

Statement by Senator Charles E. Grassley
November 8, 2011

Thank you, Mr. Chairman, for holding this important oversight hearing. If our time were not so limited, I would have liked to ask about the Department's conference budget, the broken system of reviewing FBI whistleblower cases, the Department's attempt to use the tragic failure in Fast and Furious as a pretext to call for new, stricter gun laws, and many other important topics. However, oversight on Operation Fast and Furious has been my focus since the last time Attorney General Holder appeared before the Committee.

Just over nine months ago Attorney General Holder sat in my office. After discussing a number of items with him, I handed him two letters I had written to the Acting Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Kenneth Melson.¹ A member of my staff briefly outlined the allegations contained therein that had come to us from an ATF whistleblower.

My letters mentioned: (1) the death of Border Patrol Agent Brian Terry, (2) the allegation that ATF had sanctioned the sale of hundreds of assault weapons to straw buyers, (3) the allegation that two of those weapons had been found at the scene of Agent Terry's death, and (4) the allegation that the whistleblowers who provided this information were already facing retaliation.²

Just four days later, I received a response back from the Justice Department.³ That response explicitly stated that the whistleblower allegations were "false" and that "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."⁴ In the nine months since then, mounting evidence has put the lie to those claims. We have learned that instead of making every effort to interdict, ATF actually allowed the transfer of firearms in several operations, in hopes of making bigger cases.⁵ Agents who objected to the practice called it "walking guns."⁶ In addition to documentary evidence contradicting the Department's denials, six ATF agents testified powerfully at two House Oversight Committee hearings about gunwalking in Operation Fast and Furious.

Assistant Attorney General Lanny Breuer admitted one week ago in this room that the Department's letter to me in February was absolutely false.⁷ Think about that for a second. It's bad enough that the head of the Criminal Division admits that the Department's letter to me was false. It gets worse, though. He admitted that he knew all along that it was false. Although he could not recall whether he helped edit it, he knew it was false because he was aware of a previous gunwalking operation called Wide Receiver. Yet he remained silent for nine months as

¹ Letters from Senator Charles E. Grassley to Kenneth Melson, Acting Director of the ATF (Jan. 27, 2011, and Jan. 31, 2011).

² *Id.*

³ Letter from Ronald Weich, Asst. Att'y Gen, U.S. Dept. of Justice, to Senator Charles E. Grassley (Feb. 4, 2011) .

⁴ *Id.*

⁵ Email from George Gillett to David Voth, Oct. 05, 2010, HOCR DOJ 001349-001352 (Attachment 1).

⁶ Joint Staff Report, The Department of Justice's Operation Fast and Furious: Accounts of ATF Agents, at p. 19 (June 14, 2011).

⁷ *Combatting International Organized Crime: Hearing Before the Subcomm. on Crime and Terrorism of the S. Comm. on the Judiciary*, 112th Cong. (2011) (statement of Lanny Breuer, Asst. Att'y Gen.).

the public controversy over gunwalking grew. He was aware that Congress had been misled and yet made no effort to correct the Department's official denial. I am eager to hear whether the Attorney General thinks that is acceptable and what he intends to do about it.

Much has been said recently about guns being walked in Operation Wide Receiver "during the Bush era." It doesn't matter to me when it happened, we need to get to the bottom of it. According to the Justice Department, Bush-era prosecutors refused to bring the case.⁸ However, under Mr. Breuer's leadership headquarters revived it despite the gunwalking issues.⁹ Reviving the case may have provided the green light to the Phoenix Field Division to repeat the gunwalking strategy in Operation Fast and Furious on a much bigger scale.

It seems likely that the same ATF managers responsible for overseeing Wide Receiver might have interpreted the administration's willingness to prosecute such cases as an approval of gunwalking as an acceptable tactic. If that was not the case, then it was Mr. Breuer's responsibility to clearly communicate that gunwalking was not acceptable and to institute oversight and safeguards to ensure that it did not happen again. He did not do that.

In fact, it is clear from documents produced by the Justice Department that in early 2010, the ATF, Main Justice, and the U.S. Attorney's Office in Arizona considered Wide Receiver and Fast and Furious to be a set of related cases.¹⁰ Yet Mr. Breuer claims that he saw the flaws in one but not the other.¹¹

As Mr. Breuer's deputy was learning about the Wide Receiver in March 2010, he asked: "[D]id ATF allow the guns to walk, or did ATF learn about the volume of guns after the FFL began cooperating?"¹² That was the right question, at the right time, about the wrong case. It was too late to stop gunwalking in Wide Receiver. However, Fast and Furious was still very active. By that time, 1,228 weapons had been purchased by the straw buyers in Fast and Furious, and hundreds had been recovered in Mexico. Gun dealers were giving ATF real time notice each time the straws bought another batch of guns. As one of the ATF agents testified before the House Committee, "This wasn't a who done it."¹³ Yet the criminals were allowed to keep breaking the law, all in the hopes of catching bigger fish.

In March 2010, the Attorney General's current chief of staff, then the No. 2 individual in the Department as the Deputy Attorney General, received a personal briefing on Fast and Furious.¹⁴ The briefing included a presentation detailing the numbers of firearms each straw buyer had purchased up to that point, including 313 by one and 241 by another.¹⁵ The presentation

⁸ Letter from Ronald Weich, Asst. Att'y Gen., Department of Justice, to Senator Patrick J Leahy (Oct. 31, 2011).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Combating International Organized Crime: Hearing Before the Subcomm. on Crime and Terrorism of the S. Comm. on the Judiciary*, 112th Cong. (2011).

¹² Email from Jason Weinstein to Kevin Carwile, Mar. 16 2010, HOCR DOJ 003438 (Attachment 2).

¹³ *Operation Fast and Furious: The Other Side of the Border: Hearing before the H. Comm. on Oversight and Government Reform*, 112th Cong. 128-129 (2011) (statement of Carlos Canino, ATF Acting Attache to Mexico).

¹⁴ ATF Monthly Meeting with the Acting Deputy Attorney General, HOCR DOJ 002817-002823 (Mar. 12, 2010) (Attachment 3).

¹⁵ *Id.*

explained that those two straw buyers had spent almost \$214,000 and \$140,000, respectively, on the weapons.¹⁶ A copy of the Deputy Attorney General's presentation includes his handwritten notations. One said, "all cash," which is a typical red flag of straw buying.¹⁷

The Deputy Attorney General also wrote such detail in his notes as "followed to 3 stash houses."¹⁸ Yet the presentation also clearly included a map that he labeled "seizures in Mexico."¹⁹ Didn't he stop to question how these weapons were going from being under surveillance at stash houses in the U.S. to being recovered in Mexico? Didn't he ask why search warrants or other techniques could not have been used to seize the weapons and prevent them from being trafficked to Mexico? Or was the strategy of "allowing the transfer of firearms to continue to take place" explained to him?²⁰

That's how it was described in other briefing papers prepared by ATF, and one of the emails transmitting that paper said it was "likely to go to the DAG [Deputy Attorney General]."²¹ The ATF strategy was clearly documented. Agents were even forbidden to stop and question the straw buyers for fear that it would scare them off and stop further straw buying at the cooperating gun dealers.

In the same time period the Deputy Attorney General received such a detailed briefing, the Justice Department's Criminal Division in Washington, D.C. assigned a prosecutor to Fast and Furious as the result of a direct request from ATF Director Melson to Mr. Breuer.²² Simultaneously, Mr. Breuer's deputies and the Justice Department Office of Enforcement Operations reviewed and approved detailed wiretap applications for Fast and Furious. Mr. Breuer and his deputies were quick to recognize gunwalking in a Bush-era case and ask all the right questions. Yet, tell-tale information was right under their very noses that the same field division was doing it again, and Mr. Breuer claims he didn't make the connection.²³

Mr. Breuer admitted before this Committee last week that that very same deputy who informed him of gunwalking in Wide Receiver also approved at least one of the wiretap applications in Operation Fast and Furious.²⁴ As Mr. Breuer himself said, "The Congress made clear in law that wiretaps on telephones are an extraordinarily intrusive technique."²⁵ Thus, wiretap applications are extremely detailed documents. In order to justify tapping the phone of a private citizen, the law requires that law enforcement agencies show that they have tried everything else first. Agencies have to explain the techniques they have tried or considered in order to explain to the court why a wiretap is the only way to get the evidence needed for prosecution. The Justice Department is supposed to review those claims to make sure they are legally sufficient.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Email from George Gillett to David Voth, Oct. 05, 2010 (Attachment 1).

²¹ *Id.*

²² Email from Kenneth Melson to Lanny Breuer, Dec. 04, 2009, HOCR DOJ 2730 (Attachment 4).

²³ *Combatting International Organized Crime: Hearing Before the Subcomm. on Crime and Terrorism of the S. Comm. on the Judiciary*, 112th Cong. (2011).

²⁴ *Id.*

²⁵ *Id.*

But the very same facts that would show the need to obtain the wiretap would also show that the Justice Department knew these individuals were trafficking weapons. Indeed, the goal of the wiretap was to identify other co-conspirators. That's all well and good, but they should have stopped the flow of guns in the meantime. Anyone reviewing the affidavits would likely know that was not happening.

The Justice Department has now produced 10 memos about Operation Fast and Furious received by the Attorney General from March to November 2010, including two he did not reference in his October 7, 2011, letter to Congress.²⁶ Additionally, the Office of National Drug Control Policy recently produced another three memos addressed to the Attorney General on the issue, bringing the count to 13.²⁷ These additional three memos were also not included in the Attorney General's October 7 letter. The memos describe the government's knowledge that straw buyers were responsible for the purchase of over a thousand firearms and that the guns were being supplied to Mexican drug trafficking cartels. The Attorney General has said that since he does not have time to read the memos he receives, these memos were read by his staff instead.²⁸ I look forward to hearing today who on his staff did read them, who was responsible for overseeing the case, and why it was deemed unworthy of his attention.

I am also interested to hear when the Attorney General learned of the connection between Operation Fast and Furious and the weapons found at the scene of Border Patrol Agent Brian Terry's death. The Attorney General's then-Deputy Chief of Staff Monty Wilkinson, spoke with U.S. Attorney Dennis Burke about Operation Fast and Furious the very day that Border Patrol Agent Brian Terry died.²⁹ Did he learn of the connection between Fast and Furious and Agent Terry's death and bring it to the Attorney General's attention? Then-Acting Deputy Attorney General Gary Grindler found out within 48 hours of Agent Terry's death of the connection to Fast and Furious.³⁰ Just two weeks after that, the Attorney General announced that Mr. Grindler would be his new Chief of Staff. Did Mr. Grindler bring the connection between Fast and Furious and Agent Terry's death to the Attorney General's attention?

One month ago Attorney General Holder finally acknowledged that Operation Fast and Furious was flawed.³¹ Yet he said on September 7 of this year:

[T]he notion that somehow or other that this thing reaches into the upper levels of the Justice Department is something that at this point I don't think is supported by

²⁶ Memorandum to the Attorney General from Kenneth Melson, HOCR DOJ 003270-003271 (Mar. 01, 2010); Weekly Report to the Attorney General from Lanny Breuer, HOCR DOJ 003263 (Oct. 25, 2010) (Attachment 5).

²⁷ Weekly Memoranda to the Attorney General from NDIC, ONDCP F&F 000134-000137, 000183-000187, 000205-000208 (Attachment 6).

²⁸ Letter from Attorney General Eric Holder to Chairman Issa, et al. (Oct. 7, 2011).

²⁹ Email from Monty Wilkinson to Dennis Burke, HOCR USAO 003073-003074 (Dec. 14, 2010) (Attachment 7).

³⁰ Email from Brad Smith to Gary Grindler, HOCR DOJ 002875-2881 (Dec. 17, 2010) (Attachment 8).

³¹ Letter from Attorney General Eric Holder to Chairman Issa, et al. (Oct. 7, 2011).

the facts. And I think as we examine and as all the facts are in fact revealed, we'll see that is not the case.³²

I look forward to closely examining this claim with Mr. Holder today.

I would also add that those who seek to use this tragedy to call for new gun control should note that many of the individuals involved in Fast and Furious should have been indicted and arrested nearly a year before they were. While trafficking in firearms is a real problem in Mexico, blaming our Second Amendment freedoms in the U.S. isn't accurate and won't fix anything.

Countless stories have documented the weak controls of U.S.-made weapons in Central American nations which has been a source for firearms in Mexico. Other sources, such as weapons that walk off Mexico military bases, pose a problem too.

So, to say that guns in Mexico are "sourced" to the U.S. just because they were made here is misleading.³³ It doesn't mean that they were ever sold in a retail gun store in the U.S. The faulty statistics include U.S. weapons sold to the military in Mexico, weapons that were transferred into Mexico years ago, guns from Fast and Furious, and many other sources.

More accurate statistics breaking down what is really known about the sources of guns in Mexico would help, and I urge the Attorney General to provide these more detailed breakdowns. As we learn more about the utter failure to enforce our existing gun laws in Fast and Furious, I'm eager to hear from Attorney General Holder who he plans to hold accountable. I also want to know how he plans to prevent another tragedy like this in the future.

Let me be clear. The bottom line is that it doesn't matter how many laws we pass if those responsible for enforcing them refuse to do their duty—as was the case in Fast and Furious.

³² Carrie Johnson, *Holder Takes Heat Over 'Fast And Furious' Scandal*, NPR (Oct. 6, 2011) available at <http://www.npr.org/2011/10/06/141124685/holder-takes-heat-over-fast-and-furious-scandal>.

³³ Letter from Senator Charles E. Grassley to Acting Director Kenneth Melson (June 16, 2011) (Attachment 9).