

Congress of the United States
Washington, DC 20510

April 4, 2017

VIA ELECTRONIC TRANSMISSION

Chuck Rosenberg
Acting Administrator
U.S. Drug Enforcement Administration
Lincoln Place-West
700 Army Navy Drive
Room 12060
Arlington, VA 22202

Dear Mr. Rosenberg,

On March 2, 2017, the Department of Justice Office of Inspector General (OIG) issued a report titled, *A Review of Investigations of the Osorio and Barba Firearms Trafficking Rings*. The report includes a review of the Drug Enforcement Administration's (DEA) narcotics investigation of Manuel Gomez Barba and its failure to share with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) information obtained about firearms trafficking during the course of the investigation. The DEA's failure to share this information with ATF led to Barba's release from custody in July 2010, and allowed Barba to facilitate the purchase and shipment to Mexico of 10 AK-47 rifles, one of which was used in an attack on two Immigration and Customs Enforcement (ICE) agents. Moreover, the DEA's failure to share information with ATF delayed ATF's discovery of Barba until August 2010 through a separate firearms investigation. From the time the DEA heard Barba's statement about the AK-47s in May 2010, until ATF learned of Barba's involvement in firearms trafficking, Barba facilitated the purchase and shipment of more than 45 firearms by seven straw purchasers.

Brief Summary

On May 26, 2010, during a recorded undercover narcotics operation, Barba stated to a DEA source that he was involved in a firearms deal involving 20 AK-47s.¹ The DEA Special Agent managing the investigation declined to share this information with ATF because he was not sure it was credible and he thought he could investigate it further on his own.² Nonetheless, he documented Barba's statement in a DEA-6 report of investigation. The Special Agent told the OIG, "as you become a more seasoned investigator, you learn that some of this information is credible, and some of it is not."³

¹ OFFICE OF INSPECTOR GEN., U.S. DEP'T OF JUSTICE, OVERSIGHT & REVIEW DIV. 17-01, A REVIEW OF INVESTIGATIONS OF THE OSORIO AND BARBA FIREARMS TRAFFICKING RINGS at 73 (2017) [hereinafter 2017 OIG Report].

² *Id.* at 73-74.

³ *Id.* at 73.

Although the DEA's mission is not to investigate firearms trafficking leads, the Special Agent also told the OIG that he thought he could investigate the statement on his own:

[T]here was no way that I could have verified this information unless I was able to sit down with [Barba] and interview him in a . . . post-interview or post-arrest setting. And I felt like that once we arrested this Barba, and we were able to, if we could get him to cooperate, or in that setting, then we could explore this information.⁴

The DEA Acting Resident Agent-in-Charge (RAC) of the Beaumont Resident Office told the OIG that, on June 2, 2010, he reviewed the Special Agent's DEA-6 and was concerned by Barba's firearm trafficking statement.⁵ However, the Acting RAC and the Special Agent still failed to provide information to ATF, local law enforcement, and the U.S. Attorney's Office for the Eastern District of Texas (USAO). The Acting RAC told the OIG that he thought he or the Special Agent may have told the Baytown Police Department about Barba's statement, but neither the Acting RAC nor the Special Agent had any specific recollection of doing so.⁶ Moreover, the OIG could not find a lead sheet recording any disclosure from the DEA to ATF, local law enforcement, or the USAO.⁷ Even the task force officer from the Jefferson County Sheriff's Department who was working on the case with the DEA told the OIG that the DEA did not inform him of Barba's statements and that he did not know about the statements until after the Zapata/Avila shooting.⁸

The Acting RAC and the Special Agent decided they would investigate the statement themselves by arresting Barba during a second undercover narcotics operation.⁹ The Acting RAC told the OIG that the DEA took the statement seriously and it was the reason they arrested Barba less than a week after the Acting RAC learned of the statement.¹⁰ Yet, when the DEA arrested Barba on June 17, 2010, the agents failed to question him about the firearms trafficking statement.

Additionally, the Acting RAC and Special Agent again failed to alert the USAO to the statement.¹¹ Rather, the Special Agent recommended that the USAO request Barba's release from detention so that the DEA could use Barba as a source.¹² The Special Agent omitted Barba's statement from the affidavit he drafted for the Assistant United States Attorney (AUSA) about the narcotics investigation and failed to mention the statement in a conversation with the AUSA about Barba's detention and the request for release.¹³ The AUSA told the OIG that he

⁴ *Id.* at 74.

⁵ *Id.* at 73–74.

⁶ *Id.* at 74–75.

⁷ *Id.* at 75.

⁸ *Id.* at 76.

⁹ *Id.* at 75.

¹⁰ *Id.* at 76.

¹¹ *Id.* at 77–78.

¹² *Id.* at 78.

¹³ *Id.*

would expect an affidavit to include that kind of information “because that bears on whether there’s going to be a detention hearing and whether [Barba] gets out.”¹⁴ The AUSA told the OIG that he had no knowledge about Barba’s statement until the OIG asked him about it, and asserted that he would not have agreed to Barba’s release if he had known about it.¹⁵

The AUSA’s lack of knowledge of Barba’s statement is potentially in part due to his failure to review materials that the DEA claims it provided to the USAO, including the recording of the narcotics operation and the DEA-6 form, both of which contain Barba’s statement. However, despite the DEA Special Agent’s certainty that he provided DEA materials to the USAO, the OIG was unable to find them in the USAO’s official file on the Barba case, and could not find any record of transmittal.¹⁶ Even if the DEA did provide the DEA-6 and the recording, the DEA nonetheless should have alerted the AUSA to Barba’s statement. A detained individual’s statement about his involvement in dangerous, felonious activity is relevant to the USAO’s case against him and is particularly relevant to the AUSA’s decision to request a release from detention. The U.S. Attorney for the Eastern District of Texas, John Bales, told the OIG that Barba’s statement “should have been the biggest thing [the DEA agents] talked about” following the narcotics operation and that “it’s very upsetting to read [Paragraph 9 of the DEA-6] now and understand what happened later.”¹⁷

It is particularly alarming that a DEA Special Agent advocated for the release of an individual who disclosed his involvement in firearms trafficking. The DEA’s failure to share this information with the agency primarily responsible for investigating firearms trafficking and its failure to alert the AUSA handling Barba’s case was irresponsible and demonstrates seriously flawed judgment. The Acting RAC’s claim that the DEA took seriously a statement about firearms trafficking is irreconcilable with the DEA’s failure to notify the agency of jurisdiction.

Barba was released from custody on July 26, 2010.¹⁸ Just three weeks after his release, on August 20, 2010, Barba recruited Robert Riendfliesh to purchase 10 AK-47 rifles to ship to Mexico.¹⁹ One of these rifles was later identified at the scene of a February 15, 2011, attack in Mexico in which assailants shot ICE Special Agents Jaime Zapata and Victor Avila, killing Zapata and seriously injuring Avila.²⁰

¹⁴ *Id.*

¹⁵ *Id.* at 79–80.

¹⁶ *Id.*

¹⁷ *Id.* at 99.

¹⁸ *Id.* at 81.

¹⁹ *Id.* at 86. Riendfliesh told the OIG that Barba instructed him on how to purchase the rifles and deliver them to Barba’s associates, gave Riendfliesh money to pay for the rifles, and paid him an additional \$650. *Id.* One of Barba’s associates brought the rifles to Barba’s parents’ home in Baytown, Texas, where the serial numbers were removed. Then, Barba’s boss—a man Barba identified as “Gil”—arranged for an associate to pick the guns up for shipment to Mexico. *Id.* at 90.

²⁰ *Id.* at 89.

DEA Policy on Coordination with Other Agencies

The OIG report found that the DEA's failure to share information with ATF in the Barba investigation violated the DEA's policy on sharing information regarding uncontrolled firearms transfers.²¹ However, the OIG also found that confusion surrounding the policy illustrates the need for changes to the policy to establish a "more explicit and comprehensive" policy that "identifies for agents when they should contact ATF about firearms transfers."²² According to the OIG, the DEA disagrees with this recommendation and has declined to update its policy, despite previous recommendations to do so following the OIG's review of Operations Fast and Furious and Wide Receiver.²³

Both the DEA Special Agent and the Acting RAC told the OIG that they did not believe the DEA's policy on information required them to share Barba's statement with ATF.²⁴ Section 6612.42 of the DEA's Agent Manual requires that sources be questioned about their knowledge of "nondrug related criminal activities," and requires coordination with the responsible law enforcement agency if the information in question concerns a serious criminal offense, such as a felony.²⁵ The OIG disagreed with the DEA and wrote in its report:

In our view, the analysis is straightforward: [The Special Agent] debriefed the source following the source's participation in an undercover meeting that included statements from a drug dealer about a transaction for 20 AK-47s; that transaction constituted a "serious federal offense;" and [the Special Agent] had a duty to "thoroughly question" the source about the source's knowledge of Barba's nondrug related criminal activities, to include the transaction in question. Under these

²¹ *Id.* at 76.

²² *Id.* at 101–02.

²³ Briefing by Office of Inspector Gen., U.S. Dep't of Justice, to staff, S. Comm. on Judiciary and H. Comm. on Oversight & Gov't Reform (Mar. 3, 2017). The 2012 OIG review recommended: "The Department should review the policies and procedures of its other law enforcement components to ensure that they are sufficient to address the concerns we have identified in the conduct of Operations Wide Receiver and Fast and Furious . . ." OFFICE OF INSPECTOR GEN., U.S. DEP'T OF JUSTICE, A REVIEW OF ATF'S OPERATION FAST AND FURIOUS AND RELATED MATTERS at 429 (2012). In a 2016 follow-up report, the OIG noted:

We also found that the DEA . . . did not have policies that addressed when to contact ATF about uncontrolled firearms transfers. . . . DEA brought to our attention its policies on the "Debriefing of Confidential Sources," which provide that if the non-drug related information provided from a confidential source "concerns a serious criminal offense (e.g. a felony), or a crime which is planned to be committed, then action will be taken to coordinate with supervisory personnel of the responsible law enforcement agency, and/or with federal or state prosecutor [sic]." These policies also reference DEA's "Guide to Source Debriefing," which identify possible questions regarding firearms, ammunition, and explosives. Our review of DEA's policies determined that they were not sufficiently explicit and comprehensive to address the problems we identified in our report on Operations Fast and Furious and Wide Receiver.

OFFICE OF INSPECTOR GEN., U.S. DEP'T OF JUSTICE, OVERSIGHT & REVIEW DIV. 16-01, A REVIEW OF THE DEPARTMENT OF JUSTICE'S AND ATF'S IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN THE OIG'S REPORT ON OPERATIONS FAST AND FURIOUS AND WIDE RECEIVER at 18 (2016) [hereinafter 2016 OIG Report].

²⁴ 2017 OIG Report at 76–77.

²⁵ *Id.* at 76.

circumstances, we believe DEA's debriefing policy applied and that the coordination provision was triggered.²⁶

The OIG also wrote:

We received no cogent explanation for why DEA did not promptly contact ATF's Beaumont Resident Office, DEA's counterpart in the region and the agency with expertise in handling firearms investigations, with the information as soon as DEA learned of it, especially in light of the quantity and type of firearm that Barba mentioned, and we do not believe there was any excuse for DEA's failure to do so.

...

We believe the DEA's handling of Barba's statements about a deal for 20 AK-47s both illustrates and reaffirms the importance of our recommendation that DEA establish a policy that identifies for agents when they should contact ATF about firearms transfers.²⁷

According to the OIG, the DEA claims that "the risks related to firearms transfers were sufficiently managed through other policies"²⁸ and that "common sense" provides enough guidance to agents.²⁹ We agree with the OIG that the DEA should implement a more instructive policy and are troubled by the DEA's refusal to implement the OIG's recommendations and resistance to acknowledge such a serious problem. Moreover, holding accountable those who fail to exercise their duties to preserve public safety is just as important as policy changes.

Accordingly, please schedule a briefing on these matters as soon as possible with staff from the Committees, and also provide the following to the Committees as soon as possible, but no later than noon on April 18, 2017:

1. All documents referring or relating to disciplinary or remedial actions the DEA has taken related to events described in the OIG's March 2017 report.
2. All documents and communications referring or relating to the DEA's decision not to introduce policies related to sharing information about firearms transfers despite the OIG's previous recommendations to do so.
3. Does the DEA plan to introduce new policies related to information-sharing with other agencies, including ATF?
 - a. If yes, please describe the details of such policies.
 - b. If no, why not?

²⁶ *Id.* at 101.

²⁷ *Id.* at 100-02.

²⁸ 2016 OIG Report at 18.

²⁹ 2017 OIG Report at 102.

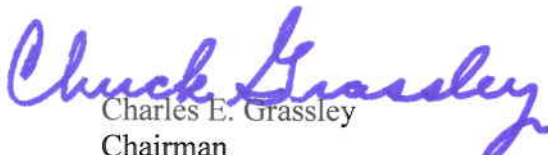
4. What steps has the DEA taken to improve information-sharing with other agencies?


Please produce all documents in electronic format and deliver your responses to the Senate Committee on the Judiciary Majority Staff in Room 224 of the Dirksen Senate Office Building and the Minority Staff in Room 152 of the Dirksen Senate Office Building, and to the House Committee on Oversight and Government Reform Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

The Senate Committee on the Judiciary has oversight jurisdiction over the DEA. The House Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Thank you in advance for your cooperation with this request. Please number your responses according to their corresponding questions. If you have questions, please contact Samantha Brennan of Chairman Grassley's staff at (202) 224-5225, Rajiv Venkataramanan of Ranking Member Feinstein's staff at (202) 224-7703, Cordell Hull of Chairman Chaffetz' staff at (202) 225-5074, or Peter Kenny of Ranking Members Cummings' staff at (202) 225-5051.

Sincerely,


Charles E. Grassley
Chairman
Senate Judiciary Committee


Jason Chaffetz
Chairman
House Oversight and Government
Reform Committee


The Honorable Dianne Feinstein
Ranking Member
Senate Judiciary Committee


The Honorable Elijah Cummings
Ranking Member
House Oversight and Government
Reform Committee

cc: The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice