

On June 30, the Minority Staff of the House Committee on Oversight and Government Reform released their report: ["OUTGUNNED: Law Enforcement Agents Warn Congress They Lack Adequate Tools to Counter Illegal Firearms Trafficking"](#) . Below is an executive summary of the report.

“The same law enforcement agents who were invited by Chairman Issa to testify about ATF’s Operation Fast and Furious have also warned the Committee that they are incredibly outgunned in the fight against international drug cartels that are trafficking tens of thousands of military-grade assault weapons from the United States to Mexico,” said Ranking Member Elijah E. Cummings, regarding the report, “This report provides new details about the interviews conducted by the Committee, and how these law enforcement agents identified common-sense improvements to our nation’s gun laws to help them in this fight.

“As I have stated repeatedly, I believe the allegations regarding Fast and Furious are serious and deserve a thorough, even-handed, and full investigation. But we cannot ignore the broader problem and its devastating effects on both sides of the border. Real oversight requires us not just to hold hearings, but to convert our findings into action. This report recommends real solutions that will help improve the lives of Americans and our Mexican neighbors and allies.”

EXECUTIVE SUMMARY

On March 16, 2011, Oversight Committee Chairman Darrell E. Issa launched an investigation into allegations that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), as part of an effort known as Operation Fast and Furious, failed to properly monitor hundreds of firearms acquired by suspected straw purchasers and destined for drug cartels in Mexico. The Committee has issued 11 subpoenas as part of this investigation, and Committee staff have conducted transcribed interviews with multiple officials from ATF, the Department of Justice, and private parties.

On June 15, 2011, Chairman Issa held a hearing relating to this investigation and called three ATF field agents to testify about their complaints regarding the mismanagement of Operation Fast and Furious. At the hearing, Ranking Member Elijah E. Cummings voiced significant

concern, stating: "The allegations that have been made are very troubling, and new information we have obtained raises additional concerns about the role of various actors involved in these incidents."

Ranking Member Cummings also explained that one of the Committee's goals should be to provide law enforcement agents on the ground with the tools they need to effectively combat the broader problems of international drug cartel violence and illegal firearms trafficking. He stated: No legitimate examination of this issue will be complete without analyzing our nation's gun laws, which allow tens of thousands of assault weapons to flood into Mexico from the United States every year, including fifty caliber sniper rifles, multiple AK variants, and scores of others. When Mexican President Calderón addressed Congress in May, he pleaded for us to stop fueling a full-scale drug war with military-grade assault weapons.

This report provides new information obtained during the Committee's investigation, including excerpts from transcribed interviews with multiple law enforcement agents that have not been made public to date. These agents—including the same agents called by Chairman Issa to testify at the Committee's hearing on June 15, 2011—repeatedly warned about the increasingly dire problem of U.S. firearms flooding into Mexico, including tens of thousands of military-grade assault weapons illegally trafficked each year.

During the Committee's investigation, law enforcement agents identified at least three specific improvements to current law that would allow them to more effectively counter firearms trafficking by Mexican drug cartels.

Stronger Criminal Penalties for Illegal Straw Purchasers

Multiple law enforcement agents who appeared before the Committee warned that current penalties for illegal straw purchases are completely inadequate either to deter illegal purchases before they occur or to encourage suspects to cooperate with law enforcement investigations after the fact. They warned that U.S. Attorneys' offices often decline to prosecute illegal straw purchasing cases because of inadequate penalties and the high burden of proof.

In a transcribed interview with Committee staff, Special Agent Peter Forcelli, a senior ATF group supervisor in the Phoenix Field Division, stated that the typical sentence for illegal straw purchases is probation. He also stated that suspects have little incentive to cooperate with investigators or “flip” on higher-level cartel members. In contrast, he stated, “if the option were doing some jail time, you might get some cooperation, so the guy would come in and proffer and [we would] be able to develop intelligence to build a case.”

When he was called by Chairman Issa to appear at the June 15 hearing, Special Agent Forcelli testified that existing laws were “toothless.” He added: “Some people view this as no more consequential than doing 65 in a 55.” He added: “for somebody to testify against members of a cartel where the alternative is seeing a probation officer once a month, they’re going to opt toward, you know, not cooperating with the law enforcement authorities.”

During a transcribed interview with Committee staff, Special Agent Lee Casa, an ATF field agent with over 20 years of experience, stated that the current practice of charging straw purchases for merely lying on purchase forms was ineffective: “I would say generally speaking there is not a lot of bite in the 924(a)(1)(A) statute as far as penalties and time, time that would be served.”

Agents reported that, as a result of these weak penalties, U.S. Attorneys’ offices often decline to prosecute illegal straw purchasers. During a transcribed interview, Special Agent Larry Alt, an attorney and senior ATF field agent, stated with respect to firearms prosecutions: “We don’t get traction with the U.S. Attorney’s office, they don’t follow through, they don’t want to prosecute cases.”

Special Agent Forcelli agreed, stating that “this situation, wherein the United States Attorney’s Office for Arizona in Phoenix declined most of our firearm cases, was at least one factor which led to the debacle of ‘Operation Fast and Furious.’” He added: “we have gone from a ‘D-minus’ to maybe a ‘D.’ It is still far from, again, effective or 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.”

Enactment of Illegal Firearms Trafficking Statute

Multiple law enforcement agents who appeared before the Committee stated that their efforts to combat international drug cartels would be strengthened through the enactment of a federal statute specifically designed to criminalize the trafficking of firearms. Currently, there is no federal statute that specifically prohibits firearms trafficking. Instead, prosecutors attempt to charge traffickers with "paperwork violations," such as dealing in firearms without a license.

Special Agent Carlos Canino, the acting ATF attaché to Mexico, stated during his transcribed interview that there is an "epidemic" of illegal firearms trafficking to Mexico, and a "trafficking statute would be helpful." He added: "What we want to do is we want to stop otherwise legal guns from getting into an illegal secondary market. You know, we want to stop these guys, violent criminals, from hurting people."

Committee staff also conducted a transcribed interview of William Newell, the former Special Agent-in-Charge of the Phoenix Field Division. He stated: "not having a statute that would address a pattern of activity by a group of individuals that are engaged in some form of diversion of firearms from legal to illegal creates a situation for us where we have to go and look at each individual transaction."

Special Agent Casa reiterated this view during his transcribed interview. He stated: "There is really no trafficking, firearms trafficking statute, per se. It would be nice to have a trafficking statute per se or to enhance some of the penalties on even, on the straw purchasers, just to be a deterrent effect ... so we can really hammer these people and just put them in jail."

Requiring Reports of Multiple Long Gun Purchases

Numerous law enforcement agents also stated that reports regarding multiple sales of long guns would be a critical law enforcement tool to counter firearm trafficking networks. Under current law, federally licensed dealers are required to report multiple purchases of handguns, but not long guns, including .50 caliber semiautomatic rifles and multiple AK-variants that are now the "weapons of choice" for international drug cartels.

In his transcribed interview with Committee staff, Special Agent Canino explained this problem. He stated:

[R]ight now the problem we're having is the long rifles. A guy goes out and buys X number of 7.62 rifles, whatever, 8, 10, 12, 100. You don't know that that guy—unless an FFL calls you and says, hey, this guy just bought this quantity, you're not going to know until one of those guns ends up at a crime scene.

When he was called by Chairman Issa to testify before the Committee on June 15, Special Agent Forcelli explained that monitoring the sale of multiple long guns would be no different than monitoring the sale of cold medicine in pharmacies. He stated: "we monitor how much Sudafed somebody buys in a pharmacy nowadays because that's what utilized to make methamphetamine."

Congressional Delegation to Mexico City

On June 24 and 25, 2011, Chairman Issa and Ranking Member Cummings traveled to Mexico City as part of a delegation of seven Members of Congress to meet with Mexican and U.S. officials. The delegation was briefed by numerous officials who warned that Mexican drug cartels are arming themselves with military-grade weapons purchased in the United States and illegally trafficked to Mexico.

For example, authorities from the Mexican Federal Police reported that the overwhelming number of weapons recovered at Mexican crime scenes are coming from the United States, and that drug cartels are increasingly turning to the United States for firepower in their war against the Mexican government.

John Feeley, the U.S. chargé d'affaires in Mexico, also warned the delegation that weapons trafficking from the United States is fueling "war-like activities" by the drug cartels and that the United States needs to stop weapons trafficking before the firearms get to Mexico. He stated: "By the time they get here, the horse is already out of the barn."

ATF's chief intelligence analyst in Mexico, Dennis Fasciani, confirmed for the delegation that "the vast majority of weapons recovered at crime scenes in Mexico do come from the United States." He estimated that roughly 75% of all traced weapons were originally purchased in the four border states of Texas, New Mexico, Arizona, and California, and he stated that ATF needs the ability to monitor long gun sales in real-time in order to stop trafficking networks.

Prior to traveling on the delegation, Committee staff conducted several transcribed interviews with ATF officials who further buttressed these reports. For example, the former ATF attaché to Mexico, Darren Gil, stated during his interview: "without a doubt, the majority of weapons that we're recovering ... come from the U.S., there's no doubt all right."

Conclusion and Recommendations

During the Committee's hearing on June 15, Chairman Issa interrupted Committee Members who were asking questions of the law enforcement agents that he invited to testify. In particular, Chairman Issa objected to any questions about whether the nation's gun laws could be improved to assist these law enforcement agents in their efforts to counter drug violence and firearms trafficking by Mexican drug cartels.

Chairman Issa stated: "we're not here to talk about proposed gun legislation. It would be outside the scope of this hearing." He instructed the witnesses that "the scope of this, your testimony here, is limited, and that it's not about proposed legislation."

Despite the Chairman's efforts to wall off any discussion of the nation's gun laws, the record compiled during the Committee's investigation documents clearly that these same law enforcement agents believe that their efforts to combat international drug cartels would be enhanced significantly with common-sense improvements in several key areas.

For these reasons, based on multiple transcribed interviews, hearing testimony, and briefings to

Committee Members by both U.S. and Mexican law enforcement officials, this report recommends that: (1) Congress increase criminal penalties for illegal straw purchases; (2) Congress enact a dedicated firearms trafficking statute; and (3) ATF obtain reports from gun dealers on purchases of multiple long guns that are now the weapons of choice for Mexican drug cartels.