U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 22, 2011

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

Dear Chairman Leahy:

Please find enclosed responses to questions for the record, numbers 37 through 53, arising from the appearance of Attorney General Eric Holder before the Committee on May 4, 2011, at an oversight hearing of the Department of Justice. These responses have been provided to the Committee on an expedited basis pursuant to our agreement with Ranking Minority Member Grassley. We will forward the responses to the remaining questions to you as soon as possible.

Please do not hesitate to call upon us if we may be of additional assistance.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Charles Grassley
Ranking Member

ATF Investigative Strategy Briefing Paper

37. The Department of Justice wrote on February 4, 2011, in response to letters I sent on January 27 and January 31:

> **At the outset, the allegation described in your January 27 letter—that ATF "sanctioned" or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico—is false. ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.**

Yet one briefing paper written by ATF Phoenix Field Office agents listed the investigative strategy of Operation Fast and Furious. The briefing paper, which was recently released by the House Oversight and Government Reform Committee states:

> **Currently our strategy is to *allow the transfer of firearms to continue to take place* in order to further the investigation and allow for the identification of additional coconspirators who would *continue to operate and illegally traffic firearms to Mexican DTOs* [Drug Trafficking Organizations] which are perpetrating armed violence along the Southwestern Border.**

Questions:

A. Have you read this briefing paper?

B. Was it ever provided to the Deputy Attorney General's office or any other component of the Justice Department other than the ATF? If so, please describe the circumstances in detail.

C. How does this document square with your Department's assertion that "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico"?

D. How does this document square with your Department's assertion that the whistleblower allegations are false?

Response:

The Department is aware of the briefing paper. Based on information presently available, we believe that Justice Department officials outside of ATF became aware of the briefing paper in connection with the investigation of this matter by the House Oversight and Government Reform Committee.

The excerpt above is an incomplete quotation from that briefing paper. The section that you have quoted actually reads:

> Currently our strategy is to allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow for the identification of additional co-conspirators who would continue to operate and illegally traffic firearms to Mexican DTOs which are perpetuating armed violence along the Southwest Border. This is all in compliance with ATF 3310.4(b) 148(a)(2). It should be noted that since early December efforts to "slow down" the pace of these firearms purchases have succeeded and will continue but not to the detriment of the larger goal of the investigation.

The briefing paper as a whole demonstrates that employees involved in the investigation and ultimate prosecution of the matter believed that, at the time the briefing paper was prepared, probable cause for an arrest was lacking. Most notably, the briefing paper describes that in conversations between ATF and the United States Attorney's Office, "[i]nvestigative and prosecution strategies were discussed and a determination was made that there was minimal evidence at this time to support any type of prosecution; therefore, additional firearms purchases should be monitored and additional evidence continued to be gathered."

The Department has not asserted "that the whistleblower allegations are false[.]" The Department takes these allegations seriously and, for this reason, the Attorney General asked the Inspector General to investigate this matter.

E. Why was this inaccurate information provided to the Senate Judiciary Committee?

Response:

The Department makes every effort to provide Congress with accurate, complete and timely information. The Department followed its standard practice in this matter of seeking input from components likely to have information about the matter in order to prepare a response that was accurate and complete to the best of our knowledge at the time it was provided.

F. What steps were taken to verify the truth of the assertions in the February 4, 2011 letter before it was sent?

Response:

As noted, the Department followed its standard practice of seeking input from components likely to have information about the matter in order to prepare a response that was accurate and complete to the best of our knowledge at the time it was provided.

G. Please list each official within DOJ and ATF who reviewed the draft letter and indicate whether that individual was aware of the briefing paper at that time.

Response:

The Department followed its standard practice in this matter of seeking input from components likely to have information about the matter in order to prepare a response that was accurate and complete to the best of our knowledge at the time it was provided. As noted, based on information presently available, we believe that Justice Department officials outside of ATF became aware of the briefing paper in connection with the investigation of this matter by the House Oversight and Government Reform Committee.

38. Genesis of Operation Fast and Furious

Questions:

A. When was Operation Fast and Furious first conceived?

Response:

We are advised that an ATF investigation was formally opened in or about November 2009, based on preliminary investigative information and activity initiated in or about October 2009. Based on the apparent connection to Mexican drug trafficking organizations, an Organized Crime Drug Enforcement Task Force (OCDETF) case designation proposal was prepared in or about January 2010 and submitted to the district and regional OCDETF committees for review and approval. This proposal was approved by the regional OCDETF committee in or about February 2010.

B. Who first suggested the methods of investigation employed in Operation Fast and Furious, specifically the strategy of "*allow[ing] the transfer of firearms to continue to take place* in order to further the investigation"?

Response:

The phrase "to allow the transfer of firearms to continue" should not be construed to suggest that ATF condoned or sanctioned the suspected firearms trafficking activity. Rather, ATF has made clear that its strategy was to gather sufficient evidence to build a case against federal firearms violators. ATF has also observed that the tactic of allowing the transfer of firearms in order to further an investigation and determine the identity of additional co-conspirators is authorized by ATF Order 3310.4(b) Firearms Enforcement Program (2/8/1989), which provides that:

i. "WEAPONS TRANSFERS."

a. Considerations. During the course of illegal firearms trafficking investigations, special agents may become aware of, observe, or encounter situations where an individual(s) will take delivery of firearms, or transfer firearm(s) to others. In these instances, the special agent may exercise the following options:

(1) In cases where probable cause exists to believe a violation of law has occurred and the special agent determines there is a need to intervene in the weapons transfer (e.g., the recipient of the firearms is a known felon; it is known the firearms will be used in crime of violence), the special agent shall do so but should place concerns for public safety and the safety of the involved special agents as the primary determining factor in exercising this option.

(2) In other cases, immediate intervention may not be needed or desirable, and the special agent may choose to allow the transfer of firearms to take place in order to further an investigation and allow for the identification of additional coconspirators who would have continued to operate and illegally traffic firearms in the future, potentially producing more armed crime.

C. Which officials at ATF and DOJ are responsible for authorizing the strategy of "*allow[ing] the transfer of firearms to continue to take place* in order to further then investigation"?

Response:

As noted, the phrase "to allow the transfer of firearms to continue" should not be construed to suggest that ATF condoned or sanctioned the suspected firearms trafficking activity. Rather, at the time the briefing paper being quoted was prepared in or about January 2010, the United States Attorney's Office for the District of Arizona, in conjunction with ATF's Phoenix Field Division, evaluated all facts and information that had been compiled in the case to that point and concluded that sufficient evidence to permit the prosecution and conviction of targeted individuals did not exist.

D. Did any investigative methods in Operation Fast and Furious require the approval of the Department of Justice? If so, please describe in detail the method and the persons providing authorization.

Response:

The authority to approve the use of consensual (one-party consent) telephonic and non-telephonic electronic surveillance is delegated to ATF first-line supervisors, who shall ensure notification/concurrence of an Assistant U.S. Attorney (AUSA) within the judicial district where such use is contemplated. ATF used this technique in Operation Fast and Furious with the approval of the U.S. Attorney's Office (USAO) and, where appropriate, a court order.

ATF policy requires the notification/concurrence of an AUSA within the judicial district where the use of electronic tracking devices is contemplated. In some circumstances, including in this investigation, federal court orders are obtained for the installation, monitoring, maintenance, and retrieval of such electronic tracking devices, which not only involve the approval of an AUSA, but also a federal magistrate or judge.

The use of Title III interceptions also requires the concurrence of the USAO within the judicial district where such use is contemplated. In such cases, the USAO forwards the Title III application to the Criminal Division of the Department of Justice for a limited determination of whether a legal basis for the intercept request exists. Following that limited review, if approval is granted to seek a Title III interception order, the application and related orders are submitted to the court under seal. Ultimately, the court reviews the request and determines whether sufficient legal basis exists for the requested intercepts.

E. If no investigative methods used in Operation Fast and Furious required the approval of the Department of Justice, what is the process used to authorize such methods, and who conducts it?

Response:

Please see the response to Question 38D.

39. U.S. Attorney's Office Involvement

Questions:

A. When did U.S. Attorney Dennis Burke first become aware of Operation Fast and Furious and the strategy of "*allow[ing] the transfer of firearms to continue to take place* in order to further then investigation"?

Response:

While we do not have information on the exact date, Mr. Burke likely became aware of the case called Fast and Furious sometime during the first quarter of 2010. The strategy of the United States Attorney's Office was not to "allow the transfer of firearms" but rather to gather sufficient evidence to conduct a successful prosecution of the offenders committing federal firearms violations.

B. What was his subsequent involvement in Operation Fast and Furious?

Response:

Mr. Burke was generally briefed on aspects of the case by ATF and USAO staff during the investigation phase.

C. When did Assistant U.S. Attorney Emory Hurley first become aware of Operation Fast and Furious and the strategy of "*allow[ing] the transfer of firearms to continue to take place* in order to further then investigation"?

Response:

The case called Fast and Furious was opened by Mr. Hurley in the USAO on or about November 25, 2009. As noted above, the strategy at the USAO was to gather sufficient evidence to conduct a successful prosecution of the offenders committing federal firearms violations.

D. What was his subsequent involvement in Operation Fast and Furious?

Response:

Mr. Hurley was the assigned prosecutor for the case.

E. As of May 10, 2011, is the U.S. Attorney's Office for the District of Arizona listed as the point of contact for any Phoenix Police Department criminal case? If so, please describe each case and explain why a Phoenix AUSA is listed as the point of contact on each case.

Response:

The USAO does not have information about whom the Phoenix Police Department lists as the points of contact in particular cases.

F. I understand that the U.S. Attorney's Office for the District of Arizona has been unwilling in recent history to prosecute firearm trafficking or straw purchase cases in which they did not have the possession of the firearm because of a belief that case law required it as "the *corpus* of the crime." This policy was followed even in cases where there was a signed confession from the straw purchaser or trafficker. However, I also understand that other districts, including others in the 9th circuit, do not take that position. Is it the Justice Department's understanding possession of the firearm is required to prosecute a straw purchaser or trafficker? If not, please explain why this policy is enforced in the District of Arizona.

Response:

To prosecute a straw purchaser or trafficker, the USAO must introduce sufficient evidence to prove the elements of the offense beyond a reasonable doubt. The facts of each case are different and are evaluated individually in the context of constitutional requirements and Ninth Circuit case law. The Ninth Circuit has held as a general matter, not limited to firearms cases, that when the government relies on a defendant's confession to meet its burden of proof, it must also introduce sufficient independent evidence that the criminal conduct at the core of the

offense has occurred and that the confession is trustworthy. There is no USAO "policy" that requires introduction into evidence of the firearm in every firearms case.

G. How many cases have been declined for prosecution by U.S. Attorney's Office in the District of Arizona on this basis? How many have been declined in each of the other districts on this basis?

Response:

The case management system used by the Department of Justice does not record reasons for declining prosecution of individual cases at the level of specificity required to answer this question. However, in response to this request, the USAO conducted an informal survey of cases declined by that office during the period of January 1, 2010 to July 11, 2011. To the best of our knowledge based on this informal survey, the office declined to prosecute only three cases of the hundreds of gun cases presented for prosecution due to concerns about whether the available evidence met the burden of proof established by the Constitution and Ninth Circuit case law as it relates to the corpus of the offense. The Department presently is unable to say how many cases, if any, have been declined in other districts due to such concerns.

40. Federal Firearms Licensees

On April 13, 2011, I provided DOJ emails in which Federal Firearms Licensees (FFLs) expressed concerns to ATF about the dangers of engaging in suspicious sales to further the ATF's investigation. ATF arranged at least one meeting between at least one FFL and the U.S. Attorney's Office for the District of Arizona to discuss these concerns.

Questions:

A. How many meetings did the U.S. Attorney's Office for the District of Arizona have with FFLs to discuss similar concerns?

Response:

A member of the USAO attended two meetings with FFLs.

B. Please describe in detail the dates, participants, and communications during any such meetings.

Response:

On or about December 17, 2009, AUSA Emory Hurley, ATF Group Supervisor David Voth, and ATF Special Agent Hope MacAllister met with the owner of an FFL. In part, the owner was advised that law enforcement could not tell him who he could or could not sell to and that they could not instruct him to make a sale in violation of the law or refuse to make a lawful sale. He was advised that as an FFL he had to comply with all of the statutes and regulations that

govern the sale and transfer of firearms and could not sell firearms unless the required paperwork and background check were completed.

On or about May 13, 2010, AUSA Emory Hurley and ATF Group Supervisor David Voth attended a meeting with the owner of another FFL, in which the owner was advised, in part, that law enforcement could not direct him to make a sale in violation of the law or direct him to refuse a lawful sale.

41. ATF Acting Director

Questions:

A. When did Acting Director Kenneth Melson first become aware of Operation Fast and Furious and the strategy of "*allow[ing] the transfer of firearms to continue to take place* in order to further the investigation"?

Response:

ATF advises that they do not have information on the exact date that Acting Director Melson first learned of Operation Fast and Furious. According to ATF, however, Acting Director Melson likely became aware on or about December 9, 2009, as part of a briefing following a seizure of weapons in Douglas, Arizona. Further, we have produced and made available to the House Oversight and Government Reform Committee documents that are responsive to this question.

B. How often was Acting Director Melson briefed on Operation Fast and Furious?

Response:

We are advised that there was no regular schedule of briefings on this matter. Periodic updates were provided to the Acting Director as determined to be necessary by the Office of Field Operations. These briefings typically coincided with planned field visits or in preparation for meetings.

C. When did you first speak to Acting Director Melson about Operation Fast and Furious? What was the context?

Response:

We believe that the first direct discussion of Operation Fast and Furious between Acting Director Melson and the Attorney General occurred in or about late April 2011 as part of an agenda item in a briefing for the Attorney General by the leaders of the Department of Justice's law enforcement components.

42. **Awareness of Operation Fast and Furious**

Questions:

When and how did you first learn of Operation Fast and Furious or the strategy of "*allow[ing]the transfer of firearms to continue to take place* in order to further the investigation"?

Response:

The concerns about Operation Fast and Furious first became evident earlier this year. After learning of these concerns, the Attorney General referred the matter to the Department of Justice's Office of the Inspector General for review, as was made clear in the Attorney General's testimony on March 10, 2011 before a subcommittee of the Senate Appropriations Committee, and also in testimony before the House Judiciary Committee on May 3, 2011.

43. **Deputy Attorney General's Office**

Questions:

When and how did any official in the Deputy Attorney General's office first become aware of Operation Fast and Furious or the strategy of "*allow[ing] the transfer of firearms to continue to take place* in order to further the investigation"? Please provide a detailed answer for each official in that office.

Response:

The House Oversight and Government Reform Committee has requested and the Department is producing documents that may relate to this matter. See also Responses to Questions 37A-D and 42.

44. **Criminal Division**

Questions:

A. **When and how did the Assistant Attorney General for the Criminal Division, Lanny Breuer, first become aware of Operation Fast and Furious or the strategy of "*allow[ing] the transfer of firearms to continue to take place* in order to further the investigation"?**

Response:

See Responses to Questions 37A-D and 42.

B. When and how did any other official in the office of the Assistant Attorney General for the Criminal Division first become aware of Operation Fast and Furious or the strategy of "*allow[ing] the transfer of firearms to continue to take place* in order to further the investigation"? Please provide a detailed answer for each official in that office.

Response:

See Responses to Questions 37A-D and 42.

45. Other Awareness

Questions:

A. Before the death of Border Patrol Agent Brian Terry, who else at the Justice Department headquarters knew about the existence of Operation Fast and Furious or the strategy of "*allow[ing] the transfer of firearms to continue to take place* in order to further the investigation"?

Response:

See Responses to Questions 37A-D and 42.

B. When and how did they become aware of it?

Response:

See Responses to Questions 37A-D and 42.

46. Priorities

When questioned about portions of the above matters at the House Judiciary Committee hearing last week, you repeatedly said that you were not sure or did not know the answer.

Questions:

Since your Department informed me on March 2, 2011, that you had asked the Acting Inspector General to evaluate the concerns that had been raised about ATF's actions, you had at least two months to inquire into this matter. Other than referring this matter to the Acting Inspector General, what actions have you personally taken to inquire into Operation Fast and Furious or the strategy of "*allow[ing] the transfer of firearms to continue to take place* in order to further the investigation"—now that you are aware of it?

Response:

As the Committee is aware, the Department's Office of the Inspector General is conducting a comprehensive and independent review of Operation Fast and Furious. In addition, we have instructed all U.S. Attorneys and federal law enforcement regional supervisors that they are not to knowingly allow any guns to be illegally transported into Mexico. Further, the Department has devoted substantial resources to helping Congress and the Inspector General understand the facts surrounding the Operation. This includes, over the past several months, the review of hundreds of thousands of pages of materials by Department professionals, which has made it possible to produce to investigators more than 2,000 pages of responsive information. These efforts, as well as others undertaken by the Department, reflect our commitment to learning the facts underlying this matter.

47. **Connection of Terry Guns to Operation Fast and Furious**

In your testimony before the House Judiciary Committee last week, you said that if the guns that were found at the murder scene of Border Patrol Agent Brian Terry had indeed come from the ATF's Operation Fast and Furious, a serious problem likely occurred. I identified for you in my February 9, 2011, letter the serial numbers of the two firearms recovered at Agent Terry's murder scene, as well as the fact that both were purchased by Operation Fast and Furious suspect Jaime Avila on January 16, 2010.

Questions:

Given that the recently unsealed indictment of Manuel Osorio-Arellanes for his involvement in the murder of Border Patrol Agent Brian Terry confirms the serial numbers of two AK-47 variant rifles recovered at the murder scene, does the Department officially acknowledge that those two guns are connected to Operation Fast and Furious?

Response:

The Department has an active, ongoing criminal investigation regarding the death of U.S. Border Patrol Agent Brian Terry, which limits the information that we may appropriately disclose in response to your question. That said, we can advise you that the rifles associated with the deadly assault on Agent Terry were purchased in a single transaction by Jaime Avila, Jr. in January 2010. We are advised that the FFL faxed a copy of the Form 4473 for the sale to ATF after the firearms were gone. As we understand it, there was no ATF or other law enforcement surveillance of Avila's purchase.

48. **Recovery of Guns**

At last week's hearing, I presented you with a chart regarding the firearms purchased by fifteen specific targets before and after they were identified in Operation Fast and Furious. This chart also identified the firearms recovered in the

U.S. after the target was identified in the investigation. These fifteen targets were later indicted, but they are not the only suspects involved in Operation Fast and Furious.

Questions:

A. For these fifteen defendants, what was the number of firearms they purchased that were recovered in Mexico after the suspects were identified in the investigation?

Response:

Based on information known to ATF and analyzed as of May 26, 2011, we understand that ninety-five (95) firearms were recovered in Mexico after the suspects were identified. Some of these firearms were purchased before the suspects were identified in the case.

B. What was the total number of firearms purchased by *all* suspects in Operation Fast and Furious (not just the fifteen on the chart) before they were entered in the investigation?

Response:

Based on information known to ATF and analyzed as of May 26, 2011, we understand that all of the suspects in Operation Fast and Furious purchased a combined total of six hundred and two (602) firearms before they were identified in the investigation.

C. What was the total number of firearms purchased by *all* suspects in Operation Fast and Furious (not just the fifteen on the chart) after they were entered in the investigation?

Response:

Based on information known to ATF and analyzed as of May 26, 2011, we understand that all of the suspects (indicted and unindicted) in Operation Fast and Furious purchased a combined total of one thousand four hundred and eighteen (1,418) firearms after they were identified in the investigation. We are advised that ATF was not aware of the majority of these purchases at the time they actually occurred.

D. For *all* suspects in Operation Fast and Furious (not just the fifteen on the chart), what was the number of firearms they purchased that were recovered in the U.S. after the targets were identified in the investigation?

Response:

Based on information known to ATF and analyzed as of May 26, 2011, we understand that two hundred and seventy-four (274) firearms were recovered in the U.S. after the suspects were identified in the investigation.

E. For *all* suspects in Operation Fast and Furious (not just the fifteen on the chart), what was the number of firearms they purchased that were recovered in Mexico after the targets were identified in the investigation?

Response:

Based on information known to ATF and analyzed as of May 26, 2011, we understand that ninety-six (96) firearms were recovered in Mexico after the suspects were identified in the investigation.

F. How many guns from *all* suspects in Operation Fast and Furious (not just the fifteen on the chart) were purchased after the targets were entered into the investigation but have not been recovered in the U.S. or Mexico?

Response:

Based on information known to ATF and analyzed as of May 26, 2011, we understand that the total number of firearms purchased by all of the suspects (indicted and unindicted) after they were entered in this investigation that have not yet been recovered and traced in Mexico or the U.S. is one thousand forty-eight (1,048). We are advised that ATF was not aware of the majority of these purchases at the time they actually occurred.

G. Can the Department of Justice, the ATF, or any other agency under your oversight account for the whereabouts of any of these guns that have not been recovered in the U.S. or Mexico? If so, how many can be accounted for, and how many cannot? Please explain.

Response:

ATF investigations relating to these matters are still underway. That said, as noted above, we are advised that ATF was not aware of the majority of these purchases at the time they actually occurred.

49. Recovery of Guns in Connection with Violent Crimes

Questions:

A. In addition to the two guns recovered at the Terry murder scene, how many of the guns connected to Operation Fast and Furious that have been recovered were recovered in connection with violent crimes in the U.S.? Please describe the date and circumstances of each such recovery in detail.

Response:

We are advised that ATF does not have complete information available to respond to this question. That said, to date, it is our understanding that ATF is aware of 11 instances where a recovered firearm associated with this case was recovered in connection with a crime of violence in the United States. Generally, ATF has learned about recoveries of these firearms by other law enforcement agencies in the U.S. and Mexico through tracing. However, we are advised that when a law enforcement agency submits a trace request to ATF, the information provided by the law enforcement agency does not indicate if the firearm recovered has been used in connection with a violent crime.

B. How many of the guns connected to Operation Fast and Furious that have been recovered were recovered in connection with violent crimes in Mexico? Please describe the date and circumstances of each such recovery in detail.

Response:

Please see the response to Question 49A. ATF does not have complete information available to respond to this question.

50. Accountability

A. If Acting Director Melson was fully informed of Operation Fast and Furious throughout the operation, do you believe he should be held accountable?

Response:

The facts surrounding the Operation are under review by the Inspector General and the Department will assess her report when it is available.

B. If the whistleblower allegations of allowing straw purchases of weapons in Operation Fast and Furious prove true and Acting Director Melson approved, condoned or remained complicit of these investigative techniques, should he be removed from his position of leadership at ATF?

Response:

Please see the response to Question 50A.

C. If individuals in the Deputy Attorney General's office were aware that the ATF was not making every effort to interdict guns that have been purchased illegally and approved, condoned, or remained complicit regarding the ATF techniques of knowingly allowing straw purchases, do you believe they should be held accountable?

Response:

Please see the response to Question 50A.

D. If individuals in the office of the Assistant Attorney General for the Criminal Division were aware that the ATF was not making every effort to interdict guns that have been purchased illegally and approved, condoned, or remained complicit regarding the ATF techniques of knowingly allowing straw purchases, do you believe they should be held accountable?

Response:

Please see the response to Question 50A.

E. Who do you believe should be held accountable for the "major errors" of Operation Fast and Furious?

Response:

Please see the response to Question 50A.

51. ATF Leadership in Phoenix

I understand that the ATF Phoenix Field Office has temporarily assigned a new Special Agent in Charge and two new Assistant Special Agents in Charge. That constitutes the top three leadership positions in that office.

Questions:

A. Why was this new leadership assigned?

Response:

The changes in leadership that have taken place in ATF's Phoenix Field Division were made by ATF for management and personnel reasons and were made in the best interests of ATF.

B. Has this ever happened before in the ATF? Please provide supporting documentation of these changes in the Phoenix field office leadership in addition to any other similar changes in ATF leadership.

Response:

ATF routinely fills positions that have been made vacant by reassignments. The documentation for such a change is OPM SF-50.

C. Does this change in leadership represent an acknowledgement that mistakes have been made by those who were replaced? Please explain.

Response:

See Response to Question 51A.

D. Will the ATF officials who were temporarily replaced return to their posts or will they permanently be replaced in the Phoenix Field Office?

Response:

Not all of the ATF officials who were temporarily replaced will return to their posts.

E. Where will Phoenix Special Agent in Charge (SAC) William Newell be assigned after his temporary Headquarters assignment ends?

Response:

The SAC is and will remain assigned to ATF Headquarters.

52. Murder Weapon of ICE Agent Jaime Zapata

According to a Justice Department press release from March 1, 2011, one of the firearms used in the February 15 murder of U.S. Immigration and Customs Enforcement (ICE) Agent Jaime Zapata was traced by the ATF to Otilio Osorio, a Dallas-area resident. Otilio Osorio and his brother Ranferi Osorio were arrested at their home, along with their neighbor Kelvin Morrison, on February 28. According to that same press release, the Osorio brothers and Morrison transferred 40 firearms to an ATF confidential informant in November 2010. Not only were these three individuals not arrested at that time, according to the press release their vehicle was later stopped by local police. Yet the criminal indictment in *United States v. Osorio*, filed March 23, 2011, is for straw purchases alone and references no activity on the part of the Osorio brothers or Morrison beyond November 2010.

Questions:

A. Why did the ATF not arrest Otilio and Ranferi Osorio and their neighbor Kelvin Morrison in November?

Response:

The question seeks information regarding sensitive law enforcement operations. We are attempting to determine the extent to which, if any, information in response to this question can be provided consistent with the Department's law enforcement responsibilities.

B. Was any surveillance maintained on the Osorio brothers or Morrison between the November firearms transfer and their arrest in February?

Response:

Please see the response to Question 52A.

C. Did any ATF personnel raise concerns about the wisdom of allowing individuals like the Osorio brothers or Morrison to continue their activities after the November weapons transfer? If so, how did the ATF address those concerns?

Response:

Please see the response to Question 52A.

D. Although the gun used in the assault on Agent Zapata that has been traced back to the U.S. was purchased on October 10, 2010, how can we know that it did not make its way down to Mexico after the undercover transfer in November, when the arrest of these three criminals might have prevented the gun from being trafficked and later used to murder Agent Zapata?

Response:

Please see the response to Question 52A.

E. Why should we not believe that this incident constitutes a further example, outside of the Phoenix Field Office and unconnected to Operation Fast and Furious, of the ATF failing to make arrests until a dramatic event is linked to a purchase from one of their targets, even when those targets are ultimately only charged for the same offenses the ATF was aware of months prior to their arrest?

Response:

Please see the response to Question 52A.

F. Do you believe that it was appropriate for the ATF to wait until Agent Zapata was shot before arresting these individuals on February 28?

Response:

Please see the response to Question 52A.

53. **Earlier Knowledge of Zapata Murder Weapon Traffickers**

The DOJ press release alludes to an August 7, 2010, interdiction of firearms in which including a firearm purchased by Morrison. Further documents released by my office make clear that not only did Ranferi Osorio also have two firearms in that interdicted shipment, ATF officials received trace results on September 17, 2010 identifying these two individuals.

A. What efforts did the ATF take in September to further investigate the individuals whose guns had been interdicted, including Morrison and Osorio?

Response:

Please see the response to Question 52A.

B. When did law enforcement officials first become aware that Otilio Osorio purchased a firearm on October 10, 2010?

Response:

Please see the response to Question 52A.

C. Had the ATF placed surveillance on the Osorio home in September or arrested Ranferi Osorio and Kelvin Morrison, isn't it possible that the ATF might have prevented Otilio Osorio from purchasing a weapon on October 10 with the intent for it to be trafficked?

Response:

We are not in a position to speculate about what might have happened in response to this scenario.