

The Attorney General

Washington, D.C.

October 7, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Minority Member
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lamar S. Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Messrs. Chairmen and Senator Grassley, Congressman Conyers, and
Congressman Cummings:

I have watched for some months now as the facts surrounding Operation Fast and Furious have been developed on the public record. I have not spoken at length on this subject out of deference to the review being conducted, at my request, by our Department's Inspector General. However, in the past few days, the public discourse concerning these issues has become so base and so harmful to interests that I hope we all share that I must now address these issues notwithstanding the Inspector General's ongoing review.

For example, I simply cannot sit idly by as a Majority Member of the House Committee on Oversight and Government Reform suggests, as happened this week, that law enforcement and government employees who devote their lives to protecting our citizens be considered "accessories to murder." Such irresponsible and inflammatory rhetoric must be repudiated in the strongest possible terms. Those who serve in the ranks of law enforcement are our Nation's heroes and deserve our Nation's thanks, not the disrespect that is being heaped on them by those who seek political advantage. I trust you feel similarly and I call on you to denounce these statements.

I also want to be very clear that protecting American citizens from the devastating effects of gun violence is among the most important responsibilities of the Department of Justice. Likewise, ensuring that weapons sold here do not flow south to Mexico is of paramount importance. We are committed to disrupting and dismantling the organizations that traffic weapons across our borders and I am proud to

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stand with our brave law enforcement officers who fight every day to protect our citizens and those of Mexico from the effects of gun violence and illegal gun trafficking.

A. Fast and Furious was a Flawed Response to a Serious Problem on the Southwest Border

According to ATF, it took into evidence nationwide approximately 35,000 firearms in FY 2011. In FY 2010, the number was approximately 37,500. During that same period, ATF reports that it took into evidence nationwide over 5 million rounds of ammunition. Still, the Southwest Border remains the front line in the battle against illegal gun trafficking. ATF and our prosecutors struggle mightily to make cases against gun smugglers and do outstanding work on a daily basis in an effort to stop the flow of guns across our borders.

Notwithstanding the seriousness of the problem faced on the Southwest Border, there is no doubt that Operation Fast and Furious was fundamentally flawed. Regrettably, its effects will be felt for years to come as weapons that should have been interdicted but were not continue to show up at crime scenes in this country and in Mexico. This is both tragic and completely unacceptable. I want to be very clear that we must aim to disrupt and dismantle the dangerous cartels that operate south of our border. That said, in our pursuit of that goal we must take all steps possible to prevent guns from crossing our border and the desire to bring cartel leaders to justice does not and cannot justify losing track of dangerous weapons.

For that very reason, in 2011, after the controversy about this matter arose, I took decisive action to ensure that such operations are never again undertaken. First, I referred the matter to the Department's Inspector General for review so the facts underlying it could come out. Second, I instructed the Deputy Attorney General to reiterate to our prosecutors and law enforcement components that Department policy prohibits the design or conduct of undercover operations which include the uncontrolled crossing of guns across the border. In addition, new leadership is now in place both at ATF and in the United States Attorney's Office in Arizona. It has become clear that the flawed tactics employed in Fast and Furious were not limited to that operation and were actually employed in an investigation conducted during the prior Administration. Regardless, those tactics should never again be adopted in any investigation.

B. No Knowledge of Fast and Furious' Misguided Tactics

Much has been made in the past few days about my congressional testimony earlier this year regarding Fast and Furious. My testimony was truthful and accurate and I have been consistent on this point throughout. I have no recollection of knowing about Fast and Furious or of hearing its name prior to the public controversy about it. Prior to early 2011, I certainly never knew about the tactics employed in the operation and it is my understanding that the former United States Attorney for the District of Arizona and the former Acting Director and Deputy Director of ATF have told Congress that they, themselves, were unaware of the tactics employed. I understand that they have also told Congress that they never briefed me or other Department leadership on the misguided tactics that were used in Fast and Furious. Of course, that is not surprising for, as Chairman Issa made clear in an interview on CNN just this week, even the former Acting Director of ATF "has said he didn't know about" the tactics being used in the field by his agency.

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In the past few days, some have pointed to documents that we provided to Congress as evidence that I was familiar with Fast and Furious earlier than I have testified. That simply is not the case and those suggestions mischaracterize the process by which I receive information concerning the activities of the Department's many components. On a weekly basis, my office typically receives over a hundred pages of so-called "weekly reports" that, while addressed to me, actually are provided to and reviewed by members of my staff and the staff of the Office of the Deputy Attorney General. The weekly reports contain short summaries of matters that the agencies deem of interest that week. Sometimes, the summaries are simply a sentence-long and other times they consist of a paragraph. In some cases, the summaries are of policy-related issues or upcoming events. In other cases, the summaries are brief, high-level reviews of pending matters or investigations. It is important to look at the documents supposedly at issue here and, for that reason, I have attached them to this letter and am making them public in the form they previously were provided by us to Congress. Please note that none of these summaries say anything about the unacceptable tactics employed by ATF.

Attorneys in my office and in the Office of the Deputy Attorney General review these weekly reports and bring to my attention only those matters deemed to require my consideration or action; given the volume of material to which I must devote my attention, I do not and cannot read them cover-to-cover. Here, no issues concerning Fast and Furious were brought to my attention because the information presented in the reports did not suggest a problem. Rather, the entries suggest active law enforcement action being taken to combat a firearms-trafficking organization that was moving weapons to Mexico. For example, the ATF weekly report for July 19-23, 2010 briefly described the seizure in Phoenix of 73 firearms and 250 AK-47 drum magazines from a local business as part of Operation Fast and Furious, again with no mention of any unacceptable tactics.

If a component of the Department has concerns about a particular matter, there are established avenues for raising them with my office or that of the Deputy Attorney General and a weekly report is not one of them. As Attorney General, I am not and cannot be familiar with the operational details of any particular investigation being conducted in an ATF field office unless those details are brought to my attention. That did not happen with Fast and Furious until the public controversy arose in 2011.

Senator Grassley has suggested that I was aware of Operation Fast and Furious from letters he provided to me on or about January 31, 2011 that were addressed to the former Acting Director of ATF. However, those letters referred only to an ATF umbrella initiative on the Southwest Border that started under the prior Administration -- Project Gunrunner -- and not to Operation Fast and Furious.

To be sure, during 2010 I knew generally that ATF was conducting gun trafficking operations along the Southwest Border and elsewhere in the country since that is a core part of its mission given the large number of firearms flowing to Mexico each year from the United States. I also was aware of the existence of Project Gunrunner. More specifically, however, I now understand some senior officials within the Department were aware at the time that there was an operation called Fast and Furious although they were not advised of the unacceptable operational tactics being used in it. For example, I understand that we have provided to Congress materials from a March 2010 monthly meeting between the then-Acting Deputy Attorney General and senior ATF officials that included discussion of Fast and

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Furious. That meeting, of course, occurred shortly before Chairman Issa received his own briefing regarding Fast and Furious from some of the same ATF officials. I am aware that Chairman Issa has said that he was not briefed on the unacceptable details of Fast and Furious. Like Chairman Issa, the then-Acting Deputy Attorney General was not told of the unacceptable tactics employed in the operation in his regular monthly meetings with ATF to discuss its activities throughout the United States and abroad.

C. Congress Has Failed to Consider Whether Additional Tools Are Needed to Stem the Flow of Guns into Mexico

ATF witnesses testified before the House Committee on Oversight and Government Reform that the agency's ability to stem the flow of guns from the United States into Mexico is severely impaired by a lack of effective law enforcement tools. For example, a number of witnesses indicated that current penalties for illegal straw purchases are inadequate to deter such activity or to induce cooperation with law enforcement authorities after a violation is detected. Likewise, the lack of reporting requirements for multiple long gun purchases in a short period of time hindered law enforcement efforts to combat gun trafficking. Yet, the House of Representatives has voted to block a rule that requires such reporting on the Southwest Border.

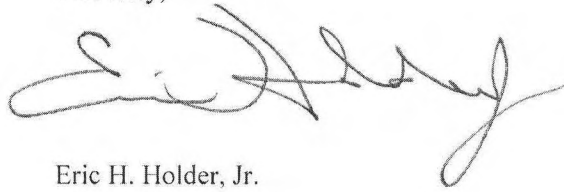
As I have said, the fact that even a single gun was not interdicted in this operation and found its way to Mexico is unacceptable. Equally unacceptable, however, is the fact that too many in Congress are opposed to any discussion of fixing loopholes in our laws that facilitate the staggering flow of guns each year across our border to the south. I cannot help but note that at the same time that some members of Congress understandably criticize the Fast and Furious operation, they vehemently refuse to consider whether ATF has the resources and legal tools it needs to do its job -- tools that would be entirely consistent with the constitutional rights of law-abiding citizens.

A telling moment in this regard came during one of the Fast and Furious hearings held by the House Committee on Oversight and Government Reform when Representative Maloney sought to question an ATF witness about potential reforms to our laws that would help stem the flow of illegal weapons. Representative Maloney was cut-off in mid-sentence by Chairman Issa, who then "cautioned" the witness that it would not be "valid testimony" to respond to such questions because the Committee was not interested in "proposed legislation and the like[.]" While failing to interdict weapons is an unacceptable tactic to stop the flow of illegal weapons, it seems clear that some in Congress are more interested in using this regrettable incident to score political points than in addressing the underlying problem. Even in the face of an unprecedented flow of guns across the border, too many in Congress still oppose every effort to reform our gun laws in ways that would make the United States and our Mexican neighbors safer.

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Until we move beyond the current political climate -- where real solutions take a back seat to both political posturing and making headlines on cable news programs, and is deemed more important than actually solving our country's difficult challenges -- nothing is going to change. I hope we can engage in a more responsible dialogue on this subject in the future. There is much we all need to do together to stop gun violence on both sides of the border and make our Nation safer.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Holder", with a stylized flourish at the end.

Eric H. Holder, Jr.

Enclosures