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Justice Department Accused of ‘Reckless Technique’

New York Times – Ginger Thompson

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WASHINGTON — In a report issued Tuesday by two powerful Republicans in Congress, the Justice Department was accused of conducting an operation that allowed nearly 1,000 guns to flow illegally into Mexico, including two that were eventually found at the scene of the murder of an American Border Patrol agent.

The report, by Senator Charles E. Grassley of Iowa and Representative Darrell Issa of California, said the 2009 operation in Arizona by the Bureau of Alcohol, Tobacco, Firearms and Explosives, called Fast and Furious, was intended to shift the focus of enforcement efforts toward criminal organizations south of the border and away from straw purchasers who knowingly buy guns for others.

The legislators criticized the effort as using what they described as a “reckless investigative technique that street agents call ‘gun-walking.’ ” The technique involved long periods of surveillance in which agents watched loads of legally bought weapons move from straw purchasers to third parties, hoping that the transactions would lead them to bigger criminal targets.

Instead, the legislators said, guns were routinely lost, and fewer than two dozen people were ultimately arrested — all of them accused of being straw purchasers. The legislators say A.T.F. agents were routinely ordered to stand down rather than interdict guns from people they suspected of trafficking weapons.

“With the clinical precision of a lab experiment, the Justice Department kept records of weapons they let walk and the crime scenes where they next appeared,” Mr. Issa said. “To agents’ shock, preventing loss of life was not the primary concern.”

Law enforcement officials aware of the operation said surveillance was commonly used in fighting organized crime. They said gun ownership was such an ingrained part of the culture in Arizona, where it is not illegal to buy multiple weapons at a time, that it is difficult to tell straw purchasers from legal ones without conducting surveillance to determine how the guns were being used.

But they said the A.T.F., which has long complained of being understaffed and underfinanced, was simply unable to keep up with the weapons, particularly once they crossed the border.

Justice Department officials said Attorney General Eric H. Holder Jr. had asked for an investigation into the operation.

“The attorney general takes the allegations that have been raised by some A.T.F. agents about the Fast and Furious operation seriously,” a department spokeswoman, Tracy Schmalzer, said in a statement. “The department has also made clear to law enforcement agencies and prosecutors working along the southwest border that under no circumstances should guns be allowed to cross the border into Mexico.”

The operation, first made public in April, has threatened to plunge the already beleaguered A.T.F. into its worst crisis since the 1993 raid on the Branch Davidian compound outside Waco, Tex.

The Congressional report, which will be discussed Wednesday at a hearing before the House Committee on Oversight and Government Reform, said the operation had polarized the agency. It quoted a handful of unidentified agents who

talked about the uneasiness they felt while watching guns get away and sometimes being ordered to turn a blind eye.

“I mean, first or second day, you are starting to question why we aren’t doing this,” one agent said, explaining how he felt when supervisors ordered him not to interdict dozens of weapons bought in a single week by a known straw purchaser. “By the end of the week, it was frustration already as to how many guns we have watched these guys get away with.”

Some of those agents blew the whistle to Congress this year after two such guns were found at the scene of the murder of the Border Patrol agent, Brian A. Terry. An official with knowledge of the investigation said that neither the bullet that killed Mr. Terry in December nor the casings found at the scene had been linked to the weapons that were recovered there.

The official emphasized that “the murder weapon has not been discovered.”

An internal memorandum prepared in January by the United States Attorney’s Office in Arizona lays out the difficulty in catching straw purchasers. It describes the A.T.F.’s surveillance of a suspect named Jaime Avila Jr., who bought the two guns found where Mr. Terry was killed.

According to the memo, Mr. Avila made his first gun purchases more than a year before Mr. Terry’s death. He bought five pistols in November 2009 in the company of a suspected trafficker, at which time the A.T.F. entered his name into its system as a possible straw buyer. He bought five AK-47-style rifles less than a month later, which fueled more suspicions by the agency but was not enough for it to take action.

Mr. Avila bought five more guns less than a month later.

In that case, Border Patrol agents, conducting a routine traffic stop, discovered the guns in the back of a car driven by a different man. Still, because the agents did not witness any illegal activity, they allowed the driver to leave with the weapons and did not report seeing the guns to the A.T.F. until months later.

The divisions in Americans’ attitudes toward guns in general came to life in Congress this week. A day before the report on the A.T.F. operation, two Democratic senators, Dianne Feinstein of California and Charles E. Schumer of New York, issued a report that attributed the bulk of the problem of gun trafficking to laws, or the lack of them, rather than law enforcement.

In a statement, Mrs. Feinstein said, “Congress has been virtually moribund while powerful Mexican drug trafficking organizations continue to gain unfettered access to military-style firearms coming from the United States.” She pointed out that numerous studies had shown that as much as 70 percent of the firearms recovered from crime scenes in Mexico were traced to the United States.

She and Mr. Schumer recommended new measures, including requiring background checks for firearm purchases at private gun shows. They also urged the Obama administration to order gun stores to report people who buy multiple firearms within a month.

Marc Lacey contributed reporting from Phoenix.