

# United States Senate

WASHINGTON, DC 20510

January 31, 2011

## Via Electronic Transmission

Kenneth E. Melson  
Acting Director  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
99 New York Avenue, NE  
Washington, DC 20226

Dear Acting Director Melson:

As you know, I wrote to you on Thursday, January 27, regarding serious allegations associated with Project Gunrunner and the death of Customs and Border Protection Agent Brian Terry. Although the staff briefing I requested has not yet been scheduled, it appears that the ATF is reacting in less productive ways to my request. I understand that Assistant Special Agent in Charge (ASAC) George Gillette of the ATF's Phoenix office questioned one of the individual agents who answered my staff's questions about Project Gunrunner. ASAC Gillette allegedly accused the agent of misconduct related to his contacts with the Senate Judiciary Committee. This is exactly the wrong sort of reaction for the ATF. Rather than focusing on retaliating against whistleblowers, the ATF's sole focus should be on finding and disclosing the truth as soon as possible.

Whistleblowers are some of the most patriotic people I know—men and women who labor, often anonymously, to let Congress and the American people know when the Government isn't working so we can fix it. As such, it would be prudent for you to remind ATF management about the value of protected disclosures to Congress and/or Inspectors General in accordance with the whistleblower protection laws. Absent such a clear communication from you, ATF management might be able to intimidate whistleblowers to prevent them from providing information to Congress.

As you may be aware, obstructing a Congressional investigation is a crime.<sup>1</sup> Additionally, denying or interfering with employees' rights to furnish information to

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<sup>1</sup> 18 U.S.C. § 1505 states, in pertinent part:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress--

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

Congress is also against the law.<sup>2</sup> Federal officials who deny or interfere with employees' rights to furnish information to Congress are not entitled to have their salaries paid by taxpayers' dollars.<sup>3</sup> Finally, ATF personnel have Constitutional rights to express their concerns to Congress under the First Amendment.

ATF employees have the right to talk to Congress and to provide Congress with information free and clear of agency interference. Further, these employees have the right to be free from fear of retaliation or reprisal for doing so. Please ensure that ATF employees are aware of their rights and whistleblower protections and that ATF managers are accountable for respecting any protected disclosures.

If you have any questions please contact my Committee staff, Jason Foster at (202) 224-5225. Any formal correspondence should be sent electronically in PDF searchable format to [Brian\\_Downey@judiciary-rep.senate.gov](mailto:Brian_Downey@judiciary-rep.senate.gov).

Sincerely,



Charles E. Grassley  
Ranking Member

cc: The Honorable Eric H. Holder, Jr.  
Attorney General of the United States

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<sup>2</sup> 5 U.S.C. § 7211 states:

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

<sup>3</sup> P.L. 111 -117 § 714 states:

No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who -

(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or

(2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, status, pay, or performance of efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).

**Johnson, Ebony (JMD)**

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**From:** Admin. Assistant (SMO)  
**Sent:** Monday, January 31, 2011 3:40 PM  
**To:** DOJExecSec (JMD)  
**Cc:** Tolson, Kimberly G (JMD); Wells, Barbara A (JMD)  
**Subject:** FW: A Letter from Ranking Member Charles E. Grassley  
**Attachments:** 2011-01-31 Letter to ATF.pdf

Pls log attached ltr. Thanks.

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**From:** Admin. Assistant (JMD)  
**Sent:** Monday, January 31, 2011 2:06 PM  
**To:** Admin. Assistant (SMO)  
**Cc:** Admin. Assistant (SMO)  
**Subject:** FW: A Letter from Ranking Member Charles E. Grassley  
**Importance:** High

Shirley: Please log in. Thanks, Jamie

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**From:** Weich, Ron (SMO)  
**Sent:** Monday, January 31, 2011 2:05 PM  
**To:** Admin. Assistant (JMD)  
**Subject:** FW: A Letter from Ranking Member Charles E. Grassley  
**Importance:** High

Please have Shirley log in etc.

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**From:** ATF (ATF)  
**Sent:** Monday, January 31, 2011 12:42 PM  
**To:** Weich, Ron (SMO); Agrast, Mark D. (SMO)  
**Cc:** Burton, Faith (SMO); Gonzales, Mary (OLA); Admin. Assistant (JMD); McDermond, James E. (ATF); Hickson, Ernest E. (ATF)  
**Subject:** FW: A Letter from Ranking Member Charles E. Grassley  
**Importance:** High

Fyi.

**ATF**

*DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives*

**ATF**

202. (mobile1)  
202. **ATF** (mobile2)  
202. (office)  
202.648.9708 (fax)

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**From:** Downey, Brian (Judiciary-Rep) [mailto:Brian\_Downey@judiciary-rep.senate.gov]  
**Sent:** Monday, January 31, 2011 12:19 PM  
**To:** Melson, Kenneth E.; Hoover, William J.; Michalic, Vivian B; **ATF**  
**Cc:** Foster, Jason (Judiciary-Rep); Hoover, William J.  
**Subject:** A Letter from Ranking Member Charles E. Grassley  
**Importance:** High

Hello,

Please find attached a letter from Ranking Member Grassley. Please confirm receipt, thank you.

Sincerely,

Brian

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Brian M. Downey  
Investigative Assistant  
U.S. Committee on the Judiciary  
Ranking Member Charles E. Grassley  
U.S. Senate  
Washington, DC  
(P) 202-224-5225