When you, Emory and I met on May 13th I shared my concerns with you guys that I wanted to make sure that none of the firearms that were sold per our conversation with you and various ATF agents could or would ever end up south of the border or in the hands of the bad guys. I guess I am looking for a bit of reassurance that the guns are not getting south or in the wrong hands. I know it is an ongoing investigation so there is limited information you can share with me. But as I said in our meeting, I want to help ATF with its investigation but not at the risk of agents safety because I have some very close friends that are US Border Patrol agents in southern AZ as well as my concern for all the agents safety that protect our country. If possible please email me back and share with me any reassurances that you can.

As always thank you for your time and I send this email with all respect and a hart felt concern to do the right thing.

Respectfully,

Cooperating FFL

[redacted signature block]

[redacted signature block]

ATF

To: Cooperating FFL <[redacted]@usdoj.gov>

Fri, Jun 18, 2010 at 2:25 PM

Cooperating FFL

Thanks for reaching out to me with your concerns. I would be happy to stop by and speak with you. If possible I have [redacted] next Tuesday, June 22, 2010. Any chance you are available that day around 10:00-10:30 am?

Thanks,

ATF

From: [redacted] Cooperating FFL
Sent: Thursday, June 17, 2010 11:56 AM
To: ATF
Subject: Fox News report

[redacted]

Cooperating FFL
Reply-To: Cooperating FFL
To: ATF <[redacted]@usdoj.gov>

Mon, Jun 21, 2010 at 9:34 PM

ATF

I am back intown. If you are still free to meet on the 22nd [redacted] around 10 and there for a few hours. Please stop by if you are available, if not let me know when we can reschedule.

Thank you,

Cooperating FFL

Sent from my Verizon Wireless BlackBerry

From: ATF <[redacted]@usdoj.gov>
Date: Fri, 18 Jun 2010 17:25:25 -0400
To: Cooperating FFL
Subject: RE: Fox News report

[redacted]

[redacted]