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June 22, 2011

Ms. Cynthia A. Schnedar
Acting Inspector General
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Acting Inspector General Schnedar:

I write to ensure that the ongoing Department of Justice (DOJ) Office of Inspector General (OIG) investigation into Operation Fast and Furious is being conducted free from any political and other improper considerations. Because (1) Fast and Furious may have been inspired by guidance published by your office; (2) your office took no action in response to concerns expressed by an ATF agent in December 2010; and, (3) you may be seeking the position of permanent Inspector General (IG), your investigation of Fast and Furious appears susceptible to improper influence.

To address the appearance that your investigation of Fast and Furious could be unduly influenced by your career aspirations, I request that you refrain from pursuing the position of full-time IG at the justice department.

1. An OIG report may have inspired Fast and Furious.

In September 2009, your office released an interim report questioning ATF's implementation of Project Gunrunner.¹ Operation Fast and Furious began in the fall of 2009, as a part of Project Gunrunner. A final report issued in November 2010 was equally critical of ATF's strategy.² The report found "weaknesses in how ATF implemented Project Gunrunner."³ It stated:

Although . . . ATF has increased some program activities during Project Gunrunner, ATF's focus remains largely on inspections of gun dealers and

¹ See DOJ OIG, *Interim Review of ATF's Project Gunrunner*, Report I-2009-006 (Sept. 2009), available at <http://www.justice.gov/oig/reports/ATF/e0906.pdf> (last visited Jun. 21, 2011).

² See DOJ OIG, *Review of ATF's Project Gunrunner, Evaluation and Inspections*, Report I-2011-001 (Nov. 2010), available at <http://www.justice.gov/oig/reports/ATF/e1101.pdf> (last visited Jun. 21, 2011) (hereinafter OIG Report).

³ *Id.* at v.

investigations of straw purchasers, rather than on high-level traffickers, smugglers, and the ultimate recipients of trafficked guns.

For example, we found that 68 percent of Project Gunrunner cases are single-defendant cases, and some ATF managers discourage field personnel from conducting the types of complex conspiracy investigations that target higher-level members of trafficking rings. . . .⁴

The report laments how cases brought against straw purchasers are difficult to prove and do not carry stringent penalties.⁵ It states that the Federal Sentencing Guidelines categorize straw-purchasing-related crimes as lesser offenses.⁶

ATF officials cited this report as one of the factors that prompted the shift to a riskier strategy of allowing guns to be trafficked rather than arresting straw buyers.⁷ Knowledge that a report published by your office led to a change in strategy which resulted in increased violence may hamper your ability to make findings critical of Fast and Furious.⁸

In his June 15, 2011, appearance before the Committee, ATF Special Agent John Dodson testified that he believes OIG may have a conflict because of its role in inspiring the Fast and Furious strategy:

Mr. Chaffetz: Do you think that there is a conflict between the OIG, given that maybe this started as a result of a recommendation? Or do you see any sort of conflict that the [inspector] general has in this case?

Mr. Dodson: Well, I can see a conflict between the office of the OIG, yes, sir. The actual individuals that are working the case, my interaction with them, since I have been interviewed by them, is that I think that they get it.

However, those two offices, being what they are and how they are aligned, there is inherently a conflict of interest there. If, in fact, someone at DOJ authorized this, knows about it, is as well versed in it as everyone at ATF, that thereby creates the conflict with OIG.⁹

⁴ *Id.*

⁵ *Id. at vi.*

⁶ *Id.*

⁷ Letter from Sen. Charles E. Grassley to Kevin L. Perkins, Chair, Integrity Committee, Council of Inspectors General on Integrity and Efficiency (Mar. 8, 2011).

⁸ *See id.*

⁹ *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong., June 15, 2011 at 74 [hereinafter Hearing Tr.].

2. The OIG did not respond to a December 2010 complaint from an ATF Agent.

In December 2010, after the murder of Customs and Border Patrol Agent Brian Terry, Special Agent Dodson contacted your office to allege that Fast and Furious was misguided and dangerous. Your office took no action in response to his allegations. In fact, he received no response until Senator Grassley's staff contacted your office on February 1, 2011.¹⁰ The failure to take these allegations seriously at the outset may encourage OIG to minimize the severity of Operation Fast and Furious in its current investigation.

3. The Fast and Furious investigation may implicate individuals positioned to influence the selection of a permanent IG at the Justice Department.

Your involvement in the OIG investigation creates a potential conflict of interest. If you are pursuing the role of permanent Inspector General, your personal career aspirations may influence your independence and ability to conduct an unbiased investigation. This investigation involves probing into wrongdoing and mismanagement by executive branch officials at the highest levels. Because the DOJ Inspector General is a presidentially-appointed position, you may feel compelled to produce a result palatable to those who will ultimately decide whether you will receive the permanent IG position.

A complete and objective OIG investigation is critical because White House and DOJ officials frequently cite it as a reason for us not to conduct oversight of Fast and Furious. Assistant Attorney General Ronald Weich testified about the OIG investigation at the Committee hearing last week.¹¹ Mr. Weich also questioned the value of congressional oversight in an April 18, 2011, letter to Chairman Leahy of the Senate Judiciary Committee:

Given the ongoing criminal investigations in Arizona and the Inspector General's ongoing review of allegations regarding those investigations, we do not believe that such oversight, or hearings, would be helpful at this time.¹²

In light of the ways in which DOJ has relied on your investigation, the Committee seeks assurances that it is free from political pressure and other influences. For the aforementioned reasons, I believe it is necessary to assuage the doubts of the Committee and the public for you to declare that you will forego any pursuit of the permanent IG job. I request that you reveal to the Committee your intentions regarding the permanent position.

¹⁰ See OIG Report, *supra* note 1, at 2.

¹¹ Hearing Tr. at 123.

¹² Letter from Asst. Att'y Gen. Ronald Weich to Sen. Charles E. Grassley (Apr. 18, 2011).

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Accordingly, I request that you respond to the following questions no later than Friday, July 1, 2011, at noon:

1. Are you interested in being nominated by the President to be the permanent Inspector General? If so, to whom have you expressed this interest?
2. Have you had any communications with any member of the White House staff relating to your interest in the appointment? If so, when and with whom? Who initiated the communication?
3. Have you had any communications with any member of the Attorney General's staff or other Justice Department officials relating to your interest in being appointed permanently to the position? If so, when and with whom? Who initiated the communication?
4. Has anyone else asked you whether you have any interest in or intention of pursuing the position of Inspector General? If so, who and when?
5. To remove the appearance of a conflict of interest, will you remove yourself from consideration as a candidate for the position of permanent Inspector General? If not, why not?

The Committee has a responsibility to protect the independence and integrity of the Inspector General's office at the Department of Justice.

If you have any questions about these requests, please contact Henry Kerner or Jean Humbrecht of the Committee staff at (202) 225-5074. Thank you for your attention to this important matter.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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