

Congress of the United States

Washington, DC 20510

June 24, 2011

Via Electronic Transmission

The Honorable Janet Napolitano
Secretary
Department of Homeland Security
3801 Nebraska Avenue, N.W.
Washington, D.C. 20528

Dear Secretary Napolitano:

As you are aware, we are conducting a joint investigation into the program of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) known as Operation Fast and Furious. This case involved a special agent from an agency within your department, the U.S. Immigration and Customs Enforcement (ICE), who was assigned to ATF's Phoenix Group VII for deconfliction purposes and operated as a member of that group. Reportedly, this agent functioned as a co-case agent. In your testimony to Congress on March 9, you stated that you had no knowledge of this case. We need to know at what level and in what detail Operation Fast and Furious was briefed and authorized by officials in the Department of Homeland Security.

We have also been made aware of alleged incidents involving another agency within your Department, the U.S. Customs and Border Protection (CBP). In a March 16 letter to CBP Commissioner Alan Bersin, enclosed as an attachment, Senator Grassley requested information on whether CBP officials had the opportunity to seize weapons from straw purchasers yet were requested not to do so. The letter referenced two separate incidents in which CBP allegedly conducted traffic stops of individuals possessing firearms, yet received requests from either the ATF or the U.S. Attorney's Office for the District of Arizona to allow the individuals to proceed.

The first incident referred to in the letter involved a January 14, 2010 traffic stop of Blas Gutierrez and Miguel Carrillo, who were found to be in possession of eight weapons, including three AK-47-type pistols. The incident was detailed in a March 8, 2011 indictment of 11 defendants, including the Mayor and the Police Chief of Columbus, New Mexico, for conspiring to smuggle weapons from the United States into Mexico.¹ The second incident outlined in the letter involved Jaime Avila, whom CBP allegedly stopped in the spring or summer of 2010 in possession of over thirty weapons, including the two WASR-10 rifles which would later be found at the scene of Agent Brian Terry's murder.

¹ Indictment, *United States v. Villalobos*, No. 11-cr-487 (D.N.M. Mar. 8, 2011).

Although CBP officials briefed Senator Grassley's staff on March 17, 2011 they refused to provide any information related to the above issues. Instead, Commissioner Bersin later responded in an April 13 letter that "any CPB records relating to these individuals would be covered by the *Privacy Act of 1974*, Title 5 USC § 552a, which limits CBP's ability to provide information in response to this request."

On May 17, 2011 Commissioner Bersin and ICE Director John Morton appeared at a hearing before the Senate Judiciary Committee. Senator Grassley broadened his inquiry to ask Commissioner Bersin whether CBP agents had ever stopped *any* suspect with weapons near the border and were instructed by ATF or the U.S. Attorney's Office to let them go. Commissioner Bersin responded that he had no personal knowledge on that matter.

As you know, Congress is explicitly exempt from the Privacy Act. Specifically, Section 552a(b)(9) of the Privacy Act permits the Executive Branch to provide to Congress or a "committee or subcommittee thereof" information that would otherwise be protected by the Privacy Act. Therefore, we write to reiterate the above questions with reference to all of the agencies under your direction:

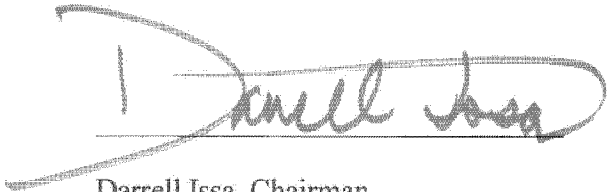
- (1) Which agency conducted the January 14, 2010 vehicle stops of Blas Gutierrez and Miguel Carrillo referenced in their March 8, 2011 indictment? Why were these individuals not arrested?
- (2) Did any agency under your direction stop Jaime Avila near the border at any time in 2009 or 2010? If so, why was Avila not arrested at that time? Did the ATF or any U.S. Attorney's Office request at the time of the stop(s) that Avila be allowed to proceed without having his weapons seized?
- (3) Has any agency under your direction ever stopped *any* suspects with weapons near the border but received direction from the ATF or any U.S. Attorney's Office to let them go? If so, please explain each incident in detail.

Additionally, please provide the following:

- (4) The serial numbers of all weapons from September 2009 to the present that any agency under your direction encountered but did not seize along the U.S.-Mexico border.

Please provide this information, including the requested documentation, no later than July 8, 2011. If you have any questions regarding this request, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner in Chairman Issa's office at (202) 226-5049. We look forward to receiving your response.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight & Government Reform
U.S. House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
U.S. Senate

Attachment

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight & Government Reform
U.S. House of Representatives,

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
U.S. Senate

Attachment

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WASHINGTON, DC 20510-6275

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March 16, 2011

Via Electronic Transmission

The Honorable Alan D. Bersin
Commissioner
U.S. Customs and Border Protection
U.S. Department of Homeland Security
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Dear Commissioner Bersin:

Since January, 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 weapons to individuals suspected of illegally purchasing them for resale to Mexican cartels. Specifically, I am seeking information on whether CBP officials had an opportunity to seize weapons from straw purchasers on two specific occasions.

First, on March 8, 2011, federal authorities indicted 11 defendants, including the Mayor and the Police Chief of a small town in New Mexico, for conspiring to smuggle weapons from the United States into Mexico.¹ According to the indictment, on January 14, 2010, Blas Gutierrez and Miguel Carrillo were pulled over near the border and were found in possession of eight weapons, including three AK-47-type pistols.² Also according to the indictment, two of the weapons were later smuggled to Mexico, where they were found this month, March 2011.³ I understand that CBP may have been the agency that conducted the vehicle stop referenced in the indictment and that some of the weapons may have been connected to Operation Fast and Furious. However, CBP allegedly let the individuals go, perhaps because it failed to determine that the weapons or individuals were connected to ATF operation at the time of the vehicle stop.

Second, CBP officials allegedly stopped Jaime Avila near the border in the spring or summer of 2010. He allegedly had the two WASR-10 rifles in his possession that were later found at the scene of Agent Brian Terry’s murder, along with over thirty additional weapons. CBP officials contacted ATF or an Assistant United States Attorney who allegedly instructed CBP to allow Avila proceed without seizing the weapons.

¹ Indictment, filed March 8, 2011, *United States v. Villalobos*, Case 2:11-cr-00487. (Attachment 1)

² *Id.* at 3.

³ *Id.*

In order to ascertain the extent to which these accounts are accurate, please ensure that CBP officials are prepared to answer questions about these two incidents in addition to questions about the use of force policy at the staff briefing scheduled for this Friday. If you have any questions about this request, please contact Brian Downey at (202) 224-5225. Thank you for your prompt attention to this important matter.

Sincerely,



Charles E. Grassley
Ranking Member

Attachment