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**From:** Cunningham, Patrick (USAAZ)  
**To:** Burke, Dennis (USAAZ)  
**CC:** Sherwood, Robert (USAAZ) <Contractor>; Scheel, Ann (USAAZ); Hernandez, Rachel (USAAZ); Morrissey, Mike (USAAZ); Hurley, Emory (USAAZ)  
**Sent:** 3/4/2011 11:57:48 AM  
**Subject:** ATF status for Jason  
**Attachments:** 12 2 10 Ltr to USSC.PDF

Dennis: For Jason, these are our answers to the press for the current status of ATF and the main indictment in Fast and Furious. PJC

Questions: Whether ATF is in custody, what's his plea, next steps?

**Answer:**

**Under 9<sup>th</sup> Circuit law offenses committed by “straw purchasers” are not considered crimes of violence for which a person can be detained pending trial. As to the only other basis for pretrial detention – flight risk – Avila is a US citizen and the Bail Reform Act requires the court to impose the least restrictive conditions that will reasonably assure his appearance and the safety of the community. Here, ATF was released on conditions pending Trial by the Magistrate Court. His release conditions include reporting as directed to U.S. Pretrial Services, surrendering any passport, not traveling outside the district of Arizona, having no contact with the other defendants, and not possessing a firearm or other dangerous weapon.**

**Regarding the treatment of “straw purchasers” by the Criminal Justice System, the five Southwest Border United States Attorneys from Arizona, Texas, California and New Mexico recently sent the enclosed letter (pdf enclosed) to the United States Sentencing Commission urging that the prison sentences for “straw purchasers” be strengthened because of their role in the trafficking and illegal export of weapons.” The letter states in part:**

‘As the chief federal law enforcement officers in the Southwest border region, we strongly believe the Commission must amend USSG § 2K2.1 if it is truly to address the national security implications of arms trafficking. As the Department explained during its meeting with Commission staff, straw purchasers are the primary source of firearms trafficked to Mexico from the United States. Most of the defendants prosecuted for arms export or arms trafficking offenses involving the Southwest border would not have obtained the firearms at issue were it not for the efforts of straw purchasers. Yet because straw purchasers face such low guideline ranges under § 2K2.1, and because many judges see straw purchasing as a mere “paper” violation, the sentences received by straw purchasers fail to reflect the seriousness of the crime or the critical role played by these defendants in the trafficking and illegal export of weapons. Simply put, straw purchasing and illegal arms exporting go hand in hand, and both must be addressed together.’”

**Regarding ATF's plea and next steps, he has entered a plea of Not Guilty and the current schedule for the case is as follows:**

**CR-11-126-PHX-JAT (ATF et al)-**

**Motions Deadline -4/22/11  
Jury Trial- 06/07/2011 at 09:00 AM**