

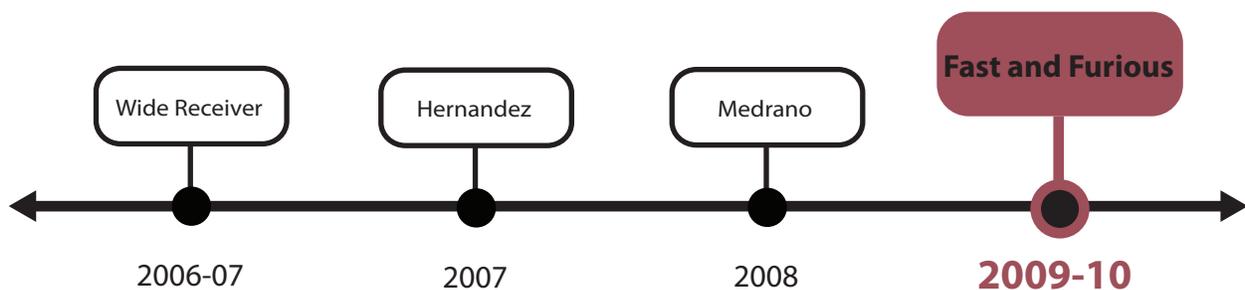
Alejandro Medrano drove Hernan Ramos's vehicle with Hernan Ramos as a passenger from Mad Dawg Global in Tuscon, Arizona, to the Douglas Port of Entry where they both entered into Mexico with at least the six (6) .223 caliber rifles in the vehicle.¹⁰⁹

The complaint states that the information was obtained by ATF agents conducting surveillance:

ATF Special Agents conducted surveillance, recorded firearms transactions, and identified the dates and times that the conspirators herein crossed the international border either in vehicles or on foot.¹¹⁰

The complaint also describes how quickly Medrano and his associates traveled back and forth between the United States and Mexico for additional firearm purchases. For example, in one instance on May 21, 2008, Hernan Ramos entered the United States and returned to Mexico "less than two hours later in the same vehicle." The complaint also states that in another instance on August 13, 2008, Medrano and an associate entered the United States "driving a vehicle which had entered into Mexico approximately fifteen minutes earlier."¹¹¹

On August 9, 2010, Medrano was "sentenced to 46 months in prison for his leadership role in the conspiracy."¹¹² Ramos was sentenced to 50 months in prison and "[m]ost of the remaining defendants in the conspiracy received prison terms ranging from 14 to 30 months."¹¹³ Many of the firearms purchased by the Medrano network were subsequently recovered in Mexico.¹¹⁴



4. Operation Fast and Furious (2009-10)

The investigation that became known as Operation Fast and Furious began in the ATF Phoenix Field Division in October 2009. Despite having identified 20 suspects who paid hundreds of thousands of dollars in cash to buy hundreds of military-grade firearms on behalf of the same trafficking ring, ATF-Phoenix and the Arizona U.S. Attorney's Office asserted that they lacked probable cause for any arrests. Three months into the investigation, they agreed instead on a broader

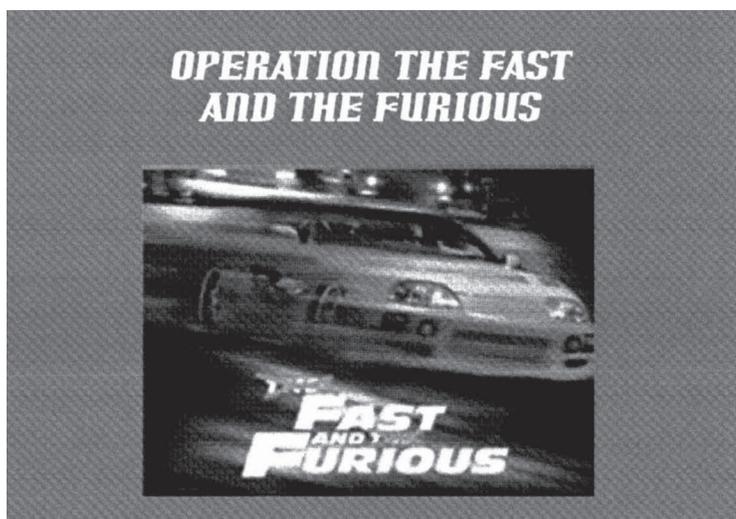
strategy to build a bigger case against cartel leaders, rather than straw purchasers, through long-term surveillance and wiretaps. While they pursued this broader strategy, ATF-Phoenix agents did not interdict hundreds of firearms purchased and distributed by the suspects under their surveillance. In March 2010, the Deputy Director of ATF became concerned with the operation and ordered an “exit” strategy to bring indictments within 90 days. The documents indicate that ATF-Phoenix field agents chafed against this directive, however, and allowed suspect purchases to continue for months in an effort to salvage the broader goal of the investigation. In January 2011, the U.S. Attorney’s Office indicted 19 straw purchasers and the local organizer of the network, all of whom had been identified at the beginning of the investigation in 2009.

Initiated by ATF-Phoenix in the Fall of 2009

According to documents obtained by the Committee, the investigation that became known as Operation Fast and Furious started in October 2009 when ATF agents received a tip that four suspected straw purchasers had acquired numerous AK-47 style rifles from the same gun dealer. ATF also received a tip about a man named Uriel Patino who had purchased numerous AK-47 rifles from the same dealer.¹¹⁵

The next month, ATF identified six additional suspected straw purchasers and two local properties that were being utilized as firearm drop locations.¹¹⁶ On November 20, 2009, some of the guns purchased by the suspects were recovered in Naco, Mexico, including firearms with a “short time to crime.” Two additional suspects were identified based on the firearms recovered in Naco.¹¹⁷

ATF-Phoenix presentation on Fast and Furious



The case continued to grow in December with the identification of seven additional suspected straw purchasers and Manuel Celis-Acosta, a suspect connected to a large-scale Drug Enforcement Administration (DEA) investigation.¹¹⁸

A Briefing Paper prepared by ATF-Phoenix noted the size of the organization and the rapid pace of firearm purchases in those initial months of the investigation. It stated:

It should also be noted that the pace of firearms procurement by this straw purchasing group from late September to early December, 2009 defied the “normal” pace of procurement by other firearms trafficking groups investigated by this and other field divisions. This “blitz” was extremely out of the ordinary and created a situation where measures had to be enacted in order to slow this pace down in order to perfect a criminal case.¹¹⁹

The Briefing Paper stated that the investigation had identified more than 20 individual straw purchasers, all connected to the same trafficking ring, who “had purchased in excess of 650 firearms (mainly AK-47 variants) for which they have paid cash totaling more than \$350,000.00”¹²⁰

Prosecutors claimed no probable cause to arrest straw buyers

According to documents obtained by the Committee, on January 5, 2010, ATF-Phoenix officials working on the investigation had a meeting with the lead prosecutor on the case, Arizona Assistant U.S. Attorney Emory Hurley. The ATF agents and the prosecutor wrote separate memos following the meeting reflecting a consensus that no probable cause existed to arrest any of the straw purchasers despite the significant number of firearms that had been purchased. The ATF-Phoenix Briefing Paper, prepared three days after the meeting, stated:

On January 5, 2010, ASAC Gillett, GS [Group Supervisor] Voth, and case agent SA MacAllister met with AUSA Emory Hurley who is the lead federal prosecutor on this matter. Investigative and prosecutions 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. This investigation was briefed to United States Attorney Dennis Burke, who concurs with the assessment of his line prosecutors and fully supports the continuation of this investigation.¹²¹

Similarly, the prosecutor wrote a memo to his direct supervisor, stating: “We have reviewed the available evidence thus far and agree that we do not have any chargeable offenses against any of the players.”¹²²

During a transcribed interview with Committee staff, the ATF-Phoenix Group Supervisor who oversaw the operation and participated in the meeting explained that he had to follow the prosecutor’s probable cause assessment:

I don’t think that agents in Fast and Furious were forgoing taking action when probable cause existed. We consulted with the U.S.

Attorney's Office. And if we disagree, I guess we disagree. But if the U.S. Attorney's Office says we don't have probable cause, I think that puts us in a tricky situation to take action independent, especially if that is contradictory to their opinion.¹²³

In another exchange, the Group Supervisor explained the prosecutor's assessment with respect to Uriel Patino, the single largest suspected straw purchaser in the Fast and Furious network:

Q: Does that meet your understanding of probable cause to interdict a gun when Uriel Patino goes in for the fifth or sixth or 12th time to purchase more and more guns with cash?

A: We talked that over at the U.S. Attorney's Office, and the conclusion was that we would need independent probable cause for each transaction. Just because he bought 10 guns yesterday doesn't mean that the 10 he is buying today are straw purchased. You can't transfer probable cause from one firearm purchase to the next firearm purchase. You need independent probable cause for each occurrence.

Q: And it doesn't matter not just that he bought 10 last week and 20 the week before, but that five of them ended up in Mexico at a crime scene, at a murder?

A: Again, in talking to the U.S. Attorney's Office, unless we could prove that he took them to Mexico, the fact that he sold them or transferred them to another [non-prohibited] party doesn't necessarily make him a firearms trafficker. If he sells them to his neighbor lawfully and then his neighbor takes them to Mexico, it is the neighbor who has done the illegal act, not Patino, who sold them to his neighbor.¹²⁴

Although the determination of whether sufficient probable cause existed to make arrests ultimately rested with the prosecutor, documents obtained by the Committee indicate that all of the participants agreed with the strategy to proceed with building a bigger case and to forgo taking down individual members of the straw purchaser network one-by-one. The ATF Briefing Paper stated:

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 [drug trafficking organizations] which are perpetrating armed violence along the Southwest Border.¹²⁵

During his transcribed interview with Committee staff, Special Agent in Charge Newell explained:

[T]he goal was twofold. It was to identify the firearms-trafficking network, the decision-makers, and not just focus on the straw purchasers. We would go after the decision-makers, the people who were financing.¹²⁶

He stated that it was critical to identify the network rather than arresting individual straw purchasers one-by-one:

The goal of the investigation, as I said before, was to identify the whole network, knowing that if we took off a group of straw purchasers this, as is the case in hundreds of firearms trafficking investigations, some that I personally worked as a case agent, you take off the low level straw purchaser, all you're doing is one of – you're doing one of two things, one of several things. You're alerting the actual string-puller that you're on to them, one, and, two, all they are going to do is go out and get more straw purchasers.

Our goal in this case is to go after the decision-maker, the person at the head of the organization, knowing that if we remove that person, in the sense of prosecute that person, successfully, hopefully, that we would have much more impact than just going after the low-level straw purchaser.¹²⁷

Prosecutor encouraged U.S. Attorney to “hold out for bigger” case

In addition to finding no probable cause to arrest suspected straw purchasers who had already purchased hundreds of firearms, the lead prosecutor recommended against employing traditional investigative tactics against the suspects. In a memorandum to his supervisor on January 5, 2010, Mr. Hurley wrote:

In the past, ATF agents have investigated cases similar to this by confronting the straw purchasers and hoping for an admission that might lead to charges. This carries a substantial risk of letting the members of the conspiracy know that they are the subject of an investigation and not gain any useful admissions from the straw buyer. In the last couple of years, straw buyers appear to be well coached in how to avoid answering question about firearms questions. Even when the straw buyers make admissions and can be prosecuted, they

are easily replaced by new straw buyers and the flow of guns remains unabated.¹²⁸

The lead prosecutor noted that ATF-Phoenix was aware that ATF headquarters would likely object to both the strategy of trying to build a bigger case and the proposal to forgo using traditional law enforcement tactics:

ATF [Phoenix] believes that there may be pressure from ATF headquarters to immediately contact identifiable straw purchasers just to see if this develops any indictable cases and to stem the flow of guns. Local ATF favors pursuing a wire and surveillance to build a case against the leader of the organization. If a case cannot be developed against the hub of the conspiracy, he will be able to replace the spokes as needed and continue to traffic firearms. I am familiar with the difficulties of building a case only upon the interviews of a few straw purchasers and have seen many such investigations falter at the first interview. I concur with Local ATF's decision to pursue a longer term investigation to target the leader of the conspiracy.¹²⁹

Later the same day, January 5, 2010, the lead prosecutor's supervisor forwarded the memorandum to U.S. Attorney Dennis Burke, recommending that he agree to both the strategy and tactics. The supervisor's email to Mr. Burke stated:

Dennis—Joe Lodge has been briefed on this but wanted to get you a memo for your review. Bottom line – we have a promising guns to Mexico case (some weapons already seized and accounted for), local ATF is on board with our strategy but ATF headquarters may want to do a smaller straw purchaser case. We should hold out for the bigger case, try to get a wire, and if it fails, we can always do the straw buyers. Emory's memo references that this is the "Naco, Mexico seizure case" – you may have seen photos of that a few months ago.¹³⁰

Mr. Burke responded two days later with a short message: "Hold out for bigger. Let me know whenever and w/ whomever I need to weigh-in."¹³¹

Although Mr. Burke agreed with the proposal to target the organizers of the firearms trafficking conspiracy, he told Committee staff that neither ATF-Phoenix nor his subordinates suggested that agents would be letting guns walk as part of the investigation. As discussed in Section C, below, Mr. Burke stated in his transcribed interview that he was under the impression that ATF-Phoenix was coordinating interdictions with Mexican officials. Mr. Burke stated:

I was under the opposite impression, which was that based on his [Mr. Newell's] contacts and the relationships with Mexico and what they

were doing, that they would be working with Mexico on weapons transferred into Mexico.¹³²

According to documents obtained by the Committee, Mr. Burke also received explicit assurances from the lead prosecutor on the case, Mr. Hurley, that ATF-Phoenix agents “have not purposely let guns ‘walk.’”¹³³

ATF-Phoenix sought funding and wiretaps to target higher-level suspects

To secure additional resources for Operation Fast and Furious, including agents, funding, and sophisticated investigative tools, ATF-Phoenix requested funding from the Organized Crime Drug Enforcement Task Forces (OCDETF) Program, which provides funding “to identify, disrupt, and dismantle the most serious drug trafficking and money laundering organizations and those primarily responsible for the nation’s drug supply.”¹³⁴

In January 2010, ATF-Phoenix submitted an investigative strategy in its application for funding from OCDETF.¹³⁵ ATF-Phoenix and the U.S. Attorney’s Office used evidence gathered from another agency’s investigation to draft its proposal.¹³⁶ The application explained that the goal Operation Fast and Furious was to bring down a major drug trafficking cartel:

The direct goal of this investigation is to identify and arrest members of the CONTRERAS DTO [Drug Trafficking organization] as well as seize assets owned by the DTO. Based upon the amount of drugs this organization distributes in the US it is anticipated that the investigation will continue to expand to other parts of the US and enable enforcement operations in multiple jurisdictions. In addition to the CONTRERAS DTO, this investigation is intended to identify and expand to the hierarchy within the Mexico-based drug trafficking organization that directs the CONTRERAS DTO.¹³⁷

ATF-Phoenix’s proposal for Operation “The Fast and the Furious” was approved by an interagency group of Federal law enforcement officials in Arizona in late January 2010.¹³⁸

ATF-Phoenix also drafted a proposal to conduct a wiretap with the goal of obtaining evidence to connect the straw purchasers to the leaders of the firearms trafficking conspiracy.¹³⁹ During his transcribed interview with Committee staff, U.S. Attorney Burke explained the purpose behind this wiretap application:

[T]he belief was, at least in I think January 2010, was when they first, my recollection is that they first started referencing the interest in

getting the [wiretap]. But the point being that they were going to try to reach beyond just the straw purchasers and figure out who the actual recruiters were and organizers of the gun trafficking ring.¹⁴⁰

ATF-Phoenix submitted its wiretap application with the necessary affidavits and approvals from the Department of Justice, Office of Enforcement Operations, and received federal court approval for its first wiretaps.¹⁴¹

ATF-Phoenix agents watched guns walk

Documents obtained by the Committee indicate that while ATF-Phoenix and the U.S. Attorney's Office pursued their strategy of building a bigger case against higher-ups in the firearms trafficking conspiracy, ATF-Phoenix field agents continued daily surveillance of the straw purchaser network. With advance or real-time notice of many purchases by the cooperating gun dealers, the agents watched as the network purchased hundreds of firearms. One ATF-Phoenix agent assigned to surveillance described a common scenario:

[A] situation would arise where a known individual, a suspected straw purchaser, purchased firearms and immediately transferred them or shortly after, not immediately, shortly after they had transferred them to an unknown male. And at that point I asked the case agent to, if we can intervene and seize those firearms, and I was told no.¹⁴²

When asked about the number of firearms trafficked in a given week, one agent answered:

Probably 30 or 50. It wasn't five. There were five at a time. These guys didn't go to the FFLs unless it was five or more. And the only exceptions to that are sometimes the Draco, which were the AK-variant pistols, or the FN Five-seveN pistols, because a lot of FFLs just didn't have ... 10 or 20 of those on hand.¹⁴³

Agents told the Committee that they became increasingly alarmed as this practice continued, which they viewed as a departure from both protocol and their expectations as law enforcement officials. One agent stated:

We were walking guns. It was our decision. We had the information. We had the duty and the responsibility to act, and we didn't do so. So it was us walking those guns. We didn't watch them walk, we walked.¹⁴⁴

ATF Deputy Director Hoover ordered an “exit strategy”

The documents obtained and interviews conducted by the Committee indicate that, following a briefing in March 2010, ATF Deputy Director William Hoover ordered an “exit strategy” in order to extract ATF-Phoenix from this operation. At the March briefing, the ATF Intelligence Operations Specialist and the Group Supervisor made a presentation regarding Operation Fast and Furious that covered the suspects, the number of firearms each had purchased, the amount of money each had spent, the known stash houses where guns were deposited, and the locations in Mexico where Fast and Furious firearms had been recovered. The briefing also included Assistant Director for Field Operations Mark Chait and Deputy Assistant Director for Field Operations William McMahon, four ATF Special Agents in Charge from ATF’s Southwest border offices, and others.

In his transcribed interview with Committee staff, Deputy Director Hoover stated that he became concerned sometime after the briefing about the number of guns being purchased and ordered an “exit strategy” to close the case and seek indictments within 90 days:

Q: It’s our understanding that you and Mr. Chait, in March approximately, asked for an exit strategy for the case?

A: That is correct. ...

Q: And if you could tell us what led to that request?

A: We received a pretty detailed briefing in March, I don’t remember the specific date, I’m going to say it’s after the 15th of March, about the investigation, about the number of firearms purchased by individuals. ... That would have been by our Intel division in the headquarters. ... During that briefing I was, you know, just jotting some notes. And I was concerned about the number of firearms that were being purchased in this investigation, and I decided that it was time for us to have an exit strategy and I asked for an exit strategy. It was a conversation that was occurring between Mark Chait, Bill McMahon and myself. And I asked for the exit strategy 30, 60, 90 days, and I wanted to be able to shut this investigation down.

Q: And by shutting the investigation down, you were interested in cutting off the sales of weapons to the suspects, correct?

A: That’s correct.

Q: And you were worried, is it fair to say, that these guns were possibly going to be getting away and getting into Mexico and showing up at crime scenes?

A: I was concerned not only that that would occur in Mexico, but also in the United States.¹⁴⁵

Other than requesting an exit strategy, Mr. Hoover did not recall making any other specific demands because he generally “allowed field operations to run that investigation.”¹⁴⁶

ATF-Phoenix did not follow the 90-day exit strategy and continued the operation

In April 2010, more than one month after Deputy Director Hoover’s demand for an exit strategy, ATF-Phoenix still had not provided it, and Special Agent in Charge Newell expressed his frustration with perceived interference from ATF headquarters that he believed could prevent him from making a larger case. In an April 27, 2010, email to Deputy Assistant Director McMahon, he wrote:

I don’t like HQ driving our cases but understand the “sensitivities” of this case better than anyone. We don’t yet have the direct link to a DTO that we want/need for our prosecution, [redacted]. Once we establish that link we can hold this case up as an example of the link between narcotics and firearms trafficking which would be great on a national media scale but if the Director wants this case shut down then so be it.¹⁴⁷

Although Mr. Newell delivered an exit strategy that day at Mr. McMahon’s reminder, the operation continued to grow and expand rather than wind down over the months to follow.¹⁴⁸ In June 2010, three months after Deputy Director Hoover’s directive, the operational phase of the case was still continuing. On June 17, 2010, the ATF-Phoenix Group Supervisor received an email from a cooperating gun dealer raising concerns about how the firearms he was selling could endanger public safety. The dealer stated:

As per our discussion about over communicating I wanted to share some concerns that came up. Tuesday night I watched a segment of a Fox News report about firearms and the border. The segment, if the information was correct, is disturbing to me. When you, Emory and I met on May 13th I shared my concerns with you guys that I wanted to make sure that none of the firearms that were sold per our conversation with you and various ATF agents could or would ever end up south of the border or in the hands of the bad guys. I guess I

am looking for a bit of reassurance that the guns are not getting south or in the wrong hands. I know it is an ongoing investigation so there is limited information you can share with me. But as I said in our meeting, I want to help ATF with its investigation but not at the risk of agents safety because I have some very close friends that are US Border Patrol agents in southern AZ as well as my concern for all the agents safety that protect our country.¹⁴⁹

A month later, on July 14, 2010, Special Agent in Charge Newell sent an email to an ATF colleague in Mexico stating that ATF was “within 45-60 days of taking this [Operation Fast and Furious] down IF the USAO goes with our 846/924(c) conspiracy plan.”¹⁵⁰ At that time, the case was still months away from indictment.

In August 2010, the operation continued, with another cooperating gun dealer writing to the ATF-Phoenix Group Supervisor seeking advice about a large purchase order made by Uriel Patino, who personally purchased more than 600 assault weapons from a small handful of cooperating gun dealers. The dealer stated:

One of our associates received a telephone inquiry from Uriel Patino today. Uriel is one of the individuals your office has interest in, and he looking to purchase 20 FN-FNX mm firearms. We currently have 4 of these firearms in stock. If we are to fulfill this order we would need to obtain the additional 16 specifically for this purpose.

I am requesting your guidance as to weather [sic] or not we should perform the transaction, as it is outside of the standard way we have been dealing with him.¹⁵¹

The Group Supervisor wrote back requesting that the gun dealer fulfill the order:

[O]ur guidance is that we would like you to go through with Mr. Patino’s request and order the additional firearms he is requesting, and if possible obtain a partial down payment. This will require further coordination of exact details but again we (ATF) are very much interested in this transaction and appreciate your [] willingness to cooperate and assist us.¹⁵²

During a transcribed interview with Committee staff, another cooperating gun dealer explained that ATF agents had promised to address the concerns he raised about their capability to interdict these weapons:

I was assured in no uncertain terms—and let me be straight about this. She assured that they would have enough agents on sight to surveil the sale and make sure that it didn’t get away from them, as it was stated

to me. ... To continue, we went along with these sales at their request. ATF would want us to continue with them, and we did so.¹⁵³

Indictments delayed for months

By August 2010, rather than indicting the suspects in Operation Fast and Furious, ATF-Phoenix and the prosecutor were still in the process of compiling evidence to make indictment decisions. During his transcribed interview with Committee staff, Special Agent in Charge Newell stated:

Well, the next phase in the investigation, it really moves from an investigation phase to prosecution phase at that point in the sense of getting the case ready for indictment. So I know that the case agent ... as well as the others were meeting regularly with the AUSA Emory Hurley, compiling all the different pieces of evidence specific to each individual prospective defendant, to get to a point where we met what we felt in conjunction with the U.S. Attorney's Office, in coordination with them, that met the burden of proof to be able to seek an indictment.¹⁵⁴

Mr. Newell stated that he understood that this process of "compiling" evidence takes significant time and, as a result, "we were hoping to get indictments in, as I recall, I think it was maybe October, November roughly."¹⁵⁵ Mr. Newell attributed the delay in the indictments to "a combination of workload [at the U.S. Attorney's Office] and the fact that there was a lot of work that needed to be done as far as putting the charges together."¹⁵⁶

In contrast, U.S. Attorney Burke informed Committee staff that the delay in the indictments was because ATF-Phoenix failed to produce to the prosecutor the completed case file until October 2010:

There is a formal process when an agency gives us a case with their cover, and the actual full documentation of the case was given to us, our office in October 2010, and I believe it was represented that it was given to us in August 2010.¹⁵⁷

On January 19, 2011, ten months after Deputy Director Hoover ordered an exit strategy, the U.S. Attorney's Office filed an indictment against Manuel Celis-Acosta and 19 straw purchasers that included counts for conspiracy, dealing in firearms without a license, conspiracy to possess a controlled substance with intent to distribute, possession with intent to distribute marijuana, conspiracy to possess a firearm in furtherance of a drug trafficking offense, false statements in connection with acquisition of firearms, conspiracy to commit money laundering, money laundering, and aiding and abetting.¹⁵⁸

B. CHALLENGES SPECIFIC TO THE ARIZONA U.S. ATTORNEY'S OFFICE

Numerous ATF agents in Phoenix and senior ATF officials in Washington, D.C. informed the Committee that the U.S. Attorney's Office in Arizona historically has been reluctant to prosecute firearms traffickers. Due to the Federal prosecutors' analysis of heightened evidentiary thresholds in their district, agents reported that they faced significant challenges over the course of many years getting the U.S. Attorney's Office in Arizona to arrest, prosecute, and convict firearms traffickers.

"Viewed as an obstacle more than a help"

In testimony before the Committee, ATF Special Agent Peter Forcelli stated that within a few weeks of transferring to the Phoenix Field Division from New York in 2007, he noticed a difference in how Federal prosecutors in Arizona handled gun cases:

In my opinion, dozens of firearms traffickers were given a pass by the U.S. Attorney's Office for the District of Arizona. Despite the existence of "probable cause" in many cases, there were no indictments, no prosecutions, and criminals were allowed to walk free.¹⁵⁹

Special Agent Forcelli testified that "this situation wherein the United States Attorney's Office for Arizona in Phoenix declined most of our firearms cases, was at least one factor which led to the debacle that's now known as 'Operation Fast and Furious.'"¹⁶⁰ He added that little improvement has been made to date:

I would say, if anything, we have gone from a 'D-minus' to maybe a 'D.' It is still far from, again, effective or far from what, you know, the taxpayers deserve. But it is still very bad. I mean I wouldn't say it is effective. ... Guns in the hands of gang members or cartel traffickers, that's pretty concerning.¹⁶¹

He added: "the U.S. Attorney's Office is kind of viewed as an obstacle more than a help in criminal prosecutions here in Arizona, here in the Phoenix area."¹⁶²

In his transcribed interview with Committee staff, Acting ATF Director Kenneth Melson stated that Arizona historically has been a very difficult place to prosecute firearms traffickers. He stated:

A: We have had, as Peter Forcelli said, a long history with the District of Arizona going back to Paul Charlton, if not earlier, where it was difficult to get these cases prosecuted. Diane

Humetewa was the second U.S. Attorney there who had issues with our cases and wouldn't prosecute. I was head of the Executive Office for U.S. Attorneys at the time. I know exactly what was going on there and the issues we had with getting cases prosecuted in the District of Arizona.

Q: What was going on there?

A: Well, they—

Q: Were they prosecuting gun cases?

A: No, no. And they had a limit—for example, they wouldn't take any case that had less than 500 pounds of marijuana coming across the border with people in custody of it. We had to take some of our most significant cases to the state courts to try because they wouldn't take them.

Q: So is it fair to say there was a frustration—I believe you said earlier there was a frustration and aggravation with the Arizona U.S. Attorney's office, is that fair?

A: Yes, I think there was a frustration. Peter Forcelli said it really like it was. Let me say it, Dennis Burke has really made a change in the office. And he has turned that office around, maybe not 180 degrees but he's getting there. He's at least at 45 or 50 degrees. We have gotten more prosecutions out of his office than before, but historically, we have had a real hard time getting prosecutions. And when we do, we get no sentences. The guidelines are so low.¹⁶³

Evidentiary thresholds in Arizona

According to ATF officials, prosecutors in the Arizona U.S. Attorney's Office insisted that they could not prosecute firearms cases without physical possession of the firearms at issue. The prosecutors referred to this as the doctrine of *corpus delicti* ("body of the crime").¹⁶⁴ Because it was difficult to get Mexican authorities to cooperate in returning recovered firearms from that country, agents claimed that this created an effective bar to prosecution of many trafficking suspects. Agents told the Committee that prosecutors in the Arizona U.S. Attorney's Office applied the *corpus delicti* doctrine to refuse to prosecute cases even when suspects confessed to committing the crime.¹⁶⁵

ATF counsel strongly disagreed with the U.S. Attorney's Office that firearms had to be present to prove that straw purchasers had lied on the Federal forms they

filled out when purchasing firearms. According to Special Agent in Charge Newell, the other other U.S. Attorneys' offices in his jurisdiction—New Mexico, Colorado, Wyoming, and Utah—did not share Arizona's interpretation of this evidentiary standard.¹⁶⁶

On February 24, 2010, ATF counsel prepared a memorandum criticizing the *corpus delicti* doctrine as interpreted by the Arizona U.S. Attorney's Office. The memo stated:

In furtherance of ATF's primary investigative authority and the Southwest Border Initiative, ATF agents spend a very significant number of hours—and often place themselves in dangerous circumstances—investigating alleged straw transactions as part of firearms trafficking cases. In recent years, few of these investigations have resulted in Federal prosecutions in the District of Arizona. It is our desire to work with your office to adjust the scope of our investigations and/or our investigative procedures to provide straw purchaser cases that fall within the prosecution guidelines of your office.¹⁶⁷

According to ATF agents in Phoenix, the U.S. Attorney's Office also established additional evidentiary hurdles that made prosecuting firearms cases difficult, including requiring independent evidence of illegality for each firearms transaction. According to ATF agents, prosecutors would not build a case based on a pattern of multiple successive firearms purchases followed in quick succession by trips to Mexico. Instead, agents had to prove that each transaction, standing by itself, was illegal. The ATF-Phoenix Group Supervisor for Fast and Furious told the Committee how this policy applied:

We talked that over at the U.S. Attorney's Office, and the conclusion was that we would need independent probable cause for each transaction. Just because he bought 10 guns yesterday doesn't mean that the 10 he is buying today are straw purchased. You can't transfer probable cause from one firearm purchase to the next firearm purchase. You need independent probable cause for each occurrence.¹⁶⁸

The ATF Group Supervisor explained that application of this requirement meant that agents could not rely on prior actions as the basis for arresting suspected straw purchasers or interdicting weapons.¹⁶⁹

ATF agents also informed the Committee that the Arizona U.S. Attorney's Office required proof, by clear and convincing evidence, that every person in a chain of people who possessed the firearm had the intent to commit a crime.¹⁷⁰ Agents

understood this to mean that they would not have sufficient probable cause to arrest a suspect or interdict weapons when suspects transferred guns to non-prohibited persons who then trafficked the guns to Mexico.¹⁷¹



DEA photo from announcement of Fast and Furious indictments (January 2011)

C. NO EVIDENCE THAT SENIOR OFFICIALS AUTHORIZED OR CONDONED GUNWALKING IN FAST AND FURIOUS

Contrary to some claims, the Committee has obtained no evidence that Operation Fast and Furious was conceived and directed by high-level political appointees at the Department of Justice. Rather, the documents obtained and interviews conducted by the Committee reflect that Fast and Furious was the latest in a series of fatally flawed operations run by ATF's Phoenix Field Division and the Arizona U.S. Attorney's Office during both the previous and current administrations.

The Acting Director of ATF, the Deputy Director of ATF, and the U.S. Attorney in Arizona each told the Committee that they did not approve of gunwalking in Operation Fast and Furious, were not aware that agents in ATF-Phoenix were using the tactic, and never raised any concerns with senior officials at the Department of Justice in Washington, D.C. In addition, the Deputy Attorney General and Assistant Attorney General for the Criminal Division both stated that ATF and prosecutors never raised concerns about gunwalking in Operation Fast and Furious to their attention, and that, if they had been told about gunwalking, they would have shut it down. The Attorney General has stated consistently that he was not aware of allegations of gunwalking until 2011, and the Committee has received no evidence that contradicts this assertion.

Attorney General Holder

The Attorney General has stated repeatedly that he was unaware that gunwalking occurred in Operation Fast and Furious until the allegations became public in early 2011.¹⁷² In testimony before the Senate Judiciary Committee, Attorney General Holder was unequivocal in his criticism of the controversial tactics employed in Fast and Furious:

Now I want to be very clear, any instance of so called gunwalking is simply unacceptable. Regrettably this tactic was used as part of Fast and Furious which was launched to combat gun trafficking and violence on our Southwest border.

This operation was flawed in its concept and flawed in its execution, and unfortunately we will feel the effects for years to come as guns that were lost during this operation continue to show up at crime scenes

"This should never have happened and it must never happen again."
-Attorney General Holder

both here and in Mexico. This should never have happened and it must never happen again.¹⁷³

Testifying before the House Judiciary Committee, the Attorney General rejected the allegation that senior leaders at the Department of Justice approved of gunwalking in Operation Fast and Furious:

I mean, the notion that people in the—in Washington, the leadership of the Department approved the use of those tactics in Fast and Furious is simply incorrect. This was not a top-to-bottom operation. This was a regional operation that was controlled by ATF and by the U.S. Attorney's Office in Phoenix.¹⁷⁴

The Committee has obtained no evidence indicating that the Attorney General authorized gunwalking or that he was aware of such allegations before they became public. None of the 22 witnesses interviewed by the Committee claims to have spoken with the Attorney General about the specific tactics employed in Operation Fast and Furious prior to the public controversy.

To the contrary, the evidence received by the Committee supports the Attorney General's assertion that the gunwalking tactics in Operation Fast and Furious were developed in the field. The leaders of the two components with management responsibility for Operation Fast and Furious—ATF and the U.S. Attorney's Office—informed the Committee that they themselves were not aware of the controversial tactics used in Operation Fast and Furious and did not brief anyone at Justice Department headquarters about them. Similarly, the Attorney General's key subordinates—the Deputy Attorney General and the Assistant Attorney General for the Criminal Division—informed the Committee that they were never briefed on the tactics by ATF or the U.S. Attorney's Office and never raised concerns about the operation to the Attorney General.

In 2010, the Office of the Attorney General received six reports from the National Drug Intelligence Center that contained a brief, one paragraph overview of Operation Fast and Furious. None of the information in the documents discussed the controversial tactics used by ATF agents in the case. One typical paragraph read:

From August 2 through August 6, the National Drug Intelligence Center Document and Media Exploitation Team at the Phoenix Organized Crime Drug Enforcement Task Force (OCDETF) Strike Force will support the Bureau of Alcohol, Tobacco, Firearms, and Explosives' Phoenix Field Division with its investigation of Manuel Celis-Acosta as part of OCDETF Operation Fast and the Furious. This investigation, initiated in September 2009 in conjunction with the Drug Enforcement Administration, Immigration and Customs Enforcement,

and the Phoenix Police Department, involves a Phoenix-based firearms trafficking ring headed by Manuel Celis-Acosta. Celis-Acosta and [redacted] straw purchasers are responsible for the purchase of 1,500 firearms that were then supplied to Mexican drug trafficking cartels. They also have direct ties to the Sinaloa Cartel which is suspected of providing \$1 million for the purchase of firearms in the greater Phoenix area.¹⁷⁵

In his October 7, 2011, letter, the Attorney General explained that he never reviewed the reports and that his staff typically reviews these reports. He also testified that even if he had reviewed them personally, they did not indicate anything problematic about the case because “the entries suggest active law enforcement action being taken to combat a firearms trafficking organization that was moving weapons to Mexico.”¹⁷⁶

Documents provided to the Committee indicate that in December 2010, the Arizona U.S. Attorney’s Office was preparing to inform the Attorney General’s Office about the general status of upcoming indictments in Operation Wide Receiver when news of Agent Terry’s death broke.

On December 14, 2010, Monty Wilkinson, the Attorney General’s Deputy Chief of Staff, sent an email to U.S. Attorney Burke asking if he was available for a call that day.¹⁷⁷ The next day, U.S. Attorney Burke replied, apologized for not responding sooner, and said he would call later in the day.¹⁷⁸ He also stated that the U.S. Attorney’s Office had a large firearms trafficking case he wanted to discuss that was set to be indicted in the coming weeks.¹⁷⁹

Several hours later on December 15, 2010, U.S. Attorney Burke learned that Agent Terry had been murdered.¹⁸⁰ He alerted Mr. Wilkinson, who replied, “Tragic, I’ve alerted the AG, the Acting DAG, Lisa, etc.”¹⁸¹

Later that same day, U.S. Attorney Burke learned that two firearms found at Agent Terry’s murder scene had been purchased by a suspect in Operation Fast and Furious. He sent an email to Mr. Wilkinson forwarding this information and wrote: “The guns found in the desert near the murder [sic] BP officer connect back to the investigation we were going to talk about—they were AK-47’s purchased at a Phoenix gun store.”¹⁸² Mr. Wilkinson replied, “I’ll call tomorrow.”¹⁸³

In his interview with Committee staff, U.S. Attorney Burke stated that he did not recall having any subsequent conversation with Mr. Wilkinson that “included the fact that Fast and Furious guns were found at the scene” of Agent Terry’s murder.¹⁸⁴ In a November 2011 hearing of the Senate Judiciary Committee, Senator Charles Grassley asked Attorney General Holder, “Did Mr. Wilkinson say anything to you about the connection between Agent Terry’s death and the ATF operation?”

Attorney General Holder responded, “No, he did not.”¹⁸⁵ In a January 27, 2011, letter to the Committee, the Department stated that Mr. Wilkinson “does not recall a follow-up call with Burke or discussing this aspect of the matter with the Attorney General.”¹⁸⁶

Deputy Attorney General Grindler

During his interview with Committee staff, Gary Grindler, the former Acting Deputy Attorney General stated that he was not aware of the controversial tactics that ATF-Phoenix employed in Operation Fast and Furious, never authorized them, and never briefed anyone at the Department of Justice about them.¹⁸⁷

“*I would have stopped it.*”
-former Deputy Attorney General Grindler

In March 2010, Acting ATF Director Melson and Deputy Director Hoover met with Mr. Grindler for a monthly check-in meeting and shared information about Operation Fast and Furious and other matters. As part of this briefing, Mr. Melson and Mr. Hoover stated that they discussed the total number of firearms purchased by individual suspects in Operation Fast and Furious, the total amount of money spent on purchasing these firearms, and a map displaying seizure events for the case in both the United States and Mexico.¹⁸⁸

Mr. Grindler stated that neither of ATF’s senior leaders raised any concerns with him about Operation Fast and Furious at that briefing or mentioned gunwalking:

Q: And to your recollection, did Director Melson or Deputy Director Hoover ever tell you that they were deliberately allowing firearms to be transferred to Mexico in order to use them as a predicate for cases in the United States?

A: I mean, I am extraordinarily confident that they didn’t tell me that. That is just an absurd concept. If that had been told to me, I would not only have written something, but done something about it.

Q: What would you have done?

A: I would have stopped it. I would have asked for detailed briefings about this matter and figure out more clearly what’s going on here.¹⁸⁹

Deputy Director Hoover corroborated Mr. Grindler’s account. In his interview with the Committee, Mr. Hoover explained that he did not inform the

Deputy Attorney General about gunwalking in Operation Fast and Furious because he did not know about it himself:

A: Well, there's been reports that the Deputy Attorney General's office was aware of the techniques being employed in Fast and Furious, and that's not the case, because I certainly didn't brief them on the techniques being employed in Fast and Furious.

Q: Because you didn't know?

A: Right.¹⁹⁰

When asked whether he ever discussed his briefing on Operation Fast and Furious with the Attorney General, Mr. Grindler said, "I don't have any recollection of advising the Attorney General about this briefing in 2010."¹⁹¹

Acting ATF Director Melson

In an interview with Committee staff on July 4, 2011, then-Acting ATF Director Kenneth Melson stated that he was not aware of the controversial tactics that the ATF-Phoenix Field Division employed, never authorized them, and never briefed anyone at the Department of Justice about them. Mr. Melson stated:

I don't believe that I knew or that [Deputy Director] Billy Hoover knew that they were—that the strategy in the case was to watch people buy the guns and not interdict them at some point. That issue had never been raised. It had never been raised to our level by the whistleblowers in Phoenix—that stayed in-house down there. The issue was never raised to us by ASAC [Assistant Special Agent in Charge] Gillett who was supervising the case.

It unfortunately was never raised to my level by SAC [Special Agent in Charge] Newell who should have known about the case, if he didn't, and recognize the issue that was percolating in his division about the disagreement as to how this was occurring. Nor was it raised to my level by DAD [Deputy Assistant Director] McMahon who received the briefing papers from [Phoenix Group Supervisor] Voth and may have had other information on the case. Nor was it given to me by a Deputy Assistant Director in OSII, the intel function, when he briefed this case the one time I wasn't there and he raised an objection to it and saw nothing change.¹⁹²

Director Melson also denied that Department of Justice or senior ATF officials devised or authorized those tactics:

Q: Did you ever use or authorize agents to use a tactic of non-intervention to see where the guns might go?

A: I don't believe I did.

Q: Did you ever tell agents not to use or authorize agents not to use other common investigative techniques like "knock and talks" or police pullovers in order to see where the guns might go in this case?

A: No.

Q: Did anyone at the Department of Justice ever tell you or tell anyone else at headquarters and it got to you that those tactics were authorized as part of a new strategy in order to follow the guns, let the guns go, see where they might end up?

A: No.¹⁹³

Documents obtained by the Committee indicate that Mr. Melson received three briefings regarding Fast and Furious in the early months of the operation and had regular status updates thereafter. He stated that "the general assumption among the people that were briefed on this case was that this was like any other case that ATF has done."¹⁹⁴ In addition to stating that he was not aware of the controversial tactics in Operation Fast and Furious, Mr. Melson stated that he did not know the full scope or scale of criminal activity by suspects until after concerns about gunwalking became public.

After the public controversy broke, Mr. Melson requested copies of Operation Fast and Furious case files to review for himself. He told Committee staff that he became extremely concerned after reviewing them:

I think I became fully aware of what was going on in Fast and Furious when I was reading the ROIs. And I remember sitting at my kitchen table reading the ROIs, one after another after another, I had pulled out all Patino's—and ROIs is, I'm sorry, report of investigation—and you know, my stomach being in knots reading the number of times he went in and the amount of guns that he bought.

And this is why I wish the people in Phoenix had alerted us during this transaction to exactly this issue, so we could have had at least made a judgment as to whether or not this could continue or not.¹⁹⁵

ATF Deputy Director Hoover

During his interview with Committee staff, then-Deputy Director William Hoover stated that he had not been aware of the tactical details in Operation Fast and Furious and had not raised any concerns with Acting ATF Director Melson or anyone at Justice Department headquarters.¹⁹⁶ Deputy Director Hoover rejected the suggestion that senior management officials at ATF or the Department of Justice were responsible for any of the controversial tactical decisions made in Operation Fast and Furious:

Q: But you don't believe that this is some sort of top-down—it wasn't a policy or some tactical strategy from either ATF management or main Justice to engage in what happened here in Phoenix in Fast and Furious?

A: No, sir. It's my firm belief that the strategic and tactical decisions made in this investigation were born and raised with the U.S. Attorney's Office and with ATF and the OCADETF strike force in Phoenix.¹⁹⁷

Mr. Hoover's subordinates also informed the Committee that they did not warn him about gunwalking allegations in Operation Fast and Furious because they were unaware of them. Assistant Director for Field Operations Mark Chait told the Committee that he was "surprised" when he learned of allegations that gunwalking occurred in Operation Fast and Furious in February 2011.¹⁹⁸ Deputy Assistant Director for Field Operations William McMahon, the supervisor above the Phoenix Field Division, stated:

I don't think at any point did we allow guns to just go into somebody's hands and walk across the border. I think decisions were made to allow people to continue buying weapons that we suspected were going to Mexico to put our case together. But I don't believe that at any point we watched guns going into Mexico. I think we did everything we could to try to stop them from going to Mexico.¹⁹⁹

Although Mr. Hoover stated that he was unaware of gunwalking allegations in Operation Fast and Furious prior to the public controversy, he informed Committee staff that he became concerned in March 2010 about the number of guns being purchased.²⁰⁰ As discussed above, Mr. Hoover received a briefing in March 2010 during which ATF officials described the suspects, the number of firearms, the

amount of money each had spent, known stash houses, and the locations where firearms had been recovered. Mr. Hoover told the Committee that he ordered an “exit strategy” to close the case and seek indictments within 90 days.

Apart from whether Mr. Hoover was aware of specific gunwalking allegations in Operation Fast and Furious, it remains unclear why he failed to inform Acting ATF Director Melson or senior Justice Department officials about his more general concerns with the investigation or his directive for an exit strategy.

During his interview with Committee staff, Deputy Director Hoover took substantial personal responsibility for ATF’s actions in Operation Fast and Furious. He stated:

I blame no one else. I blame no one else – not DEA, not the FBI, not the U.S. Attorney’s Office. If we had challenges, then we need to correct those challenges. I am the deputy director at ATF, and, ultimately, you know, everything flows up, and I have to take responsibility for the mistakes that we made.²⁰¹

United States Attorney Burke

During an interview with Committee staff, Arizona U.S. Attorney Dennis Burke stated that neither he nor anyone above him ever authorized non-interdiction of weapons or letting guns walk in Operation Fast and Furious:

Q: To your knowledge as the U.S. Attorney for the District of Arizona, did the highest levels of the Department of Justice authorize [the] non-interdiction of weapons, cutting off of surveillance, as an investigative tactic in Operation Fast and Furious?

A: I have no knowledge of that.

Q: Do you believe you would have known if that was the case?

A: Yes.

Q: Did you ever authorize those tactics?

A: No.

...

Q: Did anyone ever discuss—from the Department of Justice main headquarters—your supervisors—ever discuss with

you or raise to your attention that there was a new policy with respect to interdiction of weapons or surveillance of firearms?

A: No. Not that I can recall at all.

Q: And did anyone ever—from the Department of Justice, Main Justice I will call it, ever tell you that you were authorized to allow weapons to cross the border when you otherwise would have had a legal authority to seize or interdict them because they were a suspected straw purchase or it was suspected that they were being trafficked in a firearms scheme?

A: I have no recollection of ever being told that.²⁰²

Although U.S. Attorney Burke agreed with ATF-Phoenix's proposal to build a "bigger" case that targeted the organizers of the firearms trafficking conspiracy, he stated that ATF-Phoenix never indicated that agents would be letting guns walk as part of the investigation:

Q: Did you ever discuss with him [Special Agent in Charge Newell] a deliberate tactic of non-interdiction to see where the weapons ended up? To see if they ended up with the DTO in Mexico?

A: I do not recall that at all.

Q: Would that stick out in your mind at this point if he had said we're going to let the guns go, find them in crime scenes in Mexico, and then use that to make a connection to a DTO?

A: I don't recall that at all. I was under the opposite impression, which was that based on his contacts and the relationships with Mexico and what they were doing, that they would be working with Mexico on weapons transferred into Mexico.²⁰³

Emails from Special Agent in Charge Newell touting recent seizures of firearms in both the United States and in Mexico are consistent with U.S. Attorney Burke's statement that he believed ATF-Phoenix was coordinating interdiction with appropriate law enforcement agencies on both sides of the border. For example, on June 24, 2010, Mr. Newell sent an email to Mr. Burke with a picture of a .50 caliber weapon that had been recovered, stating: "Never ends ... our folks are working non-stop around the clock 7 days a week. But they are making some great seizures and gleaning some great Intel."²⁰⁴

The lead prosecutor on the case, Emory Hurley, sent Mr. Burke similar updates. On August 16, 2010, for example, Mr. Hurley prepared a memorandum asserting that “the investigation has interdicted approximately 200 firearms, including two .50 caliber rifles” and stating, “[a]gents have not purposely let guns ‘walk.’”²⁰⁵

Criminal Division review of Fast and Furious wiretap applications

In testimony before a Subcommittee of the Senate Judiciary Committee on November 1, 2011, Assistant Attorney General Lanny Breuer stated that he first became aware of the controversial tactics in Operation Fast and Furious after they became public:

I found out first when the public disclosure was made by the ATF agents early this year. When they started making those public statements, of course, at that point, as you know, both the leadership of ATF and the leadership of the U.S. Attorney’s Offices adamantly said that those allegations were wrong.

But as those allegations became clear, that is when I first learned that guns that could—that ATF had both the ability to interdict and the legal authority to interdict, that they failed to do so. That is when I first learned that, Senator.²⁰⁶

Similarly, in an interview with Committee staff, Deputy Assistant Attorney General Jason Weinstein stated:

I did not know at any time during the investigation of Fast and Furious that guns had walked during that investigation. I first heard of possible gunwalking in Fast and Furious when the whistleblower allegations were made public in early 2011. Had I known about gunwalking in Fast and Furious before the allegations became public, I would have sounded the alarm about it.²⁰⁷

“I would have sounded the alarm”
-Assistant Attorney General Breuer

Mr. Breuer and Mr. Weinstein also rejected the allegation that they should have been able to identify gunwalking in Operation Fast and Furious based on the Criminal Division’s legal reviews of wiretap applications submitted by the Arizona U.S. Attorney’s Office.

Federal law requires that senior Department officials approve all Federal law enforcement applications to Federal judges for the authority to conduct wiretaps.²⁰⁸ The Department has assigned that legal review duty to the Office of

Enforcement Operations in the Criminal Division.²⁰⁹ During Operation Fast and Furious, numerous wiretap applications were submitted to the Criminal Division to determine whether they satisfied the legal threshold established under the Fourth Amendment to the United States Constitution. Drafts of the applications were sent to the Office of Enforcement Operations, which prepared cover memos for final review and approval by a Deputy Assistant Attorney General.²¹⁰ The wiretap applications are under court seal and therefore have not been produced to the Committee.

Mr. Weinstein informed the Committee that he reviewed the cover memoranda prepared by the Office of Enforcement Operations for three wiretap applications in Operation Fast and Furious and that he approved all three.²¹¹ He stated that his general practice was to read the cover memo first and examine the underlying affidavit only if there were issues or questions necessary to the probable cause determination that the summary memo did not provide.²¹² Mr. Weinstein stated that he believed his practice was consistent with the conduct across various administrations.²¹³

Mr. Weinstein rejected the criticism that he should have identified gunwalking in Operation Fast and Furious based on his review of the memoranda summarizing the wiretap affidavits in the case. Although he could not comment on the contents of the documents because they are under seal by a Federal District Court judge, he stated:

It's not a fair criticism. As I said earlier, I can't comment on the contents. What I can say is I obviously have a sensitive radar to gunwalking, since that's been the focus of my life, my professional life, is keeping guns out of the hands of criminals. So when I saw in Wide Receiver that an investigation, however well intentioned it may have been, was being conducted in a way that put guns in the hands of criminals, I reacted pretty strongly to it. Had I seen anything at any time during the investigation of Fast and Furious that raised the same concerns, I would have reacted. And I would have reacted even more strongly because that would have meant it was still going on and that Wide Receiver was not in fact an isolated incidence as I believed it to be.²¹⁴

“The focus of my life, my professional life, is keeping guns out of the hands of criminals.”
-Deputy Assistant Attorney General Weinstein

In testimony before the Senate Judiciary Committee, Mr. Breuer made clear that his staff reviews wiretap affidavits to determine the legal sufficiency of the

request rather than to conduct oversight of investigative tactics in law enforcement investigations. He stated:

[A]s Congress made clear, the role of the reviewers and the role of the deputy in reviewing Title III applications is only one. It is to ensure that there is legal sufficiency to make an application to go up on a wire and legal sufficiency to petition a Federal judge somewhere in the United States that we believe it is a credible request. But we cannot—those now 22 lawyers that I have who review this in Washington, and it used to only be 7, cannot and should not replace their judgment, nor can they, with the thousands of prosecutors and agents all over the country.

Theirs is a legal analysis: Is there a sufficient basis to make this request? We must and have to rely on the prosecutors and their supervisors and the agents and their supervisors all over the country to determine that the tactics that are used are appropriate.²¹⁵

Criminal Division response to Wide Receiver

Questions have been raised about whether Mr. Breuer or Mr. Weinstein should have been aware of gunwalking in Operation Fast and Furious because they learned about similar tactics in a different case dating back to 2006 and 2007, Operation Wide Receiver. Documents obtained by the Committee indicate that as soon as they learned about gunwalking during the previous Administration, Mr. Breuer and Mr. Weinstein took immediate steps to register their concerns directly with the highest levels of ATF leadership, but they did not inform the Attorney General or the Deputy Attorney General.

In March 2010, a Criminal Division supervisor sent an email to Mr. Weinstein regarding the Wide Receiver case stating that, “with the help of a cooperating FFL, the operation has monitored the sale of over 450 weapons since 2006.”²¹⁶ In response, Mr. Weinstein expressed concern, writing: “I’m looking forward to reading the pros[ecution] memo on Wide Receiver but am curious—did ATF allow the guns to walk, or did ATF learn about the volume of guns after the FFL began cooperating?”²¹⁷ The supervisor inaccurately responded: “My recollection is they learned afterward.”²¹⁸ As discussed above, ATF Operational Plans and other documents provided to the Committee show that ATF agents in Arizona were contemporaneously aware of the illegal straw purchases.

The next month, Mr. Weinstein received and reviewed a copy of the prosecution memorandum prepared by the criminal prosecutor in the Wide Receiver case.²¹⁹ On April 12, 2010, Mr. Weinstein wrote to the prosecutors stating:

ATF HQ should/will be embarrassed that they let this many guns walk—I'm stunned, based on what we've had to do to make sure not even a single operable weapon walked in UC [undercover] operations I've been involved in planning—and there will be press about that.²²⁰

In his interview with Committee staff, Mr. Weinstein explained that “there was no question from the moment those sales were completed that ATF had a lot of evidence that those sales were illegal. That's pretty rare. And it's that specific fact that set me off on Wide Receiver.”²²¹ He also stated that the gunwalking tactics used in Wide Receiver “were unlike anything I had encountered in my career as a prosecutor.”²²² As a former prosecutor in the U.S. Attorney's Office in Baltimore, he added:

One of my priorities in all of the work I did in Maryland was to stop guns from getting to criminals and get guns out of the hands of criminals who managed to get their hands on them. But I was very sensitive about any situation or any operation that might result in law enforcement, however inadvertently, putting a gun into the hands of a criminal. And so all of the operations that I participated in designing, and I referred to this in the email, were designed to make sure that not even a single operable weapon got in the hands of a criminal.²²³

After reading the prosecution memorandum, Mr. Weinstein contacted his supervisor, Assistant Attorney General Breuer. On April 19, 2010, they met to discuss Mr. Weinstein's concerns about ATF-Phoenix's handling of the case.²²⁴ According to Mr. Weinstein, Mr. Breuer shared his shock about the gunwalking tactics used in Wide Receiver:

[T]here's no question in my mind from his reaction at the meeting that Mr. Breuer shared the same concerns that I did. As I indicated in my opening, Mr. Breuer has made helping Mexico and stopping guns from getting to Mexico a top priority. I had commented to somebody in my office that I traded when I came from Baltimore to the Criminal Division, I traded having a boss come into my office every day and ask me what am I doing to keep the murder rate down, to a boss who is asking me virtually every day, what am I doing to stop guns from going to Mexico? So when he heard about this he had the same reaction I did.²²⁵

According to Mr. Weinstein, Mr. Breuer directed him to immediately register their concerns “directly with the leadership of ATF.”²²⁶ The next day, Mr. Weinstein contacted ATF Deputy Director Hoover to request a meeting.²²⁷ On April 28, 2010, Mr. Weinstein and Mr. Hoover met and were joined by the Acting Chief of the Organized Crime and Gang Section at DOJ, James Trusty and ATF Deputy Assistant

Director William McMahon.²²⁸ Mr. Weinstein told the Committee that he expressed his serious concerns about ATF-Phoenix's management of Wide Receiver and the fact that so many firearms had been allowed to walk. Notes taken at that meeting indicate that of 183 guns sold in the first part of Operation Wide Receiver, the "vast majority walk[ed]" and were linked to "violent crime."²²⁹ Mr. Weinstein stated:

[A]t the meeting the first topic on the agenda was to talk about the tactics. And so Mr. Trusty and I went through the facts of the case and I explained my concerns about the tactics. The meeting was nearly 2 years ago now, and as I sit here today I just can't recall the specific words used, but my strong memory from that meeting is that Mr. Hoover had the same reaction I did; that is, that he shared my concerns about the tactics. And I walked away from that meeting being satisfied that although this had happened in '06 and '07, this was not the kind of thing that would be happening under Mr. Hoover's watch. I wish I could remember the exact words used, but that's the strong sense I walked away with.²³⁰

Although neither Mr. Breuer nor Mr. Weinstein had direct supervisory authority over ATF, Mr. Weinstein told the Committee that the seriousness of issue compelled them to request the meeting. Mr. Weinstein stated:

I raised this with Mr. Hoover because I knew it was something he would be concerned about, and he was concerned about it. I didn't direct him. It's not my place to direct him. I didn't ask him to do anything in particular. His reaction, as I said, was exactly what I expected, which was concern about the tactics. And so I just walked away. I walked away feeling there was no reason to worry that this was the kind of thing that he would tolerate.²³¹

Mr. Weinstein stated that he relayed the details of the meeting to Mr. Breuer, and at that time both of them believed that they had satisfied their duty to address the issue with the appropriate managers.²³² Mr. Weinstein also noted that he believed the gunwalking in Wide Receiver was an "extreme aberration from years ago."²³³

Despite raising these concerns about gunwalking in Operation Wide Receiver immediately with senior ATF leadership, Mr. Breuer later expressed regret for not raising these concerns directly with the Attorney General or Deputy Attorney General. During an exchange at a hearing with Senator Grassley, Mr. Breuer stated:

I regret the fact that in April of 2010, I did not. At the time, I thought that we—dealing with the leadership of ATF was sufficient and reasonable. And frankly, given the amount of work I do, at the time,

I thought that that was the appropriate way of dealing with it. But I cannot be more clear that knowing now—if I had known then what I know now, I, of course, would have told the Deputy and the Attorney General.²³⁴

Criminal Division interactions with Mexican Officials

According to documents obtained by the Committee, Assistant Attorney General Breuer met with senior officials from the Mexican government in Mexico on February 2, 2011, to discuss potential areas of cooperation to fight transnational organized crime and drug trafficking.²³⁵ According to a summary, the group discussed a wide range of issues including U.S. extradition requests to Mexico, firearms trafficking, and a cooperative security agreement between the United States, Mexico, and countries in Central America.²³⁶

With respect to combating firearms trafficking, the Mexican Undersecretary for North America explained that “greater coordination and flow of information would be helpful to combat arms trafficking into Mexico.”²³⁷ Mr. Breuer responded by telling the Mexican officials that the Department had sought to increase penalties for straw purchasers and desired their support for such measures. According to the summary, Mr. Breuer also made a suggestion about one way the two countries could increase coordination:

AAG Breuer suggested allowing straw purchasers cross into Mexico so SSP [Mexican federal police force] can arrest and PGR [the Mexican Attorney General’s Office] can prosecute and convict. Such coordinated operations between the US and Mexico may send a strong message to arms traffickers.²³⁸

Documents produced to the Committee indicate that this summary of Mr. Breuer’s meeting was shared with Acting ATF Director Melson in anticipation of his February 8, 2011, meeting with the U.S. Ambassador to Mexico.²³⁹ According to a summary of this latter meeting, Mr. Melson discussed with the Ambassador the possibility of controlled firearms deliveries, but the Department of Justice Attaché who was also present raised concern about the “inherent risk” of such joint operations:

Melson and the Ambassador discussed the possibility of allowing weapons to pass from the US to Mexico and US law enforcement coordinating with SSP and PGR to arrest and prosecute the arms trafficker. I raised the issue that there is an inherent risk in allowing weapons to pass from the US to Mexico; the possibility of the GoM [Government of Mexico] not seizing the weapons; and the weapons being used to commit a crime in Mexico.²⁴⁰

The documents obtained by the Committee do not indicate that any action was taken after this meeting regarding efforts to coordinate operations with Mexican authorities.

As described in the section above on the Hernandez case, the memo prepared for Attorney General Mukasey in 2007 similarly explained that “ATF would like to expand the possibility of such joint investigations and controlled deliveries—since only then will it be possible to investigate an entire smuggling network, rather than arresting simply a single smuggler.”²⁴¹ The memo provided to Attorney General Mukasey was explicit, however, in warning that previous operations “have not been successful.”²⁴²

D. DEPARTMENT RESPONSES TO GUNWALKING IN OPERATION FAST AND FURIOUS

Inaccurate information initially provided to Congress

On January 27, 2011, Senator Charles Grassley wrote a letter to the Department of Justice relaying allegations from whistleblowers that ATF-Phoenix had walked guns in Operation Fast and Furious.²⁴³ On February 4, 2011, Ron Weich, the Assistant Attorney General for Legislative Affairs, sent a written response that stated:

[T]he 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.²⁴⁴

As this report documents, it became apparent during the course of the Committee’s investigation that this statement in the Department’s letter was inaccurate and, on December 2, 2011, the Deputy Attorney General formally withdrew the Department’s February 4th letter.²⁴⁵ On the same day, the Department provided the Committee with more than 1,000 pages of internal emails, notes, and drafts from all of the parties involved in the drafting of the February 4 letter, as well as a lengthy explanation of how the inaccurate information was included in the letter. According to the Department:

Department personnel, primarily in the Office of Legislative Affairs, the Criminal Division and the Office of the Deputy Attorney General, relied on information provided by supervisors from the components in the best position to know the relevant facts: ATF and the U.S. Attorney’s Office in Arizona, both of which had responsibility for Operation Fast and Furious. Information provided by those supervisors was inaccurate.²⁴⁶

The documents obtained by the Committee and the interviews conducted by Committee staff support this explanation.

Documents obtained by the Committee indicate that, during the drafting of the letter, senior ATF officials insisted that ATF-Phoenix had not allowed guns to walk in Operation Fast and Furious. Detailed notes of a meeting with Acting Director Melson taken by a Department of Justice official state that ATF “didn’t let a guns [sic] walk,” and “didn’t know they were straw purchasers at the time.”²⁴⁷

Additional notes taken of a meeting with Deputy Director Hoover state that “ATF doesn’t let guns walk,” and “we always try to interdict weapons purchased illegally.”²⁴⁸

Both Acting ATF Director Melson and ATF Deputy Director Hoover told the Committee that they did not intend to mislead the Department or Congress and that they sincerely believed that guns had not walked in Operation Fast and Furious at the time the letter was drafted.²⁴⁹

The U.S. Attorney’s Office in Arizona also adamantly denied allegations of gunwalking. On January 31, 2011, U.S. Attorney Burke wrote to senior Department officials that the allegations “are based on categorical falsehoods.”²⁵⁰ Mr. Burke and the Chief of the Criminal Division at the U.S. Attorney’s Office sent a series of emails over the course of that week continuing to deny the allegations and pressing for a strong response.²⁵¹

In his interview with Committee staff, U.S. Attorney Burke stated that, after later learning about the scope of gunwalking in Operation Fast and Furious, he deeply regretted conveying “inaccurate” information to senior Department officials drafting the February 4 response, but that it “was not intentional.”²⁵²

The Committee was not able to interview one witness from the U.S. Attorney’s Office, the former Criminal Chief, Patrick Cunningham. In a letter on January 19, 2011, Mr. Cunningham’s attorney informed the Committee that he was exercising his Fifth Amendment right against self-incrimination. The letter stated:

I am writing to advise you that my client is going to assert his constitutional privilege not to be compelled to be a witness against himself. The Supreme Court has held that “one of the basic functions of the privilege is to protect innocent men.” *Grunewald v. United States*, 353 U.S. 391,421 (1957); *see also Ohio v. Reiner*, 532 U.S.17 (2001) (per curiam). The evidence described above shows that my client is, in fact, innocent, but he has been ensnared by the unfortunate circumstances in which he now stands between two branches of government. I will therefore be instructing him to assert his constitutional privilege.²⁵³

During his interview with Committee staff, U.S. Attorney Burke stated that Mr. Cunningham adamantly denied that gunwalking occurred in Operation Fast and Furious.²⁵⁴ Similarly, Deputy Assistant Attorney General Weinstein informed Committee staff that Mr. Cunningham continued to assert that gunwalking had not occurred in Operation Fast and Furious after the February 4, 2011, letter.²⁵⁵

Within the Criminal Division, Mr. Weinstein informed the Committee that he offered to assist in the drafting of the February 4 letter “to be helpful,” but that he

had no independent knowledge of Operation Fast and Furious and relied on ATF and the U.S. Attorney's Office for information. He stated:

As the Department prepared its response, I and others in Main Justice were repeatedly and emphatically assured by supervisors in the relevant components who were in position to know the case best—that is the Arizona U.S. Attorney's Office and ATF leadership—that no guns had been allowed to walk in connection with Fast and Furious; and it was on that basis that the Department provided inaccurate information to Congress in the February 4th letter.

Now much attention has been paid to the sentence in that letter that reads, "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." As the documents you've received made clear, I and others at Main Justice received multiple assurances from the U.S. Attorney's Office and from ATF that this statement, like the other information in the letter, was true. ...

Given what I know now, of course, I wish I had not placed such faith in the assurances provided to me by the leadership of the U.S. Attorney's Office and ATF. But given what I knew then and given the strength of those assurances I believed at the time that it was entirely appropriate to do so. I trusted what was said to me and I firmly believed at that time that in fact ATF had not let guns walk in Fast and Furious. Obviously, time has revealed the statements made to me and others to be inaccurate, and that is beyond disappointing to me.²⁵⁶

Mr. Weinstein also explained why he did not raise concerns about gunwalking during the previous administration in Operation Wide Receiver in 2006 and 2007. During his interview with Committee staff, he stated:

Now some have said that because I knew about Wide Receiver at the time I assisted with the February 4th letter, I knew that statement to be untrue, and that is just not correct. Let me explain why.

Wide Receiver was an old case in which inappropriate tactics had been used in the investigative phase years earlier. This occurred under a prior administration, under a different U.S. Attorney's Office management and different ATF management. Because of the repeated assurances I and others received in February 2011, from the then current leadership of the U.S. Attorney's Office in ATF that guns had not walked in Fast and Furious and from ATF that it was making every effort to interdict guns, I did not make any connection between

Wide Receiver and Fast and Furious. For that reason, I simply was not thinking about Wide Receiver as I assisted with the February 4th letter which I understood to be about Fast and Furious.²⁵⁷

Mr. Weinstein also rebutted the allegation of an intentional cover-up:

Q: Mr. Weinstein, during the drafting of the February 4th letter, did you intentionally try to mislead Congress?

A: Absolutely not.

Q: To your knowledge, did Mr. Breuer ever try to intentionally mislead Congress?

A: Absolutely not.

Q: To your knowledge, did anyone else at Main Justice, during the drafting of the February 4th letter, intentionally try to mislead Congress?

A: Absolutely not.²⁵⁸

Request for IG investigation and reiteration of Department policy

Soon after the Attorney General became aware of allegations relating to gunwalking in Operation Fast and Furious, he took several steps to address them. First, the Attorney General requested that the Inspector General investigate Operation Fast and Furious and the Department's response to Senator Grassley's letter.²⁵⁹ Testifying before a Senate Appropriations Subcommittee, the Attorney General stated:

It is true that there have been concerns expressed by ATF agents about the way in which this operation was conducted, and on that I took those allegations, those concerns, very seriously and asked the Inspector General to try to get to the bottom of it. An investigation, an inquiry is now under way.

I've also made clear to people in the Department that letting guns walk—I guess that's the term that the people use—that letting guns walk is not something that is acceptable. Guns are—are different than drug cases or cases where we're trying to follow where money goes.

We cannot have a situation where guns are allowed to walk, and I've made that clear to the United States Attorneys as well as the Agents in Charge in the various ATF offices.²⁶⁰

On March 9, 2011, Deputy Attorney General James Cole hosted a conference call with Southwest Border United States Attorneys in which he reiterated the Department's policy against gunwalking. After the call, Mr. Cole followed up with an email summarizing the conversation:

As I said on the call, to avoid any potential confusion, I want to reiterate the Department's policy: We should not design or conduct undercover operations which include guns crossing the border. If we have knowledge that guns are about to cross the border, we must take immediate action to stop the firearms from crossing the border, even if that prematurely terminates or otherwise jeopardizes an investigation.²⁶¹

Personnel actions

Justice Department officials have explained that, although they are awaiting the findings from the Inspector General's investigation before making any final personnel determinations, they have removed the key players in Operation Fast and Furious from any further operational duties.

At the U.S. Attorney's Office for the District of Arizona, all of the key personnel have resigned, been removed, or been relieved of their relevant duties in the aftermath of Operation Fast and Furious. On August 30, 2011, Dennis Burke resigned as the U.S. Attorney.²⁶² In January 2012, the Chief of the Criminal Division, Patrick Cunningham, resigned his position and left the U.S. Attorney's Office.²⁶³ The Section Head responsible for supervising Operation Fast and Furious resigned his supervisory duties in the fall of 2011, and the Assistant U.S. Attorney who was responsible for managing Operation Fast and Furious was moved out of the criminal division to the civil division.²⁶⁴

On August 30, 2011, the Justice Department removed Kenneth Melson as the acting head of ATF and reassigned him to a position as a forensics advisor in the Department's Office of Legal Policy.²⁶⁵ On October 5, 2011, ATF removed Deputy Director William Hoover from his position and subsequently reassigned him to a non-operational role.²⁶⁶ Also on October 5, 2011, ATF removed Assistant Director for Field Operations Mark Chait from his position and subsequently placed him in a non-operational role as well.²⁶⁷ Deputy Assistant Director for Field Operations William McMahon was also reassigned as a Deputy Assistant in the ATF Office of Professional Responsibility and Security Operations on May 13, 2011, and was later reassigned to a non-operational position.²⁶⁸

ATF supervisors from the Phoenix Field Division have also been reassigned. Special Agent in Charge William Newell was reassigned to an administrative position as a special assistant in the ATF Office of Management.²⁶⁹ Assistant Special

Agent in Charge George Gillett was reassigned as a liaison to the U.S. Marshal's Service.²⁷⁰ The former Supervisor of Group VII, David Voth, was reassigned to ATF's Tobacco Division.²⁷¹

Agency reforms

On January 28, 2011, Deputy Attorney General James Cole sent a letter to Congress explaining that the Department was "undertaking key enhancements to existing Department policies and procedures to ensure that mistakes like those that occurred in *Wide Receiver* and *Fast and Furious* are not repeated."²⁷² The letter detailed numerous reforms, including:

- Implementing a new Monitored Case Program to increase coordination between ATF headquarters and the field for sensitive investigations and to improve oversight;
- Clarifying the prohibition on gunwalking and providing guidance on responding to a gun dealer concerns about suspicious purchasers;
- Revising ATF's Confidential Informants Usage Policy and its Undercover Operations Policy and establishing committees on undercover operations and confidential informants;
- Providing training to personnel in ATF's Phoenix Field Division to address U.S.-Mexico cross-border firearms trafficking issues, improve techniques and strategies, and educate agents on the applicable law; and
- Restructuring ATF's Office of the Ombudsman by appointing a senior special agent as Chief ATF Ombudsman and adding a full-time special agent to handle agent complaints.²⁷³

Deputy Attorney General Cole also outlined key improvements to ensure the "accuracy and completeness" of the information the Department provides to Congress. The Department issued a directive requiring the responding component to ensure that it supplies Congress with the most accurate information by soliciting information from employees with detailed personal knowledge of the relevant subject matter. Ultimate responsibility for submitting or reviewing a draft response to Congress is assigned to an appropriate senior manager, according to the new directive. Finally, the directive emphasizes the importance of accuracy and completeness of the information provided to Congress over the timeliness of responding to requests.²⁷⁴