

Operation Fast and Furious to a Texas investigation and to the “plaza boss” in the Sinaloa cartel that Fast and Furious ultimately targeted.⁸⁴

Given the rich detail in the presentation, it is clear that the guns bought during Operation Fast and Furious were headed to the Sinaloa cartel. As Martin testified:

Q. The guns are up to 1,026 at this point?

A. That's correct.

Q. I know you had expressed some complaints earlier when it was only at 685. So there's **no doubt after this briefing that the guns in this case were being linked with the Sinaloa cartel**, based on the -

A. Based on the information presented, I'd say yes.

Q. And that was presumably **very apparent to everybody in the room?**

A. Based on this one, it says the people are connected with the Sinaloa cartel, I would say **that's correct**.⁸⁵

The volume of guns purchased and the short time-to-crime for many of these guns clearly signaled that the Sinaloa cartel received the guns shortly after their purchase in Arizona. If ATF had attempted to interdict the weapons, it is likely that hundreds of these weapons would not have found ended up with this dangerous cartel or entered Mexico.⁸⁶ Martin agreed that was clear:

Q. But whether the guns were walking, whether they were flying, whether they just disappeared, based on all the evidence that you've collected to this point, **it was pretty clear that the guns were going almost linearly from the FFLs to the DTOs?**

A. **They were headed that way.**⁸⁷

Several individuals, such as ATF and those in OSII, had already expressed their concerns, only to have them fall on deaf ears. Others, however, remained silent, despite the ominous consequences:

⁸⁴ *Id.*

⁸⁵ Martin Transcript, at 100.

⁸⁶ For a complete discussion of the shortcomings of ATF's investigation, see generally *The Department of Justice's Operation Fast and Furious: Accounts of ATF Agents*, Joint Staff Report, 112th Congress, June 14, 2011.

⁸⁷ Martin Transcript, at 50.

- Q. Was there any concern ever expressed about the guns being . . . essentially just bee lined right to the drug trafficking organizations about what the DTOs might actually do with the guns?
- A. I think it was **common knowledge that they were going down there to be crime guns to use in the battle against the DTOs to shoot each other.**
- Q. So these guns, in a way, are murder weapons?
- A. **Potentially.**⁸⁸

The only person that did speak up was Robert Champion, SAC for the Dallas Field Division participating by videoconference, who asked “What are we doing about this?”⁸⁹ According to [REDACTED] ATF, in response, Joe Cooley from Main Justice simply said that the movement of so many guns to Mexico was “**an acceptable practice.**”⁹⁰

Shortly after the March 5, 2010, presentation on Operation Fast and Furious, OSII stopped giving briefings on the program to ATF management during the weekly Tuesday meetings. OSII personnel felt that nobody in field operations heeded their warnings, and OSII no longer saw the point of continuing to brief the program.

V. Kept in the Dark

Not surprisingly, ATF officials in Mexico grew increasingly alarmed about the growing number of weapons showing up in Mexico that traced back to the Phoenix Field Division. Yet, when they raised those concerns, ATF senior leadership both in Phoenix and Washington, D.C. reassured them that the Phoenix investigation was under control. No one informed them about the details of Operation Fast and Furious. No one informed them that ATF was knowingly allowing guns to be sold to straw buyers and then transferred into Mexico.

A. Volume of Weapons Raises Eyebrows in Mexico

ATF leadership in Mexico started noticing an “abnormal” number of weapons flowing from Phoenix into Mexico as early as the end of 2009. Former ATF Attaché Darren Gil explained:

- Q. Now, at some point you mentioned that in late 2009, early 2010, your analysts made you aware of an increase in the number of

⁸⁸ *Id.* at 103-104.

⁸⁹ Interview with [REDACTED] ATF, Intelligence Operations Specialist, in Wash., D.C. (July 5, 2011).

⁹⁰ *Id.*

recoveries, firearm recoveries being traced back to Phoenix; is that right?

- A. Correct.
- Q. And I think the word you used was abnormal. Can you explain for us what exactly -- what was normal?
- A. Normal was – there's, I want to say there's at least 1,000 FFLs along the border. And . . . some people use the trail of ants terminology, some people use the river of iron terminology, but generally you'll get a handful of traces to this FFL, handful of traces to this FFL, Federal Firearms Licensee, all along the border.

* * *

I asked my analyst, because I was fairly new. I said, why is this abnormal. He says, look, Darren, we have all these trace results and they come from a variety of FFLs, but then you have a high correlation here with this one particular investigation coming out of Phoenix where we're getting this way and above the number of recoveries we get from all these other Federal Firearms Licensees. So it stuck out to my analyst who presented that to me that it was an abnormal, his terminology actually, abnormal number of recoveries.⁹¹

The “abnormal number of recoveries” concerned Gil and his agents in Mexico. Gil sought answers:

- Q. And when your analyst made you aware of this uptick, what was the next step that you took?
- A. Pretty much a review, show me what you're talking about, which he did. And then the phone call to Phoenix. And then after the phone call to Phoenix, which I spoke of, throughout the rest of the time it was primarily dealing with ATF headquarters, primarily with the chief of international affairs, Dan [Kumor].⁹²

B. Reassurances from Phoenix and Washington, D.C.

Attaché Gil initially reached out directly to the Phoenix Field Division to express his concerns about the growing number of weapons. Gil explained:

⁹¹ Gil Transcript, at 61-62.

⁹² *Id.* at 63.

Q. So when your staff in Mexico determined that a particular weapon was tracked back to Phoenix, did they try or did you try to make contact with some of the ATF staff in the Phoenix field office?

A. I did. I called the division, tried to make contact with the SAC. I don't believe I spoke with the SAC, but I got a returned call and spoke with the ASAC there, George [Gillett]. I identified my concerns, hey, we're getting an abnormal number of traces. From what I recall his response was, yes, we're aware of it. We have an ongoing investigation. We have a ton of resources on it. We're looking at it. We're working at it, and thanks for calling and making us aware and then we'll follow it up from there.⁹³

Yet the seizures continued unabated, and the answers Gil received failed to better explain the underlying cause. Gil continued:

Q. So your discussions with Mr. [Gillett] in early January, is it fair to say you weren't satisfied with the results of that call?

A. I was satisfied with the first response, sure. They're working a case, they're trying to identify what the problem is, how these weapons are getting there, they're aware of it. That's a normal response, okay, good, we're on the job.

But . . . unfortunately, my chief analyst and my deputy would come back and say, Darren, these are – we're getting more and more and more of these seizures. And I would make inquiries with the Phoenix field division and I wasn't getting any responses back. And I may have gotten two more phone calls, yeah, we're working on it, we're working on it.⁹⁴

Despite these reassurances, the volume of weapons flowing from Phoenix into Mexico continued to grow. Further, no one at ATF provided Gil or his staff any explanation as to why the volume continued to grow. When Gil and his staff tried to access the trace data on their E-Trace system to find out for themselves, they learned they did not have access. As Gil explained:

And at that point, with the number of seizures we were receiving in Mexico, that wasn't – that connected to the fact that my analyst didn't have access to the trace data in E-Trace, where we entered the data, normally we . . . would get that information back regarding the trace.

Unfortunately, my . . . deputy advised me that we were entering the data but we weren't getting the trace results back, all we were getting was “trace information delayed”. And what that generally means is, there's

⁹³ *Id.* at 15-16.

⁹⁴ *Id.* at 17.

been a hold placed on it by either the tracing center or by a field division because they didn't want that information released for some particular reason.⁹⁵

Members of Phoenix Field Division Group VII, including its case agent with support from the Group supervisor, actively shut out their colleagues in Mexico. As a result, Attaché Gil decided to seek answers from senior leadership in Washington, D.C.: “Ultimately I made phone calls to the chief of international affairs, Dan [Kumor], to try and get responses because I wasn't getting responses from Phoenix like I thought I should.”⁹⁶ In early 2010, Attaché Gil shared his concerns with Kumor about the increasing number of gun recoveries in Mexico linked to Phoenix:

Q. At some point I understand you had some conversations with your boss back in Washington, Mr. [Kumor]. Was he the first person in Washington that you spoke to about the abnormal number of weapons that you were recovering?

A. Yes.

Q. And do you remember when the first time you raised this issue with Mr. [Kumor] was?

A. Again, it would be early 2010, probably around – probably January, about the same time.

We talked almost certainly weekly and almost daily basis, so he would have been notified at that time.

Q. And do you remember what his reaction was when you first raised the issue with him?

A. Certainly, yeah, okay, let me check on it, it's an ongoing investigation, let me make some inquiries and I'll get back with you.

Q. And did he ever get back with you?

A. Yes.

Q. And what did he say?

A. Again, he said an on-going investigation, they're looking at straw purchasers, they have cooperative Federal Firearms Licensees and it sounds like a significant investigation. And . . . he didn't have

⁹⁵ *Id.* at 17-18.

⁹⁶ *Id.* at 17.

access to the trace information either but . . . the Phoenix field division is aware of the investigation. The chain up to him is aware of the investigation, so everybody is aware of it and it looks like they have it under control.⁹⁷

Gil found it insufficient to hear the investigation was “under control.” In the meantime, guns from a known straw purchasing ring continued to flow into Mexico from Arizona. Although Gil and his agents in Mexico remained in the dark about the tactics and strategy of Operation Fast and Furious, they realized something was wrong. Gil continued to express his concerns:

Q. And did you ever raise any issues with Mr. [Kumor] that while they . . . may think they have it under control, it may not be under control because we are recovering an abnormal number of firearms?

A. Again, spring time it got to the point of at what point are we going to . . . to close this investigation down? I mean, after 500 or so seizures I think you should have had enough data collection on what you're trying to show or prove. It was my position, it was Chief [Kumor's] position as well. He says, yeah, you're right. And he goes, so when are they going to close this down. And we were both on the same position there that this thing needed to be shut down.

So there was a number of ongoing – you saw my CBS interview, screaming matches . . . it was a very frustrated – high frustration level. And that was one of the reasons for . . . being frustrated.⁹⁸

Understandably, Gil was frustrated. Hundreds of weapons appeared suddenly in Mexico – traced to Phoenix – without explanation. Gil and his agents struggled to get answers from their own agency. Although ATF officials in Phoenix and Washington, D.C. acknowledged that an investigation was underway, they refused to share the details of the strategy and operation with the agents in Mexico. Gil took their silence as suggesting that his colleagues did not trust him to keep the information confidential:

Q. Did you have any idea why you weren't being made aware of the specific details of this investigation?

A. I can tell you what I was told and they were afraid that I was going to either brief the ambassador on it or brief the Government of Mexico officials on it.

⁹⁷ *Id.* at 20-21.

⁹⁸ *Id.* at 21.

- Q. And it was your understanding that individuals within ATF higher than Chief [Kumor] didn't want the ambassador to know about the investigations?
- A. I couldn't say that . . . specifically they didn't want the ambassador to know. I know I asked . . . why can't I be briefed on this. Well, they're afraid that you would brief the GOM officials, Government of Mexico officials or . . . brief the ambassador. **They were just worried about somebody leaking whatever was unique about this investigation.**⁹⁹

VI. More Complaints and More Reassurances

ATF officials in Mexico constantly worried about the number of guns flowing from Phoenix to Mexico in connection with the Phoenix Field Division's investigation. Mexican authorities continued to seize guns at violent crime scenes involving Mexican DTOs. Without being privy to the particular tactics utilized by Operation Fast and Furious, ATF's representatives in Mexico suspected something was terribly amiss. Because initial contacts with Phoenix provided few answers, ATF officials in Mexico continued to report their concerns up the chain of command to ATF leadership in Washington, D.C. Instead of acting on their complaints, senior leadership at both ATF and the Department of Justice praised the investigation. However, ATF agents in Mexico kept sounding the alarm. In July 2010, Gil and his agents received notification that the Phoenix Field Division's investigation would be ending and shut down.¹⁰⁰ In reality, ATF agents in Phoenix closed the investigative stage of Operation Fast and Furious in January 2011, only after the tragic death of Border Patrol Agent Brian Terry in December 2010.

A. Concerns Raised up the Chain of Command

Without knowing of possible gunwalking tactics used in Operation Fast and Furious, Gil and other ATF officials in Mexico knew the investigation needed to be shut down based on the empirical data. As Gil testified:

- Q. And the number of firearms recovered in Mexico, you said it was about 500 in the spring, did that number continue to rise?
- A. Yes, it did. I want to say by the time I left I think it was up to, which was in October, I think it was up to – the last data I think I was quoted was like 700 or so.
- Q. And that continued to alarm you?

⁹⁹ *Id.* at 72.

¹⁰⁰ See Section VI.E *infra* page 42 (summarizing the exchange between Gil and Kumor regarding the timeline to shutdown Operation Fast and Furious).

A. It was a topic of discussion every time – pretty much every time we spoke about when this thing was going to be shut down. And the general – the origin of it was, again, because it worried my folks. My chief analyst, who would see the data every day. He'd put in the trace results, he'd get information back, data – “trace results not available”, which means ATF put a hold on it somewhere.

So number one, we were submitting our information and we weren't getting our own trace data back, so that was an issue. The number was an issue. The fact that these guns were found in crime scenes, which we could not notify the GOM, the Government of Mexico, was an issue.

The fact that this brought pressure on us from the GOM because they're saying, why are we using – we're spending – ATF is spending extraordinary number of resources to train them on the Spanish E-Trace. And in the same breath they're saying, look, we're not getting anything back so why should we use this Spanish E-Trace, it's a waste of our time. And we have to say, no, it gives you this, this, and this. And they go, yeah, but we're not getting anything back.

So it became a big event that we're not getting this trace data back and it frustrated my folks, they in turn notified me. And we had meetings on it and then I'd make my calls to headquarters, again, primarily Chief [Kumor], and voiced our concerns. And it got to the point I would have my staff, on conference calls that we have, speak with Chief [Kumor] trying to – what the heck is going on here.¹⁰¹

Gil and his staff struggled to deal with this growing crisis. Despite the increasing number of guns from Phoenix showing up at violent crime scenes in Mexico, ATF agents in Phoenix continually denied the ATF agents in Mexico the relevant information explaining this spike. Gil was so passionate about his and his staff's concerns that he had yelling matches with his boss:

Q. Who were those screaming matches with?

A. Primarily with Chief [Kumor]. And it wasn't just on this, all right, keep that in mind. . . . However, this was also part of it and at some point screaming, yelling . . . hey, when are they going to shut this, to put it bluntly, damn investigation down, we're getting hurt down here.

¹⁰¹ Gil Transcript, at 30-32.

When, again, I think I mentioned in my CBS interview, when the Mexicans find out about this. **And this was not even knowing of the potential for gun walking. This was just . . . not shutting this investigation down and letting another 300 weapons come into the country after the first 300 weapons.** Because, again, it's inconceivable to me to even allow weapons to knowingly cross an international border.¹⁰²

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Q. So it was clear to you that this ongoing case based out of Phoenix was proceeding, they weren't shutting it down, you disagreed with that because you saw too many weapons showing up in Mexico?

A. That's a fair assessment.¹⁰³

Deputy Attaché [ATF] shared Gil's concerns about the number of guns entering Mexico and that something needed to be done:

Q. What discussions did you have about the weapons from the Phoenix case in Mexico with Mr. Gil, Mr. Darren Gil?

A. We were very concerned . . . with that amount of guns and short period of time on a suspect gun data and they kept climbing.

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I said, Darren, this is a problem . . . these many guns coming down here is a problem. We made that known to Danny Kumor . . . Danny was in agreement he pushed it up the chain and we were told yeah it is a case out of Phoenix and it is going great.¹⁰⁴

Gil and [ATF] prevailed upon their direct supervisor, Daniel Kumor, ATF's Chief of International Affairs, to take their concerns about the volume of weapons in Mexico up the chain of command:

Q. When you say pushed it up the chain, what do you mean exactly?

A. He told his superior.

Q. That would have been who?

¹⁰² *Id.* at 66-67.

¹⁰³ *Id.* at 24.

¹⁰⁴ [ATF] Transcript, at 16.

A. That would have been deputy assistant director Bill McMahon.¹⁰⁵

Gil also testified that Kumor spoke to his superior, Deputy Assistant Director McMahon, about this matter:

Q. And do you know if [Kumor] had any conversations with Mr. [McMahon], did he ever relate to you that he's had these conversations with Mr. [McMahon]?

A. Sure. He would say, I'll – I'm going to go meet with . . . Bill [McMahon], the deputy assistant director. And he would – and then in our conversations he would respond and, hey, I've spoken with Bill and he's going to send notification out or contact Phoenix and see what's going on, sure.¹⁰⁶

Gil also discussed his concerns with McMahon during trips to Washington:

Q. Did you take any trips to Washington during this time period of –

A. Sure.

Q. - January 2010 to before you left October 2010?

A. Yes.

* * *

Q. You said, might have discussed it with Mr. [McMahon]. If you did, it wasn't something that you remember in detail?

A. Yeah, would have been, hey . . . is this thing still going on, and when is it going to be shut down. And something to the effect they're either working on it – again, their general response was they're working on it, they're going to close it down as soon as they can, and we'll let you know.¹⁰⁷

While Phoenix was “working on it,” guns continued to flow unabated into Mexico. Gil, **ATF** and other ATF agents in Mexico raised legitimate concerns, but leadership told them to stand down. According to ATF leadership, not only was everything “under control,” but everyone in ATF *and* DOJ were well aware of the investigation in Phoenix:

Q. And at any point during those conversations was it made clear to you that the director is aware of this program?

¹⁰⁵ *Id.* at 16-17.

¹⁰⁶ Gil Transcript, at 22-23.

¹⁰⁷ *Id.* 36-38.

- A. Yes. At one point, I mean, again, probably during one of the final screaming matches was . . . I think I threw the question out there, hey, is DOJ aware of this investigation? Are they aware of what's going on, and are they approving this.

And then the chief's response was, yes, not only is . . . the director aware of it, Billy, William Hoover is aware of it, DOJ is aware of it. And then . . . through that fact – they have a [ATF], so DOJ must be aware of it certainly for that aspect. And certainly the US Attorney's office in Phoenix is aware of it because they had to approve the investigation.

But – so it wasn't just is the direct link aware of it . . . if the acting director is aware you assume everybody is aware of it. And then, okay, they don't want me to know something for some reason that's fine, they have their reasons and . . . you got to defer to your executive staff.¹⁰⁸

Senior leadership in Phoenix and Washington, D.C. continued to provide reassurances without answers during their visits to Mexico. [ATF] recalled several visits by both Mark Chait and Bill McMahon:

- Q. Did senior officials from DOJ and ATF visit Mexico with regard to this case?
- A. This case specifically?
- Q. Did they make any visits to Mexico?
- A. Sure, yeah. Mmh hmm.
- Q. Would this case have been one of the things that got discussed during their visits?
- A. We talked about it, but we said . . . hey what is going on with this case out of Phoenix, we are starting to see a lot of guns in the suspect gun database, kind of alarming, so many guns. They said hey . . . we've got it handled, we are working, it is a good case out of Phoenix.
- Q. Who would those officials have been?
- A. Well, the director had come down, the deputy director had come down, the deputy associate director had come down.

¹⁰⁸ *Id.* at 24-25.

- Q. Who is that?
- A. Bill McMahon. This assistant director for field operations, that is the guy who is in charge of all agents.
- Q. Mark Chait?
- A. Mark Chait came down. Bill Newell came down. So, yeah these guys have come down.
- Q. Multiple visits?
- A. Yeah. Some of them, multi visits and they talked, hey, yeah, we got a big case out of Phoenix.¹⁰⁹

As Gil later stated, “[a]t that point . . . you just got to say, fine, these guys, they’re the leaders of this agency and they have some plan that I’m not aware of, but hopefully they have a good one.”¹¹⁰

B. A “Good Investigation”

The Phoenix Field Division and ATF headquarters extolled the virtues of the investigation to ATF personnel in Mexico. For example, during Acting ATF Director Kenneth Melson’s 2010 spring visit, Gil’s staff asked about the Phoenix case. Gil detailed Acting Director Melson’s response:

- Q. And do you recall what Mr. Melson said?
- A. Generally his response was, he’s aware of it, it’s an ongoing investigation, it’s providing some good intelligence . . . [A]ll positive as far as the investigation, it looks good. And I remember, I think Deputy Director Hoover was there. I think he turned to the deputy director and said, yeah, we’ll check on it when we get back but I think it's providing some good results and we’ll check on when it’s going to be closed down, but my understanding it should be closed down fairly soon.¹¹¹

Canino confirmed Gil’s recollection:

- Q. And when any of the ATF officials came to Mexico, whether it is Melson or Hoover, do you recall briefing them? Or maybe briefing is the wrong word.

¹⁰⁹ [ATF] Transcript, at 19-20.

¹¹⁰ Gil Transcript, at 69.

¹¹¹ *Id.* at 40.

A. Mentioning it? Sure.

Q. Do you remember mentioning that there's a lot of firearms being tracked back to Phoenix?

A. Mmh-hmm.

Q. Do you remember what their response was?

A. It was like, yeah . . . we got a case. We got a good case going on in Phoenix.

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Q. Senior people in headquarters were aware of the case and they were not as alarmed?

A. Right.

Q. They thought it was under control, or they thought it was a great case, about to come to fruition?

A. Correct.¹¹²

¹¹² ATF Transcript, at 102-103.

C. Lanny Breuer and the Department of Justice

Gil and [ATF] received the same message of support for Operation Fast and Furious from the Department of Justice. During a visit to Mexico, Lanny Breuer, the Assistant Attorney General for the Criminal Division demonstrated his awareness of the case:

Mr. [Breuer] kind of summed up his take on everything at the end, and one of them was that there's an investigation that ATF is conducting that looks like it's going to generate some good results and it will be a good positive case that we can present to the Government of Mexico as efforts that the US Government is taking to try and interdict weapons going into Mexico. And that was about – that was it. That was just a general statement. Myself and my deputy I believe were in the room and we kind of looked at each other. We're aware of this case, and so we assumed that's what he was mentioning. And we just wanted to make sure – we look at each other going, hope the ambassador [Carlos Pascual] doesn't ask any questions because we really don't know anything about the case. And luckily the ambassador did not.¹¹³

[ATF] also remembered a visit from Breuer where Breuer touted the Phoenix case:

Q. And during meetings with Mr. Breuer, did this subject come up?

A. I mean, I was in a meeting, it was a country team meeting, or it might have been a law enforcement team meeting . . . Ambassador, Mr. Breuer was there, Darren was there, Mr. Breuer . . . the Ambassador was saying hey, you know what . . . we need a big win we need some positive, some positive [firearms trafficking] cases. And Lanny Breuer says, yeah, there is a good case, there is a good case out of Phoenix. And that is all he said.

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Q. But do you remember the specific incident with the Ambassador talking about the success stories?

A. Right.

Q. And that is when Breuer mentioned this large case in Phoenix?

A. Yeah. He said we got, there is a good case out of Phoenix.

¹¹³ Gil Transcript, at 44.

- Q. And is it your impression that the case he was referring to is what now what you now know to be Fast and Furious?
- A. Yeah, when he said, I thought, oh, okay . . . he knows. He knows about this case.¹¹⁴

The Department of Justice, and more specifically, Assistant Attorney General Lanny Breuer, clearly knew about Operation Fast and Furious. Further, the Department of Justice's Office of Enforcement Operations (OEO) approved numerous of the wiretap applications in this case. These applications were signed on behalf of Deputy Attorney General Ogden in the spring of 2010. Instead of stemming the flow of firearms to Mexico, Operation Fast and Furious arguably contributed to an increase in weapons and violence.¹¹⁵

Additionally, the United States Attorney's office in Arizona – another DOJ component – was inextricably involved in supervising Operation Fast and Furious as the office was part of a prosecutor-led and OCDETF funded strike force.¹¹⁶ According to many agents, the U.S. Attorney's office's intimate day-to-day involvement was to the detriment of ATF's Phoenix Field Division. Furthermore, although DOJ knew about the operation, it kept key people who needed this information in the dark.¹¹⁷

D. *Still in the Dark*

By their own accounts, members of the senior leadership of both ATF and DOJ wanted a big firearms trafficking case to demonstrate success in combatting Mexican cartels. Despite this goal, they failed to provide specifics of the case to both Mexican officials and ATF personnel stationed in Mexico. As the chief ATF advisor in Mexico, Gil found this lapse of information sharing embarrassing.¹¹⁸

As Attaché in Mexico, Gil needed to be aware of ATF operations that impacted Mexico. Nevertheless, his own agency intentionally withheld critical details of the tactics and strategy behind Operation Fast and Furious. Gil did not even know the name of the operation until January 2011:

- Q. And generally, it would have been your job to approve operations that involved Mexico given your position as the attaché?
- A. Correct. Any activity regarding certain ATF in Mexico should have come through the ATF attaché's office in Mexico, and

¹¹⁴ [ATF] Transcript, at 22-23.

¹¹⁵ See Section IV *supra*, page 8 for a detailed discussion of the flow of weapons to Mexico and the increased violence as a result.

¹¹⁶ Briefing Paper, Phoenix Field Division, 785115-10-0004 (Jan. 8, 2010).

¹¹⁷ See *supra* § V.B.

¹¹⁸ Gil Transcript, at 45.

certainly any investigative activity should have been brought to the attention of the office.

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- A. Again, I was aware there was an investigation, but I wasn't aware of the particulars of the investigation.¹¹⁹

According to Gil, ATF leadership withheld information from him and other ATF agents in Mexico because of a fear that they would brief the Government of Mexico on the investigation and would jeopardize Operation Fast and Furious:

- Q. Did anyone ever tell you, this is sensitive and we can't let the Government of Mexico know about this case?

- A. Yeah, in one of my conversations – it was probably more than one, but certainly one that I recall, because it was so out of character, but . . . what our impression was in Mexico was it's a high level investigation. We understand the security issues of it. There's a [ATF] going on. So we all assume it's probably a corrupt Federal Firearms Licensee or more or others, and maybe they do have a connection that's flowing weapons there and they're working on it.

But at some point, okay, you haven't gotten the information by this time . . . you need to shut it down just for safety and security reasons. So that was the assumption we had.

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Well, they're worried the Mexicans are going to get – the Government of Mexico would get it and it would ruin their investigation. All right, so let us know. Well . . . they're afraid that you'll either willingly or unknowingly release this information to your GOM counterparts.

Okay, well, how about letting me know as the attaché. Well, they're afraid that you'll do the same. And at that point . . . I called my folks and I said, look, they say they have it under control, all we can do is continue our mission down here and work towards our objectives and hopefully this investigation will bear fruit down the road that everybody is going to be happy with.

But the problem we had, and I noted in my interview, was that these weapons are being recovered in violent crime scenes of Mexican law enforcement interacting with cartels or Mexican

¹¹⁹ *Id.* at 111-112.

military officials interacting with cartels. And these guns are going to come back in the murder of some of these officials and we're going to have some explaining to do.¹²⁰

Ultimately, ATF leadership's withholding of information worked against its own representatives in Mexico. This realization was a source of major irritation and frustration for Gil:

Q. Is it inconceivable to you that you were not a part of these discussions?

A. Again, I've repeatedly said I was very frustrated down there. And so that answer is, yes, I was very frustrated because I was not part of the ongoing investigation.

Q. So when you're told about a bigger picture, when you're told about a more sophisticated case, you hear [Lanny Breuer] referencing an ATF case, which is presumably this case. . . . At any point in time did you say, why am I not read into this case? Why am I not a party to these conversations?

A. Sure. Myself, my deputy, my staff, we were all frustrated. We didn't understand it. We understand the concept to keep secret investigations, that if you leak something potentially that it could get corrupt the case or get somebody . . . unfortunately get somebody hurt or killed. We understand that, but as I said, one of my screaming matches was over this issue that, okay, you don't want us to -- okay, if you tell me I'm not going to release anything to the Government of Mexico then I won't release it, but let me know.

When you tell me, well, we don't want to let you know because we're afraid you'll notify the ambassador or ultimately somehow the Government of Mexico is going to find out, yes, that irritates me. **And you can see why the voice level went up and the vulgar language probably came out on certain occasion because it is very, very irritating.**

Q. And you were trying to help them understand these guns are being recovered at crime scenes, these guns are in the possession of cartels, people are dying?

A. Correct.

Q. Is that part of your –

¹²⁰ *Id.* at 32-34.

- A. Myself, the deputy, I mean, it's like ground-hog day and – that's the best way to put it. Every time the event came up for whatever reason, maybe it was a new seizure, I was notified again, hey, when is this going to be shut down. And it's the same response that, hey, we're still working on it, it's still ongoing, we're getting some good information and we'll shut it down as soon as we can.¹²¹

E. Told Operation Fast and Furious Being Shut Down

As the ATF officials in Mexico continued to express concerns throughout 2010, ATF leadership told them the investigation would be shut down as soon as possible. Gil explained:

I queried Chief [Kumor] again . . . and that – and the ongoing discussion continued, they're aware of it, they're going to close it down as soon as they possibly can, but there's still – they think the investigation is not to the point where they can close it yet. And the discussions went on and on. It went to the point I departed Mexico.¹²²

Gil left his position as Attaché to Mexico in October 2010 and retired from the ATF just a few months later. At the time of his retirement, Operation Fast and Furious remained ongoing. Several months before Gil retired, Deputy Attaché [ATF] wrote to Dan Kumor with disturbing statistics:

Like I said, this is a problem. I sent an e-mail, I think it was July of 2010 . . . letting Dan Kumor know that approximately . . . the count was up to 1,900 guns in suspect gun data, 34 of which were, 34 of which were .50 caliber rifles. And I, my opinion was that these many .50 caliber rifles in the hands of one of these cartels is going to change the outcome of a battle. Dan pushed it forward. He was told, yeah, we are taking the case off in August of 2010. The case doesn't get taken off until January 25, 2011.¹²³

Kumor's response led [ATF] to believe that arrests were imminent in Operation Fast and Furious:

- Q. So anyway let's talk about Danny Kumor telling you it is going to be closed down. You send him in the e-mail in July?
- A. He says, hey, I talked to Bill McMahon, Bill McMahon said they are taking the case down in August.
- Q. What did that mean to you? What was your understanding?

¹²¹ *Id.* at 113-115.

¹²² *Id.* at 78.

¹²³ [ATF] Transcript, at 17.

- A. That they were going to shut the case down and make arrests.
- Q. Now, at that point you still didn't know that they were gun walking?
- A. I never knew, I never believed it until this past April. Even after I ... talked to other guys in intel.
- Q. Just to go back to this. So when they said they are going to close the case down, what did you interpret that to mean? What was they were shutting down?
- A. They were going to start making arrests. Now . . . through the fall, late fall, and I have been talking to Bill.
- Q. Bill Newell?
- A. Bill Newell, and Bill told me, hey, **ATF** we are going to probably take this down you know we are trying to take it down, I think he said December or so . . . Novemberish. . . . This is right around October . . . November, December we are going to take this down . . . then, the Terry murder happens.¹²⁴

The first arrest finally came in December 2010, immediately after Agent Terry's murder. More followed a few weeks later in January 2011. Prior to these arrests, **ATF** and the other ATF agents in Mexico continued to urge ATF leaders to shut down Operation Fast and Furious to no avail. **ATF** testified:

Like I said, right around after somebody told me the figure was 1,200 guns . . . there's a case out of Phoenix. . . . They'll take it off when they take it off. We're concerned. . . . I've made my concerns up the chain . . . sent that e-mail in July. I'm told they're going take it off in August. From September nothing, October October, November, Bill Newell says, I'm going to start taking this off. . . . October, November. December comes around, Agent Terry happens. They take it off in January, end of January.¹²⁵

Kumor testified about his conversation with Deputy Assistant Director William McMahon about shutting down Operation Fast and Furious:

- Q. But he did suggest to us in an interview we did that at least in part he was telling you we've got to shut that case down, we've got to shut that case down?

¹²⁴ *Id.* at 95.

¹²⁵ *Id.* at 123.

A. Oh, yeah, we've had those discussions.

Q. But that got heated as well. He was very animated about needing to shut this case down?

A. And if we did which is very possible and I'd say I agree with you a hundred percent but it's not my call, and I've already made those concerns known . . . to Bill [McMahon], and it's not – I don't have the authority to do it. And I said, matter of fact, whoever comes down or if you want to pick up the phone, you can tell them and see if you get anywhere with them. But the bottom line is that they're saying that the U.S. attorney's office is not going to authorize them to arrest these people. And, again, they're up on a wire and they're trying to put this case together.

Q. And when you say "Bill," you mean McMahon?

A. Yes.¹²⁶

F. Concerns Communicated to Deputy Assistant Director McMahon

Despite Dan Kumor's testimony to the Committees' investigators, Deputy Assistant Director for Field Operations William McMahon tried to minimize his knowledge of the concerns expressed by ATF agents in Mexico to their supervisors at Headquarters during his testimony to the Committees:

Q. What about Mr. Kumor? Did he express any concerns about this case?

A. Not that I remember.

Q. Essentially you were having two direct reports –

A. Uh huh.

Q. Expressing major concerns about this case to you.

A. I did?

Q. Yes, Mr. Kumor and ATF. That doesn't ring a bell?

A. No, it doesn't. Them expressing concerns?¹²⁷

¹²⁶ Transcribed Interview of Daniel Kumor, Transcript at 39 (July 13, 2011) (on file with author) [hereinafter Kumor Transcript].

A December 17, 2009 e-mail from Bill Newell indicates that he intended to brief McMahon about [REDACTED] ATF concerns regarding weapons showing up in Mexico in great numbers:¹²⁸

From: Newell, William D.
Sent: Thursday, December 17, 2009 11:45 AM
To: Gillett, George T. Jr.
Cc: [REDACTED] ATF
Subject: Re:

Well done, thank you. I will address Ray's concerns with McMahon.
Bill Newell
Special Agent in Charge
ATF Phoenix Field Division (AZ and NM)
[REDACTED]

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Gillett, George T. Jr.
To: Newell, William D.
Cc: [REDACTED] ATF
Sent: Thu Dec 17 13:27:49 2009
Subject: Bill-

OSII has not yet finished a link diagram on this investigation. Therefore, there is no "chart" in existence diagramming this investigation. [REDACTED] ATF and crew are currently working on such a link-diagram chart, but it is not yet complete. [REDACTED] ATF did have a power point that gave an overview of the case and that has been forwarded to GS Voth. However, that power point is about 1 week old, so the info is already a bit dated. GS [REDACTED] ATF and [REDACTED] ATF are speaking on a regular basis, so the lines of communication are now the equivalent of the proverbial fire hose. During one of their conversations, [REDACTED] ATF told [REDACTED] ATF that [REDACTED] ATF received a briefing on the investigation this week and mentioned the possibility of needing to shut the investigation down due to the large number of guns that have already been trafficked. Therefore, I spoke with [REDACTED] ATF today and explained that even though the identified straw-purchasers bought approximately 175 guns last week alone, we have slowed down the FFL on future purchases and are obtaining intelligence directly related to this investigation from the current DEA wire tap. [REDACTED] ATF did express some concern regarding the total number of guns that have been purchased by this straw-purchase scheme. I cautioned [REDACTED] ATF on not doing any type of informal calculations on purchase numbers as that likely will result in double counting of firearms (counting purchased guns as well as recovered guns). I have also advised that we will slow the purchasers down as much as possible, but we have not identified the network yet. The result will be that the responsible conspirators will have new straw-purchasers operational before we complete the booking paperwork. I have asked [REDACTED] ATF to consider me his direct point of contact on any future questions and/or concerns and I will do the same with him. I have also spoken with Kevin O'Keefe today and maintain those lines of communication.

As for plans to proceed, I have asked [REDACTED] ATF to begin preparing a white paper that outlines progress to date as well as a plans for proceeding with the investigation. I know that he wants to take the information from the DEA wire and spin it off on a wire involving these subjects. I have also asked [REDACTED] ATF to prepare a list of resources that HQ can provide (personnel and equipment) to support this investigation. I will keep you posted as things arise.

George T. Gillett
Assistant Special Agent in Charge
ATF - Phoenix Field Division

In his testimony, Kumor noted that he lacked the authority to shut down this investigation, but he reiterated that he raised the concerns expressed to him by ATF agents in Mexico with McMahon:

¹²⁷ Transcribed Interview of William McMahon, Transcript at 38 (June 28, 2011) (on file with author) [hereinafter McMahon Transcript].

¹²⁸ E-mail from Bill Newell to [REDACTED] ATF December 17, 2009 (HOCR ATF – 000906).

- Q. And you and Gil were in agreement that this was concerning, and you supported him in his view that something ought to be done –
- A. Yes, once they started showing up, absolutely.
- Q. But you didn't have the authority to do it?
- A. No.
- Q. However, you did raise those concerns with Bill McMahon?
- A. Yes.¹²⁹

Kumor specifically refuted McMahon's testimony to the Committees' investigators about these events:

- Q. So if McMahon said to us that you never raised these concerns with him, that wouldn't be completely honest; right?
- A. That I never raised them?
- Q. Right.
- A. That's false. That's not true.
- Q. So you did raise these concerns on multiple occasions with Mr. McMahon?
- A. I did. I raised the issue of the fact that these weapons had been had started showing up and . . . what are we going to do? What's going on? Obviously if they're showing up in Mexico, that's a problem.
- Q. How early did you raise that with him as far as the best you can recall?
- A. When this thing first started. When this case first started that you're going to have . . . I know in March when they were showing the screen and how many guns were involved.
- Q. March of 2010?
- A. March of 2010, yes.

¹²⁹ Kumor Transcript, at 39-40.

- Q. And McMahon was at that meeting?
- A. I believe he was.
- Q. So he saw all these guns?
- A. Right.
- Q. Did he ever express to you that's a concern of his?
- A. Yeah, I think we've had – we had discussions where he was concerned as well. But, again, it kind of came back to . . . our hands are tied. The U.S. attorneys' office is not going to charge these guys. . . . [T]hey want to go up on a wire, so they're going up on a wire, and they're going to do the case that way. So from my standpoint, I was like, well, . . . the U.S. attorney's office is involved. . . . Newell is running the case. You're aware of it.¹³⁰

VII. Reaction of ATF Officials in Mexico

When Special Agent [ATF] and the other ATF whistleblowers first came forward with allegations that guns were walked across the Mexican border during Operation Fast and Furious, [ATF] and Gil refused to believe them. Gil and [ATF] could not believe that the ATF would actually utilize a tactic that contravened the training and field experience of every ATF agent. Gil and [ATF] the top two ATF officials in Mexico, could not even conceive that ATF would employ a strategy of allowing weapons transfers to straw purchasers. As [ATF] testified:

- Q. So at no time did you think [gunwalking] was a deliberate effort or part of a strategy?
- A. No. That was, like I said, in 21 years as an ATF agent, as a guy who teaches surveillance techniques, as a guy who teaches agents how to conduct field operations, **never in my wildest dreams ever would I have thought that this was a technique. Never. Ever. It just, it is inconceivable to me.**¹³¹
- Q. And that is because of the dangers involved?
- A. Just – you don't do it. You don't wa[lk] guns. You don't wa[lk] guns. . . . **You don't lose guns. You don't walk guns. You don't let guns get out of your sight.** You have all these undercover techniques, all these safety measures in place so guns do not get

¹³⁰ *Id.* at 41-43.

¹³¹ [ATF] Transcript, at 12.

out of your custody or control. I mean, I mean, you could follow, you could do a surveillance for 1,000 miles . . . either use planes, trackers, you use everything under the sun, but at the end of the day, those guns do not leave your control. At some point those guns do not get into the streets.¹³²

Gil felt the same way as [ATF]

...And so the – to me, when I first heard this going on in the media about the potential for ATF letting guns walk, **it was inconceivable. I didn't want to believe it. It just – it would never happen. Everybody knows the consequences on the other end of . . . these guns aren't going for a positive cause, they're going for a negative cause. The term "guns walking" didn't exist in my vocabulary.**¹³³

In fact, [ATF] – an instructor for field operations and undercover operations for ATF since 1998, and a founding member and teacher of the ATF enhanced undercover training program – felt so confident that these allegations were false, that he began assuring people that the allegations had no merit:

Never, it is just, you don't do that. It is not – **what these guys did was basically grab the ATF rule book on trafficking and threw it out the window. This is indefensible. It is indefensible.** The ATF does not do this. . . . I owe people apologies because when this first came out, I did not believe it.

* * * *

[W]hen this first broke, I said there is no way this happened. . . . [M]y boss told me, hey, [ATF] don't be so vocal about this . . . wait, wait to see what happens. I told him, I said, boss, we didn't do this. **He said how are you so sure? I said because we don't teach this, this is not how we are taught.**¹³⁴

Dan Kumor remembers cautioning [ATF] about being too quick to deny the allegations. As [ATF] supervisor, Kumor did not want him to potentially have to retract false and misleading comments made to his Mexican counterparts. As somebody stationed in ATF headquarters, Kumor may have known there could be some merit to the allegations:

And I said . . . but I told [ATF], I said . . . until we find out what's going on, I wouldn't be – if we get questions about what happened, we're going to have to direct all that to the Phoenix field division

¹³² *Id.* at 12-13.

¹³³ Gil Transcript, at 48.

¹³⁴ [ATF] Transcript, at 13-14.

or field ops because we don't know. And the last thing I want to do is represent or have you guys represent to the Mexicans or anybody else that, hey . . . there's no issues with any of this case. We don't know, and I don't want that coming back later because that would certainly be an issue with them as far as their reputations and their ability to be able to operate in the future down there.¹³⁵

As more information came to light, however, Gil and [ATF] concluded that hundreds and hundreds of guns had been walked. These guns ended up in at crime scenes in Mexico, about which Gil and [ATF] received extensive briefings. Gil and [ATF] became incensed when they finally began to learn about the full scope of Operation Fast and Furious and the investigative techniques involved:

- Q. When you first got the impression that this was part of a strategy to let guns walk into Mexico, what was your reaction to that strategy?
- A. I wasn't convinced that this happened until this past April after all the allegations were made, and I talked to different people. **I was beyond shocked. Embarrassed. I was angry. I'm still angry. Because this is not what we do.**

* * *

That is, I mean, **this is the perfect storm of idiocy.** That is the only way I could put it. This is, I mean, this is inconceivable to me. This is group think gone awry. You know what General George Patton says, if we are all thinking alike, then nobody is thinking. Right? Nobody was thinking here. How could anybody think, hey, let's follow, I mean there is a guy in this case that bought over 600 guns. At what point do you think you might want to pull him aside and say, hey, come here for a second.¹³⁶

When [ATF] himself uncovered hard evidence that ATF had allowed the guns to disappear from their surveillance he understood the whistleblower allegations were true:

- Q. Okay, and take us through what happened in April.
- A. I was here on a visit to headquarters.
- Q. Alcohol, Tobacco and Firearms headquarters?
- A. Alcohol, Tobacco and Firearms headquarters, and I was, I was looking at a, the management log on this case. And **the first two**

¹³⁵ Kumor Transcript, at 98-99.

¹³⁶ [ATF] Transcript, at 17-19.

pages, if I'm not mistaken, there are entries there that chronicle us walking away on three separate occasions from stash houses.

Q. And did that sound to you incredible?

A. I stopped reading.

Q. So you only got through two pages of this management log?

A. Yeah.

Q. And then you couldn't read it any longer?

A. Didn't want to.

Q. Because you were so upset?

A. Yes.

Q. And you were upset because walking away from three stash houses struck you as so outrageous?

A. Walking away from one, walking away from one gun when you know that that gun is going to be used in a crime when you, I mean, there is no, **there was no gray area here guys. There was no gray area here.** We knew that these guys were trafficking guns into Mexico. **There is no gray area.** They weren't trafficking, [the] guys weren't going out and buying two Larson 22 pistols. These guys were buying 7.62, 223's, .50 caliber rifles, okay, there was no mistake about this. **This is no gray area.**¹³⁷

Gil realized the full scope of Operation Fast and Furious only after he retired from ATF. It took the public allegations of the whistleblowers and contacts with his former colleagues for Gil to fully comprehend the tactics used in Operation Fast and Furious:

Q. Now, when you were speaking with [a Congressional investigator] you indicated that you learned about the specific tactics of operation Fast and Furious. Can you remind us when that was?

A. It was after I retired. It was after the shooting of Border Patrol Agent Terry. I started getting phone calls saying, hey, this is – there is something to this thing, these guns were knowingly allowed into Mexico. And so that was the first knowledge that I had about the potential allowing guns to go into Mexico.

¹³⁷ *Id.* at 25-26.

- Q. And how did you become aware of that?
- A. Several phone calls from agents, speaking to my deputy or my former deputy, [REDACTED] ATF, who I remained in contact with. Seeing Agent Dodson on TV and getting phone calls primarily. And then I was contacted by several media sources including CBS.¹³⁸

After realizing that ATF had let guns walk, Gil's concerns turned to the safety of ATF agents in Mexico:

- Q. And I believe you mentioned that in the aftermath of Agent Dodson's interview on CBS, you had concerns about your former agents in Mexico. What were – what were the concerns you had for them?
- A. I had spoken to my deputy primarily and he mentioned that, obviously, the Government of Mexico, our counterparts are not happy with this situation. It made it tough for them that . . . didn't want to work with them. It's like, hey, we can't trust you, you guys are allowing these guns to come in. Inside the embassy because the **Government of Mexico was irritated with us, they held that against the other agencies within the embassy**, maybe slowing down Visas to allow personnel to come in and work in Mexico. . . Obviously **the ambassador** probably, I didn't speak -- I haven't spoken to him since I left the country, but my understanding is he **wasn't happy about it**. And so there might have been some friction there between the acting attaché, [REDACTED] ATF, and him. And so it was several conflicts going on. And, again, they just started looking at the articles and the bloggers and some of the media reports in Mexico that the ATF was corrupt, and we were taking kickbacks to allow these weapons to come in, which puts a big zero – crossbar on my guys' backs down there.
- Q. When you say crossbar?
- A. I'm sorry, I should clarify that.
- Q. Sure.
- A. Puts a mark on their back, for instance, targets for not only corrupt cartel members to find out who they are and kidnap or kill, which is some of the unfortunate areas I had to deal with down there. And then – or **Government of Mexico officials not happy and . .**

¹³⁸ Gil Transcript, at 81-82.

. they may arrest you, indict you, take away your Visa and throw you out of the country. So there's all these things going on down there amongst my former crew.¹³⁹

VIII. Persistent Consequences of Operation Fast and Furious

A. The Murder of Mario Gonzalez Rodriguez

On October 21, 2010, drug cartel members kidnapped Mario Gonzalez Rodriguez from his office. At the time of the kidnapping, his sister Patricia Gonzalez Rodriguez was the Attorney General of the state of Chihuahua in northwestern Mexico. A few days after the kidnapping, a video surfaced on the Internet in which Mario Gonzalez sat handcuffed, surrounded by five heavily armed men wearing masks, dressed in camouflage and bullet-proof vests. Apparently under duress, Gonzalez alleged that his sister had ordered killings at the behest of the Juarez cartel, located in Chihuahua.¹⁴⁰ The video quickly went viral, instantly becoming a major news story in Mexico.

Patricia Gonzalez Rodriguez denied her brother's allegations, claiming the armed men holding him hostage coerced Mario into making his statements. Patricia Gonzalez Rodriguez asserted her brother's kidnapping was payback for the prosecutions of members of the Sinaloa cartel and corrupt Mexican law enforcement officers. Ms. Gonzalez left her post as attorney general later that month.

On November 5, 2010, Mexican authorities found Mario Gonzalez Rodriguez's body in a shallow grave.¹⁴¹ Shortly after this grisly discovery, the Mexican federal police engaged in a shootout with drug cartel members, which resulted in the arrest of eight suspects. Police seized sixteen weapons from the scene of the shootout. Two of these weapons traced back to Operation Fast and Furious.¹⁴²

E-mails obtained by the Committees indicate that ATF knew about the link to Operation Fast and Furious almost immediately after the trace results came back. A November 15, 2010 e-mail from ATF's OSII to the Phoenix Field Division alerted Phoenix that two of the recovered AK-47s weapons traced back to Operation Fast and Furious.¹⁴³ A number of employees from OSII contacted their colleagues in Phoenix to alert them of this connection. OSII agents also told ATF personnel in Mexico.¹⁴⁴

¹³⁹ *Id.* at 82-84.

¹⁴⁰ Kim Murphy, *U.S. AK-47s Linked to Mexican attorney's slaying*, L.A. TIMES, June 23, 2011, available at <http://articles.latimes.com/2011/jun/23/nation/la-na-gunrunner-20110623>.

¹⁴¹ Maggie Ybarra, *8 Held in Death of Ex-Chihuahua AG's Brother*, EL PASO TIMES, Nov. 5, 2010, available at http://www.elpasotimes.com/news/ci_16537620.

¹⁴² Email from [REDACTED] ATF to [REDACTED] ATF, Nov. 15, 2010 (HOCR ATF – 001792).

¹⁴³ *Id.*

¹⁴⁴ Interview with [REDACTED] ATF Intelligence Operations Specialist, in Wash., D.C. (July 5, 2011).

[ATF], informed ATF headquarters about the link between the Gonzalez murder and the subsequent shootout to Fast and Furious. However, no one authorized [ATF] to inform the Mexican government about the connection.

Q. Who did you mention it to?

A. I mentioned it to the Director.

Q. That's Acting Director Melson?

A. Yes. I mentioned it to Billy Hoover, I mentioned it to Mark Chait, I mentioned it to Bill McMahon, I mentioned it to my boss Danny Kumor.¹⁴⁵

* * *

A. I remember at least two times when I mentioned it to them. I said one of us – look, here's what happened. Okay, this woman is a prominent politician.

Q. This is Miss Patricia Gonzalez?

A. Right.

Q. She's no longer a –

A. No longer, right. . . [T]his is front page news for days in Mexico, we need to tell them this, because if we don't tell them this, and this gets out, it was my opinion that the Mexicans would never trust us again because we were holding back this type of information. **And every time I mentioned it... guys started looking at their cell phones, silence in the room, let's move on to the next subject.** . . . I wasn't told, yea, tell her, but I was never told, no, you can't tell her. I was never told that. It was just indecision.

Q. So you were getting no instructions at all?

A. Zero instructions.¹⁴⁶

Acting Attaché [ATF] continued to feel strongly that the Mexican government should be informed of the link between the Mario Gonzalez murderers and Operation Fast and Furious. He also believed that, given the seriousness of the information and the negative fallout that would

¹⁴⁵ [ATF] Transcript, at 31.

¹⁴⁶ *Id.* at 32.

likely ensue, ATF headquarters should share this information with the U.S. Ambassador to Mexico.¹⁴⁷

The rapidly escalating media scrutiny would eventually expose the connection between the Mario Gonzalez Rodriguez murderers and Operation Fast and Furious. In [ATF] view, sharing this information directly with Mexican officials before the press exposed it was of paramount importance to preserve U.S.-Mexico relations and the ability of ATF personnel to operate in Mexico. Not until June 2011, nearly eight months after ATF became aware of the link between Operation Fast and Furious and the guns recovered following the shootout, did [ATF] notify the Mexican government:

Q. And why did you do that [tell Ms. Morales]?

A. I communicated that to the Mexican Attorney General Maricela Morales because I did not want her to find out through media reports where these guns had come from. I wanted her to find out from me, because she is an ally of the U.S. Government. She is committed to fighting these cartels, she is a personal friend, and I owe her that.

Q. That courtesy?

A. I owe her that courtesy, absolutely.¹⁴⁸

* * *

Q. And even though you really didn't get permission – well, I guess Mr. Kumor sort of approved, but no one else really did?

A. Right.

Q. But you still decided that it was important for you to disclose that information?

A. **If I hadn't told the Attorney General this, and this had come out in the news media, I would never be able to work with her ever again, and we would be done in Mexico.** We just might as well pack up the office and go home.

Q. So the fact that these guns traced back to this program Fast and Furious has the potential, perhaps even did, to create an international incident?

A. This has already created an international incident.

¹⁴⁷ [ATF] Transcript, at 32.

¹⁴⁸ *Id.* at 30-31.

Q. But this is even more personal?

A. When the Mexican media gets ahold of this, it's going to go crazy.

Q. By “this” you're talking about the tracing to the death of Mario Gonzalez?

A. Absolutely.

* * *

Q. Now, what was her reaction when you told her?

A. She was shocked.

Q. Did she say anything, exclaim anything?

A. **She said, "Hijole," which translates basically into, "Oh, my."**

Q. Oh, my God? Oh, my?

A. Yeah.¹⁴⁹

The failure to inform the Mexican government earlier risked possible international implications. This failure to inform is another example of ATF leadership withholding essential information related to Operation Fast and Furious.

B. The Mexican Helicopter Incident

A May 2011 shootout between Mexican police and cartel members demonstrates the broadening impact of Operation Fast and Furious. On May 24, 2011, La Familia DTO gunmen forced a Federal Police helicopter to make an emergency landing in the state of Michoacan, located in western Mexico.¹⁵⁰ The gunmen attacked the helicopter, wounding two officers on board and forcing the aircraft to land near the scene of the attack.¹⁵¹ **ATF** described the event:

A. I think it was on May 24th the Mexican Federal Police mounted an operation against members of La Familia.

Q. That's a drug cartel?

¹⁴⁹ *Id.* at 31, 33.

¹⁵⁰ “Drug Gunmen Force Down Mexican Police Helicopter,” *AP*, May 25, 2011, available at <http://www.signonsandiego.com/news/2011/may/25/drug-gunmen-force-down-mexican-police-helicopter/>.

¹⁵¹ *Id.*

A. Right. In the State of Michoacan. When the Mexican Federal Police was deploying its troops via helicopter, they came under fire from members of La Familia. I believe in the May 24th incident two crewmen were hit.

Q. These were soldiers or policemen?

A. Policemen, Federal policemen. They were hit. The helicopter flew off. My understanding is that that helicopter could have made it back to the base under its own power; however, it landed to render aid to the injured people on board.¹⁵²

On May 29, 2011, the federal police launched a massive raid on the La Familia DTO. During the raid, cartel gunmen again attacked Federal Police helicopters and wounded two more officers:

A. Fast forward to May 29th. Again, the Mexican Federal Police mount another operation. I believe this time it was in the State of - - I need to look at a map. Anyway, it was a bordering State.

Q. Okay.

A. They were coming in. Members of La Familia cartel engaged – there were four helicopters – engaged them. I believe all four helicopters were struck by fire. Mexican Federal Police returned fire from the helicopters; able to suppress the fire coming in, offloaded, and the helicopters all flew back, and they were back in service within a few days.

Q. Now, was there any people hurt on the ground, any deaths?

A. I believe in the second operation, I believe ... Mexican Federal Police killed, I believe either 11 or 14 people.¹⁵³

The raid resulted in the deaths of 11 cartel members and the arrest of 36 cartel members, including those suspected of firing on the helicopter several days earlier. Authorities also found a cache of more than 70 rifles at the scene, including a Barrett .50 caliber rifle. Some of these weapons traced back to Operation Fast and Furious.¹⁵⁴ Mexican police also found a stash of heavy-duty body armor belonging to the cartels. This was the first time ATF in Mexico had seen such body armor in the hands of the cartels. Along with the Barrett .50 caliber rifles, these vests symbolized a new level of sophistication in cartel weaponry.¹⁵⁵

¹⁵² ATF Transcript, at 34.

¹⁵³ *Id.* at 34.

¹⁵⁴ *Id.* at 35.

¹⁵⁵ ATF Transcript, at 36.

During a trip to Mexico City on June 25, 2011, Members and staff from the U.S. House of Representatives Committee on Oversight and Government had an opportunity to visually inspect the damaged helicopter.¹⁵⁶ Several bullet holes were evident on the body of the aircraft, and one round from a .50-caliber rifle penetrated the thick “bullet proof” glass windshield.



The downed helicopter incident and subsequent police raid resulted in the recovery of Operation Fast and Furious weapons that may have been used against the Mexican police. Barrett .50 caliber rifles provide a significant upgrade to the cartels’ ability to inflict serious damage and casualties on their enemies. As [ATF] testified:

[T]he count was up to 1,900 guns [associated with Fast and Furious] in suspect gun data, 34 of which were, 34 of which were .50 caliber rifles. And I, my opinion was that these many .50 caliber rifles in the hands of one of these **cartels is going to change the outcome of a battle.**¹⁵⁷

Previously, weapons had been linked back to the Sinaloa cartel and members of the El Teo organization, an off-shoot from the Beltrán -Leyva cartel. La Familia DTO is the third cartel connected to Operation Fast and Furious weapons. The May 24, 2011 shooting shows that Operation Fast and Furious weapons may be found in a broader geographic area than the territory controlled by the Sinaloa DTO.¹⁵⁸ This spread of Operation Fast and Furious weapons may place an even greater number of Mexican citizens in harm’s way.

IX. Conclusion

According to the Justice Department’s July 22, 2011 response to Questions for the Record posed by Senator Grassley, Fast and Furious suspects purchased 1,418 weapons *after* becoming known to the ATF.¹⁵⁹ Of those weapons, 1,048 remain unaccounted for, since the

¹⁵⁶ Report from United States Embassy staff about Congressional Visit, June 25, 2011 (on file with author).

¹⁵⁷ *Id.* at 17.

¹⁵⁸ See Areas of Cartel Influences in Mexico, *supra* page 15.

¹⁵⁹ Letter from Ronald Weich, Asst. Att’y Gen., U.S. Dep’t of Justice, to Senator Patrick Leahy, Chairman, Senate Jud. Comm., July 22, 2011, 13.

Department's response indicates that the guns have not yet been recovered and traced.¹⁶⁰ U.S. and Mexican law enforcement officials continue to seize weapons connected to the operation and recover weapons at crime scenes on both sides of the border. Given the vast amount of Operation Fast and Furious weapons possibly still in the hands of cartel members, law enforcement officials should expect more seizures and recoveries at crime scenes. According to several agents involved in Operation Fast and Furious, ATF agents will have to deal with these guns for years to come.¹⁶¹

Some aspects of Operation Fast and Furious may ultimately escape scrutiny given the difficulties of tracing weapons recovered in Mexico. The possibility remains for more high-profile deaths linked to Operation Fast and Furious. **ATF** bluntly described his reaction to that possibility:

Q. When you first got the impression that this was part of a strategy to let guns walk into Mexico, what was your reaction to that strategy?

A. The guys in Mexico will trace those . . . I'm beyond angry. Brian Terry is not the last guy, okay, guys? Let's put it out there right now. Nobody wants to talk about that. Brian Terry is not the last guy unfortunately. . . . **Unfortunately, there are hundreds of Brian Terrys probably in Mexico . . . we ATF armed the [Sinaloa] cartel. It is disgusting.**¹⁶²

The faulty design of Operation Fast and Furious led to tragic consequences. Countless United States and Mexican citizens suffered as a result. The lessons learned from exposing the risky tactics used during Operation Fast and Furious will hopefully be a catalyst for better leadership and better internal law enforcement procedures. Any strategy or tactic other than interdiction of illegally purchased firearms at the first lawful opportunity should be subject to strict operational controls. These controls are essential to ensure that no government agency ever again allows guns to knowingly flow from American gun stores to intermediaries to Mexican drug cartels.

¹⁶⁰ *Id.* at 14.

¹⁶¹ See Casa Transcript, at 17; see also *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes*, 111th Cong. 44 (2011) (statement of **ATF** ATF Special Agent).

¹⁶² **ATF** Transcript, at 17-19.