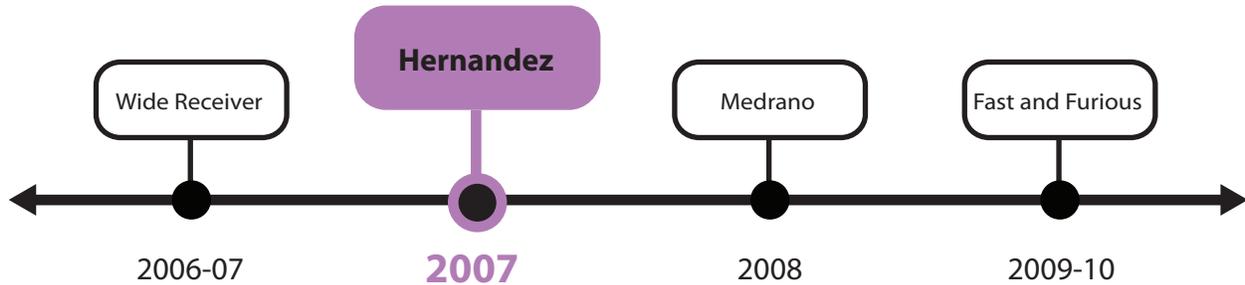


indictment while two additional co-conspirators were indicted in federal court.⁷⁵ On October 27, 2010, seven additional suspects were indicted in the District of Arizona on gun-trafficking related charges.⁷⁶



2. The Hernandez Case (2007)

According to documents obtained by the Committee, agents in the ATF Phoenix Field Division unsuccessfully attempted a second operation in the summer of 2007 after identifying Fidel Hernandez and several alleged co-conspirators as suspected straw purchasers seeking to smuggle firearms into Mexico. Despite failed attempts to coordinate with Mexican authorities, ATF agents sought approval from the U.S. Attorney’s Office to expand so-called “controlled deliveries.” In addition, documents obtained by the Committee indicate that then-Attorney General Michael Mukasey was personally briefed on these failed attempts and was asked to approve an expansion of these tactics. During the course of the investigation, Hernandez and his co-conspirators reportedly purchased more than 200 firearms.

ATF-Phoenix watched guns cross border without interdiction

According to their Operational Plan, ATF-Phoenix Field Division agents initiated a firearms trafficking investigation in July 2007 against Fidel Hernandez and his associates who, between July and October 2007, “purchased over two hundred firearms” and were “believed to be transporting them into Mexico.”⁷⁷ ATF analysts discovered that “Hernandez and vehicles registered to him had recently crossed the border (from Mexico into the U.S.) on 23 occasions” and that “four of their firearms were recovered in Sonora, Mexico.”⁷⁸

According to contemporaneous ATF documents, ATF-Phoenix unsuccessfully attempted a cross-border operation in September 2007 in coordination with Mexican law enforcement authorities:

On September 26 and 27, 2007, Phoenix ATF agents conducted nonstop surveillance on Hernandez and another associate, Carlos Morales. ATF had information that these subjects were in possession

of approximately 19 firearms (including assault rifles and pistols) and were planning a firearm smuggling trip into Mexico. The surveillance operation was coordinated with Tucson I Field Office and the ATF Mexico Country Attaché. The plan, agreed to by all parties and authorized by the Phoenix SAC, was to follow these subjects to the border crossing in Nogales, Arizona while being in constant communication with an ATF MCO [Mexico Country Office] agent who would be in constant contact with a Mexican law enforcement counterpart at the port of entry and authorized to make a stop of the suspects' vehicle as it entered into Mexico.

On September 27, 2007, at approximately 10:00 pm, while the Phoenix agents, an MCO agent and Mexican counterparts were simultaneously on the phone, the suspects' vehicle crossed into Mexico. ATF agents observed the vehicle commit to the border and reach the Mexican side until it could no longer be seen. The ATF MCO did not get a response from the Mexican authorities until 20 minutes later when they informed the MCO that they did not see the vehicle cross.⁷⁹

ATF headquarters raised concerns about operational safeguards

Failed attempts to coordinate with Mexican authorities to capture suspected firearms traffickers as part of controlled deliveries raised serious concerns at ATF headquarters. On September 28, 2007, the day after the failed attempt, Carson Carroll, ATF's then-Assistant Director for Enforcement Programs, notified William Hoover, ATF's then-Assistant Director of Field Operations, that they had failed in their coordination. Mr. Carroll stated that when the suspected firearms traffickers were observed purchasing a number of firearms from an FFL in Phoenix, Arizona, ATF officials "immediately contacted and notified the GOM [Government of Mexico] for a possible controlled delivery of these weapons southbound to the Nogales, AZ., US/Mexico Border."⁸⁰ Mr. Carroll continued:

ATF agents observed this vehicle commit to the border and reach the Mexican side until it could no longer be seen. We, the ATF MCO did not get a response from the Mexican side until 20 minutes later, who then informed us that they did not see the vehicle cross.⁸¹

According to internal ATF documents, ATF agents attempted a second cross-border controlled delivery with Mexican authorities on October 4, 2007. That operation also failed to lead to the successful capture of the subject in Mexico.⁸²

That same day, Assistant Director Hoover sent an email to Assistant Director Carroll and ATF-Phoenix Field Division Special Agent in Charge William Newell demanding a call to discuss the investigation:

Have we discussed the strategy with the US Attorney's Office re letting the guns walk? Do we have this approval in writing? Have we discussed and thought thru the consequences of same? Are we tracking south of the border? Same re US Attorney's Office. Did we find out why they missed the handoff of the vehicle? What are our expected outcomes? What is the timeline?⁸³

The next day, Assistant Director Hoover wrote Mr. Carroll again:

I do not want any firearms to go South until further notice. I expect a full briefing paper on my desk Tuesday morning from SAC Newell with every question answered. I will not allow this case to go forward until we have written documentation from the U.S. Attorney's Office re full and complete buy in. I do not want anyone briefed on this case until I approve the information. This includes anyone in Mexico.⁸⁴

Mr. Hoover's concerns seem to have temporarily halted controlled delivery operations in the Hernandez investigation. On October 6, 2007, Special Agent in Charge Newell wrote to Assistant Director Carroll:

I'm so frustrated with this whole mess I'm shutting the case down and any further attempts to do something similar. We're done trying to pursue new and innovative initiatives—it's not worth the hassle.⁸⁵

Nevertheless, Mr. Newell insisted that he did have approval from the U.S. Attorney's Office. He wrote:

We DO have them [the U.S. Attorney's Office] on board and as a matter of fact they (Chief of Criminal John Tocchi) recently agreed to charge the firearms recipients in Mexico (if we could fully [ID] them via a controlled delivery) with a conspiracy charge in US court.⁸⁶

Despite the concerns expressed by Assistant Director Hoover, ATF operational plans show that additional controlled deliveries were planned for October 18, November 1, and November 26-27, 2007.⁸⁷ The documents describe ATF plans to observe the purchases at the FFL, follow the suspects "from the FFL in Phoenix, AZ to the Mexican port of entry in Nogales, Arizona," allow the suspects to "cross into Mexico," and allow "Mexican authorities to coordinate the arrest of the subjects."⁸⁸

Attorney General Mukasey briefed and asked to "expand" operations

In the midst of these ongoing operations, on November 16, 2007, Attorney General Michael Mukasey received a memorandum in preparation for a meeting

with Mexican Attorney General Medina Mora. The memo described the Hernandez case as “the first ever attempt to have a controlled delivery of weapons being smuggled into Mexico by a major arms trafficker.”⁸⁹ The briefing paper warned the Attorney General that “the first attempts at this controlled delivery have not been successful.”⁹⁰ Despite these failures, the memorandum sought to expand such operations in the future:

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.⁹¹

This briefing paper was prepared by senior officials at ATF and the Department of Justice only weeks after Assistant Director Hoover had expressed serious concerns with the failure of these tactics.⁹²

The emails exchanging drafts of the Attorney General’s briefing paper also make clear that ATF officials understood that these were not, in fact, the first operations that allowed guns to “walk.” Assistant Director Carroll wrote to Assistant Director Hoover: “I am going to ask DOJ to change ‘first ever’... there have [been] cases in the past where we have walked guns.”⁹³ That change never made it into the final briefing paper for Attorney General Mukasey.

Ten days after Attorney General Mukasey was notified about the failed surveillance operations and was asked to expand the use of the cross-border gun operations, ATF agents planned another surveillance operation in coordination with Mexico. The Operational Plan stated:

- 1) Surveillance units will observe [redacted] where they will attempt to confirm the purchase and transfer of firearms by known targets.
- 2) Once the transfer of firearms is confirmed through surveillance, units will then follow the vehicle and its occupants from the FFL in Phoenix, AZ to the Mexican port of entry in Nogales, Arizona. Once the subjects cross into Mexico, ATF attachés will liaison with Mexican authorities to coordinate the arrest of the subjects.
- 3) ATF agents will not be involved with the arrest of the subjects in Mexico but will be present to coordinate the arrest efforts between surveillance units and Mexican authorities as well as to conduct post-arrest interviews.⁹⁴

As part of this operation, surveillance units were monitoring the FFL during normal business hours in order to observe large firearms transfers by their known targets.⁹⁵

The Committee has not received any documents indicating that ATF-Phoenix agents were able to successfully coordinate with Mexican law enforcement to interdict firearms in the Hernandez case. During the course of the investigation, Hernandez and his co-conspirators purchased more than 200 firearms. In multiple instances, ATF agents witnessed Hernandez and his associates take these weapons into Mexico.⁹⁶

Hernandez and his associate were arrested in Nogales, Arizona on November 27, 2007, while attempting to cross the border into Mexico.⁹⁷ The defendants were charged with Conspiracy to Export Firearms, Exporting Firearms, and two counts of Attempted Exportation of Firearms. The defendants were brought to trial in 2009, but acquitted after prosecutors were unable to obtain the cooperation of the Mexican law enforcement officials who had recovered firearms purchased by Hernandez. An ATF briefing paper from 2009 summarized the result:

The judge also would not allow us to introduce evidence of how the guns were found in Mexico unless we could produce the Mexican Police Officials who located the guns. We were unable to obtain the cooperation of Mexican law enforcement to identify and bring these witnesses to trial to testify.⁹⁸

At the conclusion of the trial, the jury was unable to reach a verdict on three counts of the indictment, and the defendants were acquitted on a fourth charge.⁹⁹

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CRIMINAL COMPLAINT

United States District Court DISTRICT OF ARIZONA

United States of America
v.
Carlos Valentin Morales-Valenzuela
DOB: xxx/xx/1984; Mexican citizen
Fidel Jesus Hernandez
DOB: xxx/xx/1973; U.S. citizen.

FILED RECEIVED NOV 27 2007 DISTRICT CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA

COMPLAINT CASE NO. 07-06964M

Complaint for violation of Title 18 United States Code § 371

COMPLAINANT'S STATEMENT OF FACTS CONSTITUTING THE OFFENSE OR VIOLATION:
Beginning at a time unknown, to on or about November 27, 2007, at or near the District of Arizona, defendants, **Carlos Valentin Morales-Valenzuela and Fidel Jesus Hernandez**, did knowingly and intentionally combine, conspire, confederate, and agree to willfully export and cause to be exported from the United States to Mexico defense articles, that is, three Colt Custom government .38 caliber Super handguns, serial numbers ELCEN4720, ELCEN4742 and ELCEN4719; one Colt Custom .38 caliber Super handgun, serial number ELCEN4718, three Colt .38 caliber Super handguns, Model Commander, serial numbers CU04703E, CU04765E and CU4769E, and two FNH 5.7x20 FN Herxal handguns, serial numbers 366146882 and 386127849, which were designated as defense articles on the United States Munitions List, without having first obtained from the Department of State a license for such export or written authorization for such export, in violation of Title 22, United States Code, Sections 2778(b)(2) and (c), and Title 22, Code of Federal Regulations, Sections 121.1, 121.4, 123.1, 127.1(a), 127.1(e), and 127.3.

All in violation of Title 18, United States Code Section 371.

CRIMINAL COMPLAINT

COMPLAINANT'S STATEMENT OF FACTS CONSTITUTING THE OFFENSE OR VIOLATION:
On or about November 23, 2007, CARLOS VALENTIN MORALES-VALENZUELA AND FIDEL JESUS HERNANDEZ, purchased two firearms, to-wit: two Colt custom govt. .38 Supers, from a federally licensed dealer in Phoenix, Arizona. On or about November 26, 2007, MORALES-VALENZUELA and HERNANDEZ placed nine firearms, including the two Colt custom govt. .38 Supers, in duffel bags and put them in a Ford Expedition in Phoenix, Arizona, for illegal exportation to Mexico through the Mariposa Port of Entry in Nogales, Arizona. On or about November 26, 2007, MORALES-VALENZUELA and HERNANDEZ traveled from Phoenix, Arizona, to Nogales, Arizona, for the purpose of illegally exporting nine (9) firearms to Mexico. MORALES-VALENZUELA was initially driving a Volkswagen Jetta and HERNANDEZ was driving the Ford Expedition containing the nine (9) firearms. Near Nogales, they switched vehicles, and placed the firearms in the Volkswagen Jetta. On November 26, 2007, MORALES-VALENZUELA approached the Mariposa Port of Entry in Nogales, Arizona and attempted to enter the Republic of Mexico. Upon entering the port of entry, MORALES-VALENZUELA was stopped by officials from Customs and Border Protection. Upon seeing this, HERNANDEZ quickly made a U-turn in the Volkswagen Jetta and drove away from the port of entry.

(Continued on reverse)

MATERIAL WITNESSES IN RELATION TO THE CHARGE:

Recommend Detention; Request Bench Warrant for HERNANDEZ

Being duly sworn, I declare that the foregoing is true and correct to the best of my knowledge.
Shelley Clemens/kc
AUTHORIZED BY: AUSA

Sworn to before me and subscribed in my presence.

SIGNATURE OF MAGISTRATE JUDGE
DATE
November 27, 2007

SIGNATURE OF COMPLAINANT (original only)
HOPE ALVARADO
OFFICIAL TITLE
Special Agent, ATF