

United States Senate
WASHINGTON, DC 20510

March 3, 2011

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

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

Dear Attorney General Holder and Acting Director Melson:

It has been over a month since I first contacted Acting Director Melson about serious whistleblower allegations related to a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) operation called “Fast and Furious”—part of the broader “Project Gunrunner” initiative. Several agents alleged that ATF leadership encouraged cooperating gun dealers to engage in sales of multiple assault weapons to individuals suspected of illegally purchasing for resale to Mexican cartels. These agents were motivated to come forward after federal authorities recovered two of the Operation Fast and Furious guns at the scene where a Customs and Border Patrol Agent named Brian Terry was killed.

In response to my letter, the Department of Justice (DOJ) denied that ATF would ever knowingly allow weapons to fall into the hands of criminals, or let firearms “walk” in an operation. On February 9, I wrote to DOJ and attached documents that supported the whistleblower allegations about the guns found at the scene of Agent Terry’s death.¹

My office continues to receive mounting evidence in support of the whistleblower allegations. For example, attached are detailed accounts of three specific instances where ATF allowed firearms to “walk.”² In all three instances, the suspect asks a cooperating

¹ Letter from Senator Grassley to Attorney General Holder. February 9, 2011. Accessed at <http://judiciary.senate.gov/resources/documents/upload/020911GrassleyToHolder-ATF.pdf>.

² ATF Reports of Investigation (ROIs) detailing ATF Phoenix Field Operations from May 8-June 1, 2010. (Attachment 1)

defendant to purchase firearms at a gun dealer who was also cooperating with the ATF. So, two of the three participants in the transactions were acting in concert with the ATF. Yet, the ATF allowed the suspect to take possession of the firearms in each instance. In one case the suspect said that he “assumed the only real risk in their trafficking arrangement when he [REDACTED] ‘erase(d) the (serial) numbers’ from the firearms and ‘take (transports) them...’”³

The whistleblowers did not wait until a federal agent was killed before voicing their concerns internally. Several agents in the Phoenix Gun Trafficking Group (Group VII) voiced their opposition to the ATF’s handling of the case internally first. Group Supervisor David Voth sent an email on March 12, 2010 about the “schism developing amongst our group.”⁴ His response to dissent within the group was to invite those who disagreed with the strategy to find another job:

Whether you care or not people of rank and authority at HQ are paying close attention to this case and they also believe we (Phoenix Group VII) are doing what they envisioned the Southwest Border Groups doing. It may sound cheesy, but we are “The tip of the ATF spear” [sic] when it comes to the Southwest Border Firearms Trafficking.

We need to resolve our issues at this meeting. I will be damned if this case is going to suffer due to petty arguing, rumors, or other adolescent behavior.

... If you don’t think this is fun, you’re in the wrong line of work—period! This is the pinnacle of domestic U.S. law enforcement techniques. After this the toolbox is empty. Maybe the Maricopa County Jail is hiring detention officers and you can get paid \$30,000 (instead of \$100,000) to serve lunch to inmates all day.⁵

Two weeks later, on April 2, 2010, Voth sent an email to Assistant U.S. Attorney Emory Hurley and Assistant Special Agent in Charge (ASAC) George Gillett with the subject, “No pressure but perhaps an increased sense of urgency.”⁶ In the email, he reiterated support for the strategy, but cited increasing levels of violence as a reason to move more quickly. Voth wrote:

Our subjects purchased 359 firearms during the month of March alone, to include numerous Barrett .50 caliber rifles. I believe we are righteous in our plan to dismantle this entire organization and to rush in to arrest any one person without taking in to [sic] account the entire scope of the conspiracy would be ill advised to the overall good of the mission. I

³ *Id.*

⁴ Email from Group Supervisor David Voth to Group VII. March 12, 2010. (Attachment 2)

⁵ *Id.* (Emphasis in original.)

⁶ Email from Group Supervisor David Voth to Group VII, Emory Hurley (USAAZ), and George Gillett. April 2, 2010. (Attachment 3)

acknowledge that we are all in agreement that to do so properly requires patience and planning. In the event, however, that there is anything we can do to facilitate a timely response or turnaround by others, we should communicate our sense of urgency with regard to this matter.⁷

Voth also acknowledged in a May 3, 2010 email to his group that “April was the second most violent month during the Calderon administration with 1,231 executions.”⁸ ATF personnel in Mexico reportedly noted the increased violence and contacted ATF Headquarters to express concern over the Operation Fast and Furious strategy of allowing the weapons sales to proceed.

ATF Headquarters was fully aware of the strategy. A copy the Operation Fast and Furious case summary sent to ATF Headquarters states:

This OCDETF [Organized Crime Drug Enforcement Task Force] case is a large scale firearms trafficking case with the firearms being recovered in the Republic of Mexico or on/near the US/Mexico border (El Paso, TX, Nogales, AZ, Douglas, AZ, etc.) To date over 1,500 firearms have been purchased since October 2009 for over one million (\$1,000,000.00) cash in over-the-counter transactions at various Phoenix area FFLs. [REDACTION] There are many facets to this investigation but ATF is attempting to not only secure a straw purchase/dealing in firearms without a license case against various individuals but more specifically to make the bigger connection to the Mexican Cartel/Drug Trafficking Organization (DTO) obtaining these firearms for the best possible case and the most severe charges when it is time to Indict [sic] this case.⁹

Dismantling the Mexican drug cartels is a worthy goal. However, asking cooperating gun dealers to arm cartels and bandits without control of the weapons or knowledge of their whereabouts is an extremely risky strategy. ATF leadership did not allow agents to interdict the weapons in this case. Instead, agents simply monitored the purchases of “suspect guns” and entered them into a database of firearms “suspected to eventually be used in criminal activity.”¹⁰ Over the course of this investigation, weapons allowed to walk were ending up in Mexico and along the Southwestern border. The ATF was well aware that this was happening. For example, in November 2009, four 7.62 caliber weapons were recovered in Naco, Mexico just two weeks after being purchased by one of the ATF’s suspects in Glendale, Arizona.¹¹ Also, in July 2010 a Romanian AK-47

⁷ *Id.*

⁸ Email from Group Supervisor David Voth to Group VII. May 3, 2010. (Attachment 4)

⁹ Phoenix Group VII, Operation Fast and Furious. (Attachment 5)

¹⁰ Email from Senior Firearms Program Specialist to Group VII Agent. June 17, 2010. (Attachment 6)

¹¹ Email: Suspect Person Activity Report. March 18, 2010. (Attachment 7)

variant—the same model found at the scene of Agent Terry’s death—was recovered in Navojoa, Mexico.¹²

In light of this evidence, the Justice Department’s denials simply don’t hold water. On February 4, 2011, the Department claimed that the ATF did not “knowingly” allow the sale of assault weapons to straw purchasers and that “ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation into Mexico.”¹³ Clearly those statements are not accurate. These documents establish that ATF allowed illegal firearm purchases by suspected traffickers in hopes of making a larger case against the cartels. ATF was not alone. The U.S. Attorney’s office appears to have been fully aware and engaged in endorsing the same strategy.

Congress needs to get to the bottom of this.

After close of business last night, I received a one-page response to my letters of February 9 and 16.¹⁴ The response asks that I direct to the Inspector General any individuals who believe they have knowledge of misconduct by Department employees. You should know that just after Agent Terry died in December, at least one whistleblower contacted the Office of Inspector General before contacting my office. Despite reporting the allegations multiple times by phone, Internet, and fax, no one contacted the whistleblower until after my staff contacted the Acting Inspector General directly on February 1.

I have received no documents in response to my February 16, 2011, request. Last night’s DOJ reply cites the Justice Department’s “longstanding policy regarding pending matters” as a reason for withholding documents “relating to any ongoing investigation.”¹⁵ However, as you know, that policy is merely a policy. It is not mandated by any binding legal authority.

There are many instances where the Justice Department and its components choose to provide information about pending investigations to Congress. These examples are not always officially documented, but often occur when there are particularly egregious allegations of government misconduct or there is an extremely high level of public interest in an investigation. Getting to the truth of the ATF whistleblower allegations in this case is extremely important to the family of Brian Terry and should be important to all Americans. There is no reason to wait the unknown number of years it might take for all of the trials and all of the appeals to be exhausted. The time for truth is now.

¹² Email from ATF Violent Crime Analysis Branch and Group VII Agents, detailing a weapon recovery in Mexico. August 6, 2010. (Attachment 8)

¹³ Letter from the Department of Justice to Senator Grassley. February 4, 2011. (Attachment 9)

¹⁴ Letter from the Department of Justice to Senator Grassley. March 2, 2011. (Attachment 10)

¹⁵ *Id.*

In addition to providing the documents I previously requested, please explain how the denials in the Justice Department's February 4, 2011 letter to me can be squared with the evidence.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

cc:

The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation

The Honorable Alan D. Bersin
Commissioner
United States Customs and Border Protection